

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

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| In the Matter of |) | |
| |) | |
| East Tennessee Radio Group, L.P. |) | File Number EB-02-AT-231 |
| |) | |
| Owner of Antenna Structure Registration No. 1063413 in Sevierville, Tennessee |) | NAL/Acct. No. 200232480010 |
| |) | |
| Dalton, Georgia |) | FRN 0005-0880-67 |

MEMORANDUM OPINION AND ORDER

Adopted: July 19, 2004

Released: July 22, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we deny an April 24, 2003 petition for reconsideration (“petition”) filed by East Tennessee Radio Group, L.P. (“East Tennessee”), owner of an antenna structure with Antenna Structure Registration (“ASR”) number 1063413 in Sevierville, Tennessee.¹ East Tennessee seeks reconsideration of a March 26, 2003 *Forfeiture Order*,² in which the Enforcement Bureau imposed a monetary forfeiture in the amount of two thousand four hundred dollars (\$2,400), for willfully violating Section 17.57 of the Commission’s Rules (“Rules”).³ That section requires an owner of an antenna structure for which an ASR number has been obtained to immediately notify the Commission of a change in ownership of the antenna structure. For the reasons discussed below, we deny the petition and affirm the monetary forfeiture in the amount of \$2,400.

II. BACKGROUND

2. On May 15, 2002, an agent of the Federal Communications Commission’s (“Commission” or “FCC”) Enforcement Bureau, Atlanta, Georgia Field Office (“Atlanta Office”), in the course of researching a tower violation, found that FCC records indicated that the owner of the antenna structure was Dollywood Broadcasting. However, East Tennessee advised the agent that it owned the antenna structure and that Dollywood Broadcasting was the previous owner. In a June 27, 2002, *Notice of Apparent Liability for Forfeiture* (“NAL”),⁴ the Atlanta Office found that East Tennessee willfully violated Section 17.57 of the Rules by not immediately notifying the Commission via FCC Form 854

¹ This is the antenna structure used for operation of WSEV(AM), Sevierville, Tennessee. East Tennessee is also the licensee of Station WSEV(AM).

² *East Tennessee Radio Group, L.P.*, 18 FCC Rcd 27084 (Enf. Bur. 2003) (“*Forfeiture Order*”).

³ 47 C.F.R. § 17.57.

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232480010 (Enf. Bur., Atlanta Office, June 27, 2002).

concerning the change in ownership. Accordingly, East Tennessee was assessed a \$3,000 forfeiture for the violation.⁵ In its August 16, 2002 response to the *NAL*, East Tennessee argued that the forfeiture should be set aside, explaining that it believed in good faith that the May 11, 2000 notification of the consummation of the assignment of license for WSEV(AM),⁶ the application for assignment of license,⁷ and the proffered ownership report adequately alerted the Commission to the change in ownership of the antenna structure. In the *Forfeiture Order*, we explained that Section 17.57 of the Rules clearly requires that owners notify the Commission of a change in ownership of an antenna structure using FCC Form 854 and that licensees are expected to know and comply with the Commission's Rules.⁸ In addition, although East Tennessee promptly took remedial actions to correct the violation, the Enforcement Bureau found that such actions taken to correct a violation are not mitigating factors justifying reduction or cancellation of a forfeiture. However, due to its past history of compliance, the initial forfeiture amount of \$3,000 was reduced to \$2,400.

3. In its petition, East Tennessee again avers its good faith belief that the May 11 notification, assignment of license application and subsequently filed ownership report adequately alerted the Commission to the change in ownership of the antenna structure.

III. DISCUSSION

4. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934,⁹ as amended ("Act"), Section 1.80 of the Rules,¹⁰ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.¹¹ In examining East Tennessee's petition, 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 such other matters as justice may require.¹²

5. In its petition, East Tennessee explains that it erroneously assumed that the Commission's electronic databases were linked and that the submission of one notification to the Commission would update all information contained in the Commission's records.¹³ Moreover, it again points to its claimed good faith efforts to comply with the notification requirement, explaining that "mistakes happen despite

⁵ The *NAL* also included a \$2,000 forfeiture for a violation of Section 17.4(g), 47 C.F.R. § 17.4(g), (failure to display the ASR number). However, the \$2,000 forfeiture for this violation was canceled in the *Forfeiture Order* due to East Tennessee's voluntary and timely efforts to replace the sign prior to the inspection. See *Forfeiture Order* at para. 7.

⁶ ("May 11 notification"). The consummation of the assignment of the license for WSEV(AM) from Dollywood Broadcasting to East Tennessee occurred on May 10, 2000.

⁷ See File No. BAL-20000208AAC, granted March 22, 2000.

⁸ *Forfeiture Order* at para. 8, citing *Sitka Broadcasting Company, Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Company*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Company*, 23 FCC 2d 868 (1970).

⁹ 47 U.S.C. § 503.

¹⁰ 47 C.F.R. § 1.80.

¹¹ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

¹² 47 U.S.C. § 503(b)(2)(D).

¹³ Petition at 2.

adherence to proper procedures.”¹⁴ However, East Tennessee did not adhere to proper procedures in this case. The Rule is unmistakably clear. A change in ownership information immediately triggers a requirement to advise the Commission of the event *using FCC Form 854*.¹⁵ East Tennessee made no attempt to file a form 854. Such precision is necessary to promote certainty, clarity, and a seamless application of this rule. Accurate ASR data is necessary for the Commission to meet its public safety responsibilities with respect to tower marking and lighting. The petition is denied.

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act¹⁶ and Section 1.106 of the Rules,¹⁷ East Tennessee’s petition for reconsideration of the March 26, 2003, *Forfeiture Order IS DENIED*.

7. 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.¹⁸ 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 must include the FCC Registration Number (FRN) and the NAL/Act. No. referenced in the caption. 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. 20554.¹⁹

8. **IT IS FURTHER ORDERED THAT** this *Order* shall be sent by regular mail and by certified mail, return receipt requested, to East Tennessee Radio Group, L.P., P.O. Box 1284, Dalton, GA 37862, and to its counsel, Brian M. Madden, Esq., Leventhal, Senter, & Lerman, P.L.L.C., Suite 600, 2000 K Street N.W., Washington, D.C. 20006-1809.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁴ *Id.* at 3. East Tennessee points to the Commission’s failure to change the company’s address in the database when notified, as an example of mistakes that happen, and explained that such error did not delay notice to the WSEV(AM) studio of its Rule violations, and thus no harm resulted despite the inaccurate antenna structure records. The fact that no harm resulted is not a basis for lowering the forfeiture here, although had harm resulted the forfeiture might have been increased. *See Forfeiture Policy Statement* at 12 FCC Rcd 17100 and 17116.

¹⁵ *See Concilio Mision Cristiana Fuente De Agua Viva*, 18 FCC Rcd. 6210, 6211 (Enf. Bur., 2003) (filing an application to assign a station license does not notify the Commission of a change in the ownership of the station’s antenna structure because acquisition of a station does not necessarily include acquisition of the station’s antenna structure).

¹⁶ 47 U.S.C. § 405.

¹⁷ 47 C.F.R. § 1.106.

¹⁸ 47 U.S.C. § 504(a).

¹⁹ 47 U.S.C. § 1.1914.