

Federal Communications Commission

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

In the Matter of)	
)	File Number EB-04-BF-031
Beacon Broadcasting, Inc.)	
Licensee of AM Station WANR)	NAL/Acct. No. 200432280002
Warren, Ohio)	
)	FRN: 0008 3694 23

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: May 26, 2004

By the Resident Agent, Buffalo Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Beacon Broadcasting, Inc., (“Beacon”) licensee of radio station WANR (AM) Warren, Ohio, has apparently violated Section 73.49 of the Commission's Rules (“Rules”)¹ by failing to enclose one of the station's two antenna towers within an effective locked fence or other enclosure. We conclude that Beacon is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

2. On August 5, 2003 an agent from the FCC Enforcement Bureau's Buffalo Office inspected AM station WANR licensed to Warren, Ohio. The agent observed the gate to the fence surrounding one of the two towers was missing. The tower had radio frequency potential at the base and the property did not have a perimeter fence to prevent unauthorized access to the antenna tower.

3. On September 26, 2003, the Buffalo Office issued a Notice of Violation (NOV) to Beacon Broadcasting concerning the missing gate. Beacon responded telephonically, stating the gate had been stolen, but would be replaced. The Buffalo Office has not received a written reply to the NOV to date.

4. On February 24, 2004, an agent from the FCC Enforcement Bureau's Buffalo Office again inspected AM station WANR licensed to Warren, Ohio. The agent observed that the gate on the fence surrounding one of the two antenna towers was not locked. A tree branch was propped against the gate to keep it closed. The station manager for the station stated the gate had been replaced on the fence a little over a month prior to the re-inspection and a lock was never installed.

III. DISCUSSION

5. Section 73.49 of the Rules requires that antenna towers having radio frequency potential at the base must be enclosed within effective locked fences or other enclosures. The gate was not locked

¹ 47 C.F.R. § 73.49.

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on February 24, 2004, and the general manager for WANR stated that a lock was never installed on the gate when it was replaced a month prior to re-inspection.

6. Based on the evidence before us, we find Beacon Broadcasting, Inc. willfully² and repeatedly³ violated Section 73.49 of the Rules by failing to enclose the station's antenna tower within an effective locked fence or other enclosure.

7. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")⁴, sets the base forfeiture amount for operation without AM tower fencing at \$7,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended⁵ ("*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. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a seven thousand dollar (\$7,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

8. 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 Beacon Broadcasting, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for willful and repeated violation of Section 73.49 of the Rules by failing to enclose the station's antenna towers within effective locked fences or other enclosures.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Beacon Broadcasting, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. 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,

² 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 4387-88 (1991).

³ The 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." 47 U.S.C. § 312(f)(2).

⁴ 47 C.F.R. § 1.80.

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

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Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200432280002 and FRN 0008 3694 23.

11. The response, if any, must be mailed to Federal Communications Commission, Buffalo Office, 1307 Federal Building, 111 West Huron Street, Buffalo, New York 14202, and MUST INCLUDE THE NAL/Acct. No. 200432280002.

12. 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.

13. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

14. 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 Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street S.W., Washington, DC 20554. 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.

15. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Beacon Broadcasting, Inc., 6578 Summers Road, Windsor, Ohio 44099.

FEDERAL COMMUNICATIONS COMMISSION

David A. Viglione
Resident Agent, Buffalo Office
Enforcement Bureau

Attachment A – FCC Condensed List of Small Entities, October 2002

⁸ See 47 C.F.R. § 1.1914.