

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Kaspar Broadcasting Co. of Missouri)	File No. EB-02-KC-757
Licensee of Station KWRE(AM))	NAL/Acct. No. 200332560001
Warrenton, Missouri)	FRN 0003-7474-82

MEMORANDUM OPINION AND ORDER

Adopted: March 16, 2004

Released: March 19, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we cancel the \$7,000 *Notice of Apparent Liability for Forfeiture* (“*NAL*”) issued to Kaspar Broadcasting Co. of Missouri (“Kaspar”), licensee of Station KWRE(AM), Warrenton, Missouri.¹ The *NAL* found that Kaspar failed to enclose the antenna structure, which had radio frequency potential at its base, within an effective locked fence or other enclosure, in apparent willful violation of Section 73.49 of the Commission’s Rules (“*Rules*”).²

II. BACKGROUND

2. On September 11, 2002, an agent from the Commission’s Kansas City, Missouri Office (“*Kansas City Office*”) conducted an on-site inspection of Station KWRE(AM)’s antenna structure. The agent found that the gate to the fence enclosing the antenna structure was unlocked. On October 28, 2002, the *Kansas City Office* released the *NAL*. Kaspar filed a response to the *NAL* on November 8, 2002.³

3. In its response, Kaspar did not dispute the *NAL*’s findings, but sought cancellation of the *NAL* based on the circumstances presented and its past history of FCC compliance. Specifically, Kaspar explained that during the inspection it had been broadcasting a service commemorating the September 11, 2001 tragedy from the local firehouse (located a block from the station’s antenna structure), that it had experienced technical difficulties with its remote equipment, and that its employees left the gate open briefly (over a period of thirty minutes) to facilitate repairs to the equipment while providing continuous coverage of the community memorial event.⁴ But for the unusual circumstances of the September 11th broadcast and the brief thirty minute period, Kaspar stated that its practice is to maintain a locked gate.⁵

¹ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332560001 (Enf. Bur., *Kansas City Office*, released October 28, 2002).

² 47 C.F.R. § 73.49.

³ See Letter from Vern Kaspar, President, Kaspar Broadcasting of Missouri to the Federal Communications Commission, Office of the Secretary (dated November 5, 2002) (“*NAL Response*”).

⁴ See *NAL Response* at 1; see also Exhibit 1 (the corroborating statement of Mike Thomas, Station KWRE(AM)’s program coordinator).

⁵ *Id.*

Kaspar also stated that, since 1936, it has held and continues to hold licenses for various broadcast stations, “has never received a notice of violation for any of the FCC’s rules,” has been “extremely proud of the record,” and did not “want it blemished at this late date because of a misunderstanding.”⁶

III. DISCUSSION

4. In the instant case, Kaspar did not deny that on the morning of September 11, 2002 its employees left the gate to the fence gate open. As a Commission licensee, Kaspar is held accountable for the actions of its employees,⁷ and is responsible for maintaining an effectively enclosed antenna structure. We find that Kaspar willfully violated the antenna fencing requirements of Section 73.49 of the Rules,⁸ by consciously and deliberately leaving the gate open on the morning of September 11, 2002. However, as discussed below, we agree with Kaspar that cancellation of the *NAL* is appropriate.⁹

5. The record establishes that on the morning of September 11, 2002, the gate, which Kaspar’s practice was to lock, was open for a very brief period of time to facilitate the necessary equipment repairs that allowed Station KWRE(AM) to serve its community needs by continuing its coverage of the local commemorative event. Under the circumstances, we find the nature and extent of Kaspar’s infraction to be relatively insignificant,¹⁰ when compared to other Section 73.49 violations.¹¹ Additionally, we find that, as Kaspar asserted and a search of agency decisions and notices confirmed, the stations licensed to Kaspar and its commonly owned and controlled company Kaspar Broadcasting Company, Inc., have an unblemished history of serving their broadcast communities. We believe that the circumstances surrounding and the nature and extent of Kaspar’s violation, together with its unblemished past history, justifies cancellation of the *NAL*.

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 504(b) of the Act and Section 1.80(f)(4) of the Rules,¹² the prior *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332560001, **IS CANCELLED**.

⁶ *Id.* at 1.

⁷ See *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21864-65 ¶¶ 7-8 (2002); *Sonderling Broadcasting Corp.*, 69 FCC 2d 289, 291 ¶ 6 (1978); *American Paging, Inc.*, 12 FCC Rcd 10417, 10419 ¶ 11 (Enf. Bur. 1997); *Dial-A-Page, Inc.*, 10 FCC Rcd 8825, 8826 ¶ 5 (Enf. Bur. 1995).

⁸ See 47 U.S.C. § 503(b)(1)(B) (providing that that any person found to have “willfully” or repeatedly failed to comply with any provision of the Act or Commission Rule or Order “shall be liable to the United States for a forfeiture penalty”); see also 47 U.S.C. § 312(f); *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4387-88, ¶ 5 (1991).

⁹ See 47 U.S.C. § 503(b)(2)(D); 47 C.F.R. § 1.80(b)(4) (providing that the Commission may cancel or adjust proposed forfeitures by taking into account the violation’s nature, circumstances, extent and gravity; the violator’s degree of culpability, history of prior offenses, ability to pay; and other matters as justice may require).

¹⁰ See *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 ¶ 8 (1994); *WWC License LLC*, 16 FCC Rcd 19490, 19492 ¶ 9 (Enf. Bur. 2001); *Califormula, Inc.*, 16 FCC Rcd 15087, 15087-88 ¶ 4 (Enf. Bur. 2001); see also *Anastos Media Group, Inc.*, 18 FCC Rcd 8573, 8574 ¶ 8 (Enf. Bur. 2003).

¹¹ See, e.g., *Commonwealth License Subsidiary, LLC*, 18 FCC Rcd 20483, 20485 ¶ 8 (Enf. Bur. 2003); *Mitchell Communications, Inc.*, 17 FCC Rcd 22391, 22393-94 ¶ 9 (Enf. Bur. 2002)

¹² 47 U.S.C. § 504(b); 47 C.F.R. § 1.80(f)(4).

7. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Vern Kaspar, President, Kaspar Broadcasting Co. of Missouri, P.O. Box 545, Frankfort, Indiana 46041.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau