

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

In the Matter of)	
)	
Sandhill Media Group, LLC)	File Nos.: EB-06-PO-095
)	EB-06-PO-096
Licensee of AM Station KSPZ)	
(Formerly KUPI))	NAL/Acct. No.: 200632920004
Ammon, Idaho)	FRN: 0009807074
Facility ID No. 55238)	

FORFEITURE ORDER

Adopted: May 22, 2007

Released: May 24, 2007

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of four thousand, two hundred dollars (\$4,200) to Sandhill Media Group, LLC (“Sandhill”), licensee of radio station KSPZ (formerly KUPI)¹ in Ammon, Idaho, for repeatedly violating Section 73.49 of the Commission's Rules (“Rules”).² On September 27, 2006, the Enforcement Bureau’s Portland Resident Agent Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of \$7,000 to Sandhill for failing to enclose the KSPZ antenna towers within effective locked fences or other enclosures.³ In this *Order*, we consider Sandhill’s arguments that the violation was not willful or repeated, and that the forfeiture amount should be reduced based on Sandhill’s good faith efforts to repair the fences surrounding the KSPZ antenna towers, and based on Sandhill’s history of compliance with the Commission’s Rules.

II. BACKGROUND

2. On August 3, 2006, an agent from the Portland Resident Agent Office inspected antenna towers used by Sandhill to broadcast AM station KSPZ. KSPZ is a directional AM station, which uses three antenna towers to broadcast its signal: antenna structure #1042078, antenna structure #1042029, and antenna structure #1042030.⁴ According to its license, the KSPZ antenna towers are series fed and, therefore, required to be fenced. Upon inspection of the antenna towers, the agent found that there were no effective locked fences or other barriers surrounding the base of antenna structure #1042078, or the base of antenna structure #1042029. At antenna structure #1042078, such large sections of the fence were missing that the tower was easily accessible on two sides. At antenna structure #1042029, fencing existed on only one side of the tower, making the tower easily accessible on three sides. The agent observed that large sections of the existing fences surrounding the two towers were missing, while others were lying on the ground. The agent also noted that there was a perimeter fence made up of four strands of barbed wire

¹ According to Commission records, the station’s call sign was changed to KSPZ on March 19, 2007.

² 47 C.F.R. § 73.49.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200632920004 (Enf. Bur., Western Region, Portland Resident Agent Office, released September 27, 2006).

⁴ The base fence around antenna structure #1042030 was effective.

surrounding the entire KSPZ antenna site, but that the main gate of that fence was unlocked and wide open. The KSPZ antenna site is adjacent to an auto wrecking yard and an industrial manufacturer of concrete sewer pipes and blocks. Later that day, the Portland agent contacted the KSPZ chief engineer about the condition of the fencing surrounding two of the three KSPZ towers.

3. On September 8, 2006, the Portland agent contacted the KSPZ chief engineer to inquire about the condition of the fencing surrounding the two KSPZ towers. On September 18, 2006, the KSPZ chief engineer responded via email to the Portland agent that all repairs to the fences were made on August 10, 2006. The chief engineer attached photographs of the fences to the email, to show the repairs that were made, and to show that a lock had been installed at the main gate of the perimeter fence.

4. On September 27, 2006, the Portland Office issued a *NAL* in the amount of \$7,000 to Sandhill, finding that Sandhill apparently repeatedly violated Section 73.49 of the Rules⁵ by failing to enclose the KSPZ antenna towers within an effective locked fence or other enclosures. Sandhill filed a response (“*Response*”) on October 27, 2006, arguing that the violation was neither willful nor repeated, and requesting a reduction of the proposed forfeiture based on its good faith efforts to repair the fences surrounding the KSPZ antenna towers, and its history of compliance with the Commission’s Rules.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”).⁸ In examining Sandhill’s response, Section 503(b) of the Act requires that the Commission take into account 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.⁹

6. Section 73.49 of the Rules states that 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.¹⁰ Individual tower fences need not be installed if the towers are contained within a protective property fence.¹¹ In adopting the *Report and Order* promulgating the most recent amendment of Section 73.49, the Commission stated that “a fencing requirement is necessary to protect the general public.”¹² At the time of the inspection on August 3, 2006, a perimeter fence existed around the KSPZ towers, but the gate to the perimeter fence was unlocked and open, therefore, the perimeter fence did not qualify as a protective property fence.¹³ Because the perimeter fence was not effective, the

⁵ 47 C.F.R. § 73.49.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ 47 C.F.R. § 73.49.

¹¹ 47 C.F.R. § 73.49.

¹² *Review of the Technical and Operational Regulations of Part 73, Subpart A, AM Broadcast Stations*, 59 Rad. Reg. 2d (Pike & Fischer) 927, ¶6 (1986) (“*Report and Order*”).

¹³ *See Metropolitan Radio Group*, 19 FCC Rcd 11846 (EB 2004).

base fences around the individual AM towers must be effective.¹⁴

7. The KSPZ antenna towers are series fed and, pursuant to Section 73.49, each of the three KSPZ towers must be enclosed within an effective locked fence or other enclosure. Only one of the three towers, however, was properly enclosed. The other two towers, antenna structure #1042078 and antenna structure #1042029, each had sections of their fences missing, making both towers easily accessible to the general public.

8. In its *Response*, Sandhill does not dispute that the two towers lacked individual effective fences at the time of the Portland agent's inspection. Sandhill states that it had been in the process of replacing the individual fences around both of the two subject antenna towers in April and May of 2006 and that a carpenter was scheduled to complete the reinstallation of the fences for the two antenna towers beginning August 7, 2006. At that time, Sandhill believed that the antenna towers were secured by a perimeter fence with locked gates. Sandhill states that sometime after the KSPZ chief engineer's last visit to the antenna tower in "mid to late July" and before the Portland agent's inspection, thieves removed the chain and padlock from a gate attached to the perimeter fence and "used the transmitter site to enter an adjacent car wrecking lot in order to steal car parts." Sandhill states that after the KSPZ chief engineer was informed of the violation by the Portland agent on August 3, 2006, the KSPZ chief engineer immediately purchased a new chain and padlock to secure the perimeter fence.¹⁵ Citing *Vernon Broadcasting*,¹⁶ in which the Commission cancelled a \$1,000 forfeiture against a licensee for willfully violating the predecessor rule to Section 73.49, concerning adequate fencing around an antenna tower, because the fence had been vandalized by a third party, Sandhill argues that in the present case, because the failure to secure the perimeter fence was caused by a third party, we cannot find that Sandhill willfully failed to enclose the KSPZ antenna towers within effective locked fences or within a protective property fence. We note that in the *NAL*, the Portland Office found that Sandhill apparently *repeatedly* violated Section 73.49 of the Rules. The Portland Office did not find that Sandhill apparently *willfully* violated Section 73.49 of the Rules. Therefore, we find no merit to this argument.

9. Sandhill also argues that the violation "cannot be deemed 'repeated' simply because it affected two towers at the site." Sandhill appears to argue that a violation may only be deemed repeated if it occurs for more than one day. We disagree. According to Section 312(f)(2) of the Act "'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."¹⁷ As detailed by the Portland Office, and as acknowledged by Sandhill, the perimeter fence was not an effective or protective property fence when it was inspected by the Portland agent on August 3, 2006. The Portland agent then inspected the individual fences around the two subject antenna towers and, as Sandhill acknowledges, neither of these two structures were enclosed in an effective fence. Because the perimeter fence failed, each individual fence had to be effective. Neither were, resulting in Sandhill's failure to effectively enclose each of the two antenna towers, *i.e.*, violating Section 73.49 more than

¹⁴ See *Butterfield Broadcasting Corporation*, 20 FCC Rcd 20237 (EB 2005).

¹⁵ We note that when the chief engineer was asked by the Portland agent on September 8, 2006, about the status of the fences, the chief engineer replied, on September 18, 2006, that "[a]ll repairs were made the Thursday after you called me, I believe that was 8-10-06. All fences are now fully restored and have locks on their gates." In any event, a licensee is expected to correct errors when they are brought to the licensee's attention and that such correction is not grounds for a downward adjustment in the forfeiture. See, e.g., *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

¹⁶ 60 Rad. Reg. 2d (Pike and Fischer) 1275 (1986).

¹⁷ 47 U.S.C. § 312(f)(2).

once.¹⁸ Consequently, we find that Sandhill's violation of Section 73.49 was repeated.¹⁹

10. Sandhill also requests that the forfeiture amount be reduced based on its good faith efforts to repair the individual fences surrounding the two antenna towers. We agree and reduce the forfeiture from \$7,000 to \$5,600. Sandhill also requests that a reduction be given for its history of compliance with the Commission's Rules. We have reviewed our records and we concur. Consequently, we reduce Sandhill's forfeiture amount from \$5,600 to \$4,200.

11. Based on the information before us, having examined it according to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*, we find that reduction of the proposed forfeiture to \$4,200 is warranted.

IV. ORDERING CLAUSES

12. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Sandhill Media Group, LLC, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$4,200 for repeatedly violating Section 73.49 of the Rules.²⁰

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²¹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911- 6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.²²

¹⁸ See *American General Media Corporation*, DA 99-1932, 1999 WL 740434, rel. September 22, 1999.

¹⁹ Additionally, according to Sandhill's *Response*, had the Portland agent not informed the KSPZ chief engineer about the violation of Section 73.49 on August 3, 2006, no station personnel would have discovered the violation until at least August 7, 2006.

²⁰ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.49.

²¹ 47 U.S.C. § 504(a).

²² See 47 C.F.R. § 1.1914.

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Sandhill Media Group, LLC, at its address of record, and its counsel of record, David D. Oxenford, Esquire and Brendan Holland, Esquire.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau