

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

In the Matter of)	
)	
Dewey D. Lankford)	File No. EB-02-AT-305
)	
Owner of Unregistered Antenna Structure)	NAL/Acct. No. 200232480018
Located at 33° 41' 15" North Latitude, 85° 49' 49"))	
West Longitude in Anniston, Alabama)	FRN 0007-6936-41
)	
Anniston, Alabama)	

FORFEITURE ORDER

Adopted: September 15, 2003

Released: September 17, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of three thousand dollars (\$3,000) to Dewey D. Lankford for willful violation of Section 17.4(a) of the Commission’s Rules (“*Rules*”).¹ The noted violation involves Mr. Lankford’s failure to register his antenna structure.

2. On September 24, 2002, the Commission’s Atlanta, Georgia, Field Office (“*Atlanta Office*”) released a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) ² to Mr. Lankford for a forfeiture in the amount of three thousand dollars (\$3,000). Mr. Lankford filed his response to the *NAL* on October 10, 2002.

II. BACKGROUND

3. Mr. Lankford is the licensee of broadcast station WANA(AM), Anniston, Alabama, and owns that station’s antenna structure. According to the Commission’s records, the antenna structure’s height above ground is over 200 feet. On June 26, 2002, an agent from the Atlanta Office inspected the antenna structure, located at 33° 41’ 15” North Latitude, 85° 49’ 49” West Longitude in Anniston, Alabama. A check of the Commission’s tower registration records indicated that WANA’s tower was not registered. A recent check of the of the Commission’s tower registration records indicates that WANA’s tower remains unregistered.

¹ 47 C.F.R. § 17.14 (a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232480018 (Enf. Bur., Atlanta Office, released September 24, 2002).

4. On September 24, 2002, the Atlanta Office issued a *NAL* for a forfeiture in the amount of \$3,000 to Mr. Lankford for his failure to register the tower, in willful violation of Section 17.4(a) of the Rules. In his response, filed February 10, 2003,³ Mr. Lankford admits that his antenna structure was not registered but requests cancellation or reduction of the proposed forfeiture on the basis that “we have tried from the first receipt of your letter to comply with any and all FCC statutes.” Mr. Lankford states that the previous owner of the station told him that everything regarding the station was “in order” and there was a “variance” regarding registration of the tower. Mr. Lankford further states that he believed, on the basis of a telegram from the FCC (received by the previous licensee of WANA), that WANA’s tower was not required to be registered because it has no marking or lighting requirements.⁴

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁵ Section 1.80 of the Rules,⁶ 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 Mr. Lankford’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.⁷

6. Section 17.4(a) of the Rules requires the registration of antenna structures which require notice to the Federal Aviation Administration. As provided in Section 17.7(a) of the Rules,⁸ FAA notification is required for towers whose height above ground level exceeds 200 feet. According to the Commission’s records, the height of Mr. Lankford’s antenna structure is over 200 feet. The antenna structure is, therefore, required to be registered. The lack of marking and lighting requirements does not negate the tower registration requirement. On the basis of the FCC agent’s investigation, we find that the antenna structure is not registered⁹ and that Mr. Lankford violated Section 17.4(a) by failing to register it.

³ Mr. Lankford states that he also sent a response by facsimile within the 30 day response period. We have no record of receiving that facsimile.

⁴ A check of the Commission’s TOWPUB data base confirms that WANA’s tower does not have marking and lighting requirements.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 C.F.R. § 17.7(a).

⁹ On July 23, 2003, the Wireless Telecommunications Bureau released a Public Notice, DA-03-2411, granting a 60 day amnesty period to the owners of certain unregistered antenna structures identified during an audit. Mr. Lankford’s antenna structure is not among those identified during the audit and, therefore, Mr. Lankford is not entitled to an amnesty period to register his tower.

Because Mr. Lankford knew that WANA's tower was not registered, we find that his violation of Section 17.4(a) was willful.¹⁰

7. No mitigation is warranted on the basis of Mr. Lankford's having "tried" to comply with the Commission's Rules after the Atlanta Office issued the *NAL*. In fact, Commission records indicate that his antenna remains unregistered.

8. We have examined Mr. Lankford'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 Mr. Lankford willfully violated Section 17.4(a) of the Rules and find that neither cancellation nor reduction of the proposed monetary forfeiture is warranted.

9. Mr. Lankford has not yet complied with Section 17.4(a) of the Rules. Accordingly, we will require, pursuant to Section 308(b) of the Act,¹¹ that he report to the Enforcement Bureau no more than thirty (30) days following the release of this order how he plans to achieve compliance with Section 17.4(a). Mr. Lankford's report must be submitted in the form of an affidavit or declaration signed by Mr. Lankford.

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,¹² Dewey D. Lankford **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand dollars (\$3,000) for failure to register his antenna structure, in willful violation of Section 17.4(a) of the Rules.

11. **IT IS FURTHER ORDERED** that, pursuant to Section 308(b) of the Act, Dewey D. Lankford must submit the report described in Paragraph 9, above, no more than thirty (30) days following the release of this order, to the Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Room 7-A820, Washington, D.C. 20554, Attention: Thomas D. Fitz-Gibbon, Esq.

12. 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.¹³ Payment may 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,

¹⁰ 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,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹¹ 47 U.S.C. § 308(b).

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

¹³ 47 U.S.C. § 504(a).

Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232480018 and FRN 0007-6936-41. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁴

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Dewey D. Lankford at 1111 Wilmer Avenue, Anniston, Alabama 36201.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁴ See 47 C.F.R. § 1.1914.