

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

In the Matter of)	File No. EB-01-PA-312
)	
Beacon Broadcasting, Inc.)	NAL/Acct. No. 200232400003
)	
Warren, Ohio)	FRN 0006-1146-64

FORFEITURE ORDER

Adopted: November 13, 2002

Released: November 15, 2002

By the Chief, Enforcement Bureau:

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of fifteen thousand dollars (\$15,000) to Beacon Broadcasting, Inc. (“Beacon”), the licensee of WGRP(AM), Greenville, Pennsylvania, for willful and repeated violation of Sections 17.4(g), 17.48(a), and 17.50 of the Commission’s Rules (“Rules”).¹ The noted violations involve Beacon’s failure to post the Antenna Structure Registration (“ASR”) numbers on the WGRP(AM) antenna structures, failure to notify the Federal Aviation Administration (“FAA”) that the obstruction lighting was improperly functioning, and failure to repaint the WGRP(AM) antenna structures.

2. On June 14, 2002, the Commission’s Philadelphia, Pennsylvania (“Philadelphia Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of fifteen thousand dollars (\$15,000) to Beacon for the noted violations.² Beacon filed a response to the *NAL* on August 8, 2002.

II. BACKGROUND

3. On April 4, 2001, an agent from the Philadelphia Office inspected the two antenna structures utilized for Station WGRP(AM). The antenna structures are assigned ASR numbers 1213201 and 1213203 and are located in Greenville, Pennsylvania. During the inspection, the agent observed that the ASR numbers were not posted on the WGRP(AM) antenna structures and that the paint on both antenna structures was severely faded and flaking.

4. On April 23, 2001, the Philadelphia Office issued to Beacon a *Notice of Violation* (“*NOV*”) for failure to post the ASR numbers on the WGRP(AM) antenna structures and failure to clean and repaint the WGRP(AM) antenna structures to maintain good visibility, in violation of Sections 17.4(g) and 17.50 of the Rules. In its response dated May 23, 2001, Beacon acknowledged the violations and stated that it posted the ASR numbers at the base of the antenna structures and would repaint the antenna structures within 60 days.

5. On November 7, 2001 and November 8, 2001, the agent re-inspected the WGRP(AM)

¹ 47 C.F.R. §§ 17.4(g), 17.48(a), and 17.50.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232400003 (Enf. Bur., Philadelphia Office, released June 14, 2002).

antenna structures to verify that Beacon had sufficiently addressed the violations cited in the April 23, 2001 *NOV*. On November 8, 2001, the agent observed that the ASR numbers were not posted on the WGRP(AM) antenna structures and that the paint on both antenna structures was still severely faded and flaking. The agent also observed on November 7, 2001 at 6:00 p.m. and on November 8, 2001 at 6 a.m. that the top-level red obstruction lighting on the antenna structure 1213201 was extinguished. After interviewing Michael Arch, the general manager, the agent determined that Beacon failed to notify the FAA that the top-level obstruction lighting was extinguished.

6. On November 15, 2001, the Philadelphia Office issued to Beacon an *NOV* for failure to post the ASR numbers on WGRP(AM)'s antenna structures, failure to notify the FAA that the top-level red obstruction lighting was extinguished, and failure to repaint the antenna structures to maintain good visibility, in violation of Sections 17.4(g), 17.48(a), and 17.50 of the Rules. In its response dated December 5, 2001, Beacon acknowledged the violations and stated that it posted the ASR numbers on the antenna structures, notified the FAA of the obstruction light malfunction and commenced work to correct the obstruction light outage. Beacon also stated that it obtained estimates to repaint the antenna structures but the work would commence upon the receipt of funds.

7. On June 14, 2002, the Philadelphia Office issued to Beacon an *NAL* in the amount of \$15,000 for failure to post the ASR numbers on the WGRP(AM) antenna structures, failure to notify the FAA that the obstruction lighting was improperly functioning, and failure to repaint the WGRP(AM) antenna structures in willful and repeated violation of Sections 17.4(g), 17.48(a), and 17.50 of the Rules. In its response to the *NAL*, Beacon argues that it acquired the licenses of Stations WGRP(AM) and WEXC-FM in March 2001 and the agent inspected its antenna structures shortly thereafter. Moreover, Beacon asserts that the ASR numbers appeared on the side of the tower shacks, but were faint due to the worn paint on the shacks. Beacon also states that it is "financially struggling" and requests reconsideration of the proposed forfeiture amount. In addition, Beacon states that it has discharged the former general manager, and that it is attempting to comply with all FCC rules.

III. DISCUSSION

8. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, ("Act")³ Section 1.80 of the Rules,⁴ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999). In examining Beacon'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.⁵

9. Section 17.4(g) of the Rules requires that the ASR number be posted in a conspicuous location so that it is readily visible on or near the base of the tower. Beacon indicates in its response that the ASR numbers were posted on the side of the tower shacks, but were "faint" because of the worn paint. We do not believe that Beacon was in compliance with Section 17.4(g) of the Rules. Beacon acknowledges that the ASR numbers were "faint," and this resulted in them not being visible to the agent. Thus, Beacon did not meet the requirements of Section 17.4(g) that the ASR number be readily visible. In addition, although Beacon contends that it acquired the licenses shortly before the agent's inspection, it

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

was responsible for ensuring compliance with our rules once it acquired the licenses.⁶ Moreover, Beacon had owned the station for eight months prior to the violations that are the subject of this proceeding, and had previously indicated it would re-paint the towers by the end of July, four months prior to the violation for which we issue a forfeiture. With respect to Beacon's argument regarding its inability to pay the proposed forfeiture, we note that it does not submit any financial documentation from which we can assess its ability to pay. Therefore, we decline to reduce the forfeiture amount on this basis. Finally, Beacon states that it is attempting to comply with the FCC's rules. However, Beacon's remedial efforts to correct the violation, while commendable, are not a mitigating factor. *See Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973).

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,⁷ Beacon Broadcasting, Inc. IS LIABLE FOR A MONETARY FORFEITURE in the amount of fifteen thousand dollars (\$15,000) for failure to failure to post the Antenna Structure Registration numbers on the WGRP(AM) antenna structures, failure to notify the Federal Aviation Administration that the obstruction lighting was improperly functioning, and failure to repaint the WGRP(AM) antenna structures in willful and repeated violation of Sections 17.4(g), 17.48(a), and 17.50 of the Rules.

11. 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.⁸ Payment shall be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200232400003 and FRN 0006-1146-64. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

12. IT IS FURTHER ORDERED that, a copy of this *Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Beacon Broadcasting, Inc., 5075 Mahoning Avenue, Warren, Ohio 44483 and Beacon Broadcasting, Radio Station WGRP, 44 McCracken Road, Greenville, Pennsylvania 16125.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁶ *Sitka Broadcasting Co., Inc.*, 70 FCC Rcd 2375, 2378 (1979) (indicating that licensees are expected to know and comply with the Commission's rules).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

⁸ 47 U.S.C. § 504(a).

⁹ *See* 47 C.F.R. § 1.1914.