

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

In the Matter of)	
)	
Bestov Broadcasting, Inc. of Puerto Rico)	File No. EB-02-SJ-030
)	NAL/Acct. No. 200232680005
San Juan, Puerto Rico)	FRN: 0003-7810-28

FORFEITURE ORDER

Adopted: November 14, 2002

Released: November 18, 2002

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of \$10,000 to Bestov Broadcasting, Inc. of Puerto Rico (“Bestov Broadcasting”), licensee of WTIL (AM), Mayaguez, Puerto Rico, for willfully violating Section 17.51 of the Commission’s Rules (“Rules”).¹ The noted violation involves Bestov Broadcasting’s failure to light WTIL (AM)’s antenna structure with the prescribed obstruction lighting.

2. On May 29, 2002, a Resident Agent from the Commission’s San Juan, Puerto Rico Resident Office (“San Juan Office”) issued a \$10,000 *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Mayaguez Radio Corporation for the noted violation.² On June 28, 2002, Bestov Broadcasting filed a response to the *NAL*.³

II. BACKGROUND

3. On April 25, 2002, the Resident Agent inspected an antenna structure in Mayagüez, Puerto Rico (Antenna Structure Registration number 1013203) after sunset. The Resident Agent noted that the antenna structure was completely unlit. The following day, April 26, the Resident Agent inspected WTIL(AM), the radio station associated with the antenna structure. The station manager told the Resident Agent that the lighting alarm system was

¹ 47 C.F.R. § 17.51.

² *Mayaguez Radio Corp.*, NAL/Acct. No. 200232680005 (Enf. Bur., San Juan Resident Agent Office, rel. May 29, 2002).

³ The underlying *NAL* was issued to Mayaguez Radio Corporation, licensee of WTIL(AM). Bestov Broadcasting, however, filed a response in which it asserts that it is the licensee of WTIL(AM). Our search of the Commission’s records indicates that on October 2, 1998, the Commission granted consent to assignment of the license for WTIL(AM) from Mayaguez Radio Corporation to Bestov Broadcasting. As of November 7, 2002, however, the Commission’s records listed Mayaguez Radio Corporation as the licensee of WTIL(AM). On November 8, 2002, Bestov Broadcasting filed notice with the Commission that consummation of the assignment took place on November 11, 1998. Accordingly, we accept Bestov Broadcasting’s response to the *NAL* and re-caption this proceeding.

inoperative and that he did not know whether the lights were on the previous night. The Resident Agent found that the station's log contained no light outage entries and that the Federal Aviation Administration's local Flight Service Station had not received a notice of a light outage on the antenna structure. As a result of its investigation, the San Juan Office issued the above-referenced *NAL* on June 12, 2002.

4. In its response to the *NAL*, Bestov Broadcasting alleges that the antenna structure light outage resulted from "unwillful negligence" in that its staff disregarded instructions for monitoring the antenna structure's lighting. Its employees's competence, Bestov Broadcasting continues, was a function of its poor financial status. Bestov Broadcasting then requests that we cancel the \$10,000 proposed forfeiture because of its purported inability to pay that amount and provides as supporting documentation its tax returns for the most recent three-year period along with audited financial statements prepared in accordance with generally accepted accounting practices.

III. DISCUSSION

5. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, ("Act"),⁴ Section 1.80 of the Rules,⁵ 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) ("*Policy Statement*"). In examining Truth'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.⁶

6. After reviewing the record, we find that the Bestov Broadcasting's failure to light its antenna structure was a willful violation of Section 17.51 of the Rules.⁷ According to Bestov Broadcasting, its employees disregarded its instructions for monitoring the antenna structure's lighting. The Commission has long held licensees responsible for their employees's actions.⁸ Thus, we reject Bestov Broadcasting's attempt to distance itself from its employees's performance of their duties (or lack thereof).

7. Turning to Bestov Broadcasting's inability to pay claim, we find that Bestov Broadcasting's documentation does not support its claim that it is unable to pay the proposed

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ Failures to observe antenna structure lighting, log light outages, and notify the FAA are separate violations under Part 17. *See* §§ 17.47, 17.48, 17.49.

⁸ *Eleven Ten Broadcasting, Corp.*, 32 FCC 706, 707-08 (1962) ("Inherent in such contention, however, is the view that a licensee who delegates to persons it deems responsible, authority to operate and manage a station cannot be held responsible for their activities if it is unaware of them. This is, of course, a completely untenable view. ").

\$10,000 forfeiture.⁹ Therefore, we find that Bestov is not entitled to a reduction based on inability to pay.

8. We have examined Bestov's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Bestov willfully violated Section 17.51 of the Rules, and we find no basis to rescind or reduce the \$10,000 forfeiture proposed for this violation.

IV. ORDERING CLAUSES

9. 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,¹⁰ Bestov Broadcasting, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$10,000 for willfully violating Section 17.51 of the Rules.

10. 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.¹¹ Payment 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 must include the FCC Registration Number ("FRN") referenced above, and should also note the *NAL/Acct. No.* referenced above. 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. 20554.¹²

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class and certified mail, return receipt requested, to Luis A. Mejía, President, Bestov Broadcasting, Inc., P.O. Box 9023916, San Juan, Puerto Rico 00902-3916.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁹ See *PJB Communications*, 7 FCC Rcd 2088 (1992).

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

¹¹ 47 U.S.C. § 504(a).

¹² See 47 C.F.R. § 1.1914.