

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

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| In the Matter of |) | File No.: EB-02-LA-225 |
| |) | |
| Capstar Radio Operating Company |) | NAL/Acct. No. 200332900001 |
| License of station KIXW-AM |) | |
| Registered Owner of ASR Number 1018351 |) | FRN 0005-7937-16 |
| Apple Valley, California |) | |

FORFEITURE ORDER

Adopted: August 10, 2004

Released: August 12, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of four thousand, six hundred dollars (\$4,600) to Capstar Radio Operating Company (“Capstar”), licensee of station KIXW-AM, for willful and repeated violation of Sections 17.4(g) and 17.57 of the Commission’s Rules (“Rules”).¹ The noted violations involve Capstar’s failure to display the antenna structure registration (“ASR”) number near the base of its antenna structure and failure to notify the Commission of a change in ownership information, respectively.

2. On December 30, 2002, the Commission’s Los Angeles Field Office (“Los Angeles Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of \$5,000 to Capstar.² Capstar responded to the *NAL* through counsel on January 30, 2003. In its response, Capstar requested either cancellation or substantial reduction of the forfeiture.

II. BACKGROUND

3. On June 5, 2002, as part of a field-wide targeted tower safety compliance program, agents from the Los Angeles Office inspected the tower, antenna structure number 1018351, used by Capstar for station KIXW-AM in Apple Valley, California. At the time of inspection, however, the FCC’s ASR database listed Ruby Broadcasting, Inc., as the registered owner of the antenna structure number 1018351, not Capstar. When the agents arrived at the tower for inspection, they also observed that no ASR number was displayed at or near the base of the tower.

4. On December 30, 2002, the Los Angeles Office issued an *NAL* to Capstar finding that Capstar willfully and repeatedly violated Sections 17.4(g) and 17.57 of the Rules by failing to display the ASR number near the antenna structure’s base and failing to notify the Commission of a change in ownership information for the tower. Capstar responded to the *NAL* on January 30, 2003 requesting

¹ 47 C.F.R. §§ 17.4(g), 17.57.

² *Notice of Apparent Liability for Forfeiture*, File No. EB-02-LA-225, NAL/Acct. No. 200332900001 (Enf. Bur., Los Angeles Office, released December 30, 2002).

cancellation or reduction of the forfeiture, alleging that the agents' inspection of the antenna structure site was improper, and stating that it instituted prompt remedial action to correct the noted violations.

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"),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) ("*Policy Statement*"). In examining Capstar'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 such other matters as justice may require.⁵

6. Section 17.4(g) of the Rules requires, in pertinent part, that, "the Antenna Structure Registration Number must be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure."⁶ At the time of the Commission inspection on June 5, 2002, Capstar failed to post the ASR number for the tower, as required by Section 17.4(g). Section 17.57 of the Rules requires antenna structure owners to immediately notify the Commission, using FCC Form 854, upon any change in ownership information.⁷ When agents from the Los Angeles Office inspected the antenna structure on June 5, 2002, ASR number 1018351 was registered to Ruby Broadcasting, Inc. Capstar, which acquired ownership of the tower in September of 2000, failed to timely notify the Commission of the ownership change pursuant to Section 17.57. Not until October 11, 2002, after an inquiry from a Los Angeles Office agent, did Capstar file the required updated ownership information with the Commission.

7. Capstar disputed neither its failure to post the ASR number, nor its outdated ownership information on file with the Commission. Instead, Capstar contended that an Alternative Broadcast Inspection Program ("ABIP") agreement shielded it from random inspections by Los Angeles Office agents, and, as a result, the proposed forfeiture should be reduced or cancelled.⁸ Capstar argued that the agents' "drive-by" inspection of the antenna structure violated the terms of the ABIP agreement. Specifically, Capstar claimed that, under the ABIP agreement, the Commission agreed to abort any routine inspection if the station demonstrated that it requested and paid for an alternative inspection by the California Broadcasters Association ("CBA"). In support of this claim, Clear Channel Communications Inc., ("Clear Channel"), owner of Capstar, provided a copy of its request for an alternative CBA inspection of Capstar's broadcast station.

8. Capstar's claims notwithstanding, the Los Angeles Office's inspection of the antenna structure in use by Capstar was not precluded by the above referenced ABIP agreement. Initially, we note that, at the time of the inspection, Capstar held no valid certificate of compliance. Therefore, the ABIP

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 C.F.R. § 17.4(g).

⁷ 47 C.F.R. § 17.57.

⁸ See Capstar Response at Exhibit B, ABIP Agreement ("ABIP Agreement"). The ABIP agreement then in effect between the Los Angeles Field Office and the California Broadcasters Association ("CBA") provided that the CBA would offer contract inspection services for a fee to CBA member stations. The specific language of the agreement states, in part, that once the FCC receives notice of a station's compliance from the CBA "the Los Angeles Enforcement Bureau Office will promise not to perform a random routine inspection of the station for a period of two years," and further that "that the FCC also agrees to abort any attempted routine inspection upon a showing that an Association [CBA] inspection has been requested and paid for within the last 60 days...."

agreement failed to afford Capstar a two year protection from inspection by Los Angeles Office agents.⁹ Further, assuming that Capstar obtained a certificate of compliance prior to the date of inspection, the specific terms of the ABIP agreement entitled the Los Angeles Office to inspect any station during the protected two year period so long as the inspection was undertaken as part of a targeted compliance program.¹⁰ The inspection by Los Angeles Office agents on June 5, 2002 was part of a targeted compliance program, a field-wide targeted tower safety compliance program, and therefore was not barred by the terms of the ABIP agreement.¹¹ Specifically, as part of a targeted compliance program, the inspection was not routine, and the Los Angeles Office was therefore not obligated to abort its proceedings with regard to the observed violations.¹²

9. In its response, Capstar represented that it took corrective actions, specifically including posting the tower's ASR number near the tower's base, prior to being notified in October, 2002, of the violations discovered by the Los Angeles Office agents during their June 5, 2002, inspection. This remedial action constitutes good faith, and merits a reduction of the forfeiture assessed for Capstar's violation of Section 17.4(g) to \$1,600.¹³ We note, however, that Capstar took no remedial action with respect to its inaccurate tower ownership information on file with the Commission until October 11, 2002, after receiving notification of its violation of Section 17.57 of the Rules from a Los Angeles Office agent. Therefore, Capstar's subsequent remedial action with respect to its violation of Section 17.57, while commendable, fails to mitigate its violation of that Section, and thus presents no basis for the Commission to reduce or cancel the assessed \$3,000 forfeiture for its violation of Section 17.57.¹⁴ Accordingly, we find that Capstar willfully¹⁵ and repeatedly¹⁶ violated Sections 17.4(g) and 17.57 of the Commission's Rules and reduce the total forfeiture amount to \$4,600.

⁹ See ABIP Agreement (“upon receipt of... certification, the [Los Angeles Office]... will promise not to perform a random routine inspection of the station for a period of two years from the date of certification”) (emphasis added); see also *State Broadcasting Corp.*, 19 FCC Rcd 4668, 4669-4670 (Enf. Bur. 2004) (concluding that State was not entitled to the protection of the ABIP agreement during the stipulated period, where State failed to obtain a valid certificate of compliance prior to Commission inspection). Nothing in the Agreement provided an exemption from routine inspections based on a request for an ABIP inspection.

¹⁰ See ABIP Agreement (“the FCC will only inspect a station during this [two year protected] period on the basis of an external requirement, such as a complaint or targeted compliance program”).

¹¹ See *State Broadcasting*, 19 FCC Rcd at 4670 (concluding that inspection as part of a targeted tower safety compliance program was valid during an ABIP protected period).

¹² See ABIP Agreement (“The FCC agrees to abort any routine inspection...”) (emphasis added); see also *Clear Channel Broadcasting Licenses, Inc.*, 19 FCC Rcd 8100, ¶ 8 (concluding that inspection pursuant to a targeted tower safety compliance program was not a routine inspection); *State Broadcasting*, 19 FCC Rcd at 4670 (concluding that, where the inspection was not routine, the agents were not required to abort).

¹³ See *Max Media of Montana, L.L.C.*, 18 FCC Rcd 21375, 21378 ¶ 11 (Enf. Bur. 2003) (reducing a proposed forfeiture from \$8,000 to 6,000 for antenna structure lighting violations because the licensee had undertaken corrective action and had restored the structure's lighting prior to receiving notice of the Field Office's inspection and/or action based on such inspection); see also *Barinowski Investment, Co.*, 18 FCC Rcd 25067, 25069 ¶ 7 (Enf. Bur. 2003) (reducing a proposed forfeiture from \$10,000 to \$8,000 for antenna structure painting violations because the licensee had identified the problem and had pre-paid to repaint the structure prior to the Field Office's inspection and subsequent action on the violation).

¹⁴ See, e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 7891 (2002), *forfeiture ordered*, 17 FCC Rcd 21866, 21875-76 ¶¶ 26-28 (2002) (finding that a downward adjustment of an aggregate forfeiture was not warranted where the carrier lacked an effective antenna compliance program at the time of the violations and only corrected such violations after the Commission brought them to its attention); *Odino Joseph*, 18 FCC Rcd 16522, 16524 at ¶ 8 (Enf. Bur. 2003) (finding that a downward adjustment was not warranted, where a pirate broadcaster terminated all transmissions after the Commission's investigation).

¹⁵ 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

10. We have examined Capstar'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 Capstar willfully and repeatedly violated Sections 17.4(g) and 17.57 of the Commission's Rules, and, although we find no basis for canceling the proposed forfeiture, we reduce the total forfeiture amount to \$4,600 based on Capstar's good faith effort to comply with Section 17.4(g) of the Commission's Rules.

IV. ORDERING CLAUSES

11. 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,¹⁷ Capstar Radio Operating Company **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand, six hundred dollars (\$4,600) for failure to provide an ASR number at the base of its tower structure and failure to notify the Commission of a change in ownership information in violation of Sections 17.4(g) and 17.57 of the Rules, respectively.

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.¹⁸ 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, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200332900001 and FRN 0005-7937-16. 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. 20554.¹⁹

13. **IT IS FURTHER ORDERED** that copies of this *Order* shall be sent by Certified Mail, Return Receipt Requested, and by First Class Mail to Capstar Radio Operating Company, 2625 S. Memorial Drive, Suite A, Tulsa, Oklahoma 74129, and its counsel, Dorann Bunkin, Esq., Wiley Rein & Fielding, 1776 K Street N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

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, 4388 (1991) (forfeiture to an AM radio station for willful violation of sponsorship identification, even though the AM radio station did not know its actions violated any rule or law), *recon. denied*, 7 FCC Rcd 3454 (1992).

¹⁶ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2). The Conference Report for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982). See also *Calvary Communications*, 18 FCC Rcd 18172, 18174 (2003) (finding that a lighting violation that occurred on two consecutive days was enough to warrant a "repeated" distinction).

¹⁷ 47 C.F.R. §§ 0.111, 0.311, 0.180(f)(4).

¹⁸ 47 U.S.C. § 504(a).

¹⁹ See 47 C.F.R. § 1.1914.