

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

In the Matter of)	
)	
Metropolitan Radio Group, Inc.)	
)	File Number EB-03-TP-357
Licensee of AM Radio Station WBRD,)	
Palmetto, Florida)	NAL/Acct.No.200432700013
)	
Springfield, Missouri)	FRN 0007-0069-84
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 11, 2004

By the Enforcement Bureau, Tampa Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Metropolitan Radio Group, Inc., licensee of AM radio station WBRD, Palmetto, Florida, apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000) for repeated and willful violation of Section 73.49 of the Commission’s Rules (“Rules”).¹ Specifically, we find Metropolitan Radio Group, Inc. apparently liable for failure to maintain an effective locked fence around the base of its AM antenna towers.

II. BACKGROUND

2. On December 23, 2003, two agents from the Commission’s Tampa Field Office inspected Metropolitan Radio Group, Inc.’s antenna towers for station WBRD(AM) in Palmetto, Florida. The agents found the station’s AM antenna towers were not enclosed within an effective locked fence. The property was accessible by large gaps in the property fencing and the individual fences around the base of two towers were found unlocked and opened. The agents notified the station’s contract engineer about the condition of the base fences. The contract engineer stated that he was aware of the base fence problem, had previously notified station management of the fences’ condition, and that the problem had existed for approximately 3 years.

3. On March 9, 2004, two Tampa Office agents again inspected the perimeter and base fences for WBRD(AM). The agents found the perimeter fence still allowed unrestricted access to the property at various points. One tower’s base fence was found unlocked and open. The gate of the second tower’s base fence was unhinged and leaning against a post.

¹ 47 C.F.R. § 73.49.

III. DISCUSSION

4. Section 73.49 of the Rules requires antenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) must be enclosed within effective locked fences or other enclosures. On December 23, 2003, and March 9, 2004, the WBRD AM antenna towers were not enclosed within an effective locked fence, allowing unrestricted access to the base of the structures.

5. Based on the evidence before us, we find that Metropolitan Radio Group, Inc., repeatedly² and willfully³ violated Section 73.49 of the Rules by failing to maintain an effective locked fence around the base of its AM antenna towers.

6. Pursuant to Section 1.80(b)(4) of the Rules,⁴ the base forfeiture amount for failing to maintain effective locked AM tower fencing is \$7,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.”⁵ Considering the entire record and applying the factors listed above, this case warrants a \$7,000 forfeiture.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ Metropolitan Radio Group, Inc., is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for repeated and willful violation of Section 73.49 of the Rules by failing to maintain an effective locked fence around the base of its AM antenna towers used by station WBRD.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this Notice of Apparent Liability, Metropolitan Radio Group, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or

² Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which applies equally to Section 503(b) of the Act, provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ 47 C.F.R. § 1.80(b)(4).

⁵ 47 U.S.C. § 503 (b)(2)(D).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Request for payment of the full amount of NAL under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

10.. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Spectrum Enforcement Division, and MUST INCLUDE THE NAL/Acct. No. referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

13. IT IS FURTHER ORDERED THAT a copy of this Notice of Apparent Liability shall be sent by regular mail and Certified Mail Return Receipt Requested to Metropolitan Radio Group, Inc., 318 E. Pershing Street, Springfield, MO 65806.

FEDERAL COMMUNICATIONS COMMISSION

⁸ See 47 C.F.R. § 1.1914.

Ralph M. Barlow
District Director, Tampa Office
Enforcement Bureau