

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

In the Matter of)	
)	
WLTH Radio, Inc.)	File No. EB-03-CG-054
WLTH(AM))	NAL/Acct. No. 200432320001
Gary, Indiana)	
)	FRN 0004 9887 62

FORFEITURE ORDER

Adopted: December 2, 2004

Released: December 6, 2004

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of sixteen thousand dollars (\$16,000) to WLTH Radio, Inc. (“WLTH”), licensee of AM radio station WLTH, Gary, Indiana, and owner of the station’s antenna structures, for willful and repeated violation of Sections 17.4(a), 17.48 and 17.51(a) of the Commission’s Rules (“Rules”).¹ The noted violations involve WLTH’s failure to register the antenna structure for the station, failure to notify the Federal Aviation Administration (“FAA”) of a known antenna structure light outage, and its failure to exhibit the required red obstruction lighting.

2. On December 23, 2003, the District Director of the Commission’s Chicago, Illinois, Field Office (“Chicago Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”)² to WLTH in the amount of sixteen thousand dollars (\$16,000). WLTH filed its initial response to the NAL on January 23, 2004, and supplemented it on February 27 and September 8, 2004.

II. BACKGROUND.

3. WLTH has two antenna structures – one located in Gary, Indiana, and used for WLTH’s daytime transmissions (“the day antenna structure”) and the other located in a rural area near Gary, Indiana, and used for WLTH’s nighttime transmissions (“the night antenna structure”). The day antenna structure’s height is more than 200 feet above ground level (“AGL”) and that structure is subject to the registration, lighting and marking requirements specified in Part 17 of the Rules.³ The night antenna

¹ 47 C.F.R. §§ 17.4(a), 17.48(a) and 17.51(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200432320001 (Enf. Bur., Chicago Office, rel. December 23, 2003).

³ 47 C.F.R. § 17.1 et seq. According to the Commission’s records, WLTH’s day antenna structure is required to have red obstruction lighting at night. (The information is from the Commission’s “towpub” data base, which contains information concerning antenna structures that existed before the Commission required antenna structure registration.)

structure, whose height is less than 200 feet AGL, is not subject those requirements.

4. On February 14, 2003, the Commission received a complaint alleging that WLTH's antenna structure lighting was not operational. The agent checked the Commission's antenna structure registration ("ASR") data base on February 26, 2003, and determined that WLTH's day antenna structure was not registered.⁴ On March 5 and 6, 2003, respectively an agent from the Chicago Office informed a WLTH employee and the station's engineer by telephone that the Commission had received the complaint. On March 12, 2003, the station engineer told the agent by telephone that there were underground cabling problems that resulted in a lighting outage at the day antenna structure and that he did not know the length of the outage because the power loss was sporadic.

5. On March 12, 2003, the station engineer also told the agent that he had not notified the Federal Aviation Administration ("FAA") of the lighting outage.⁵ On March 19, 2003, the agent contacted the FAA and determined that the FAA's records indicated that WLTH notified the FAA of the lighting outage on March 12, 2003. In a letter dated March 26, 2003, WLTH stated that it had corrected the lighting outage.

6. Based on its investigation, on December 23, 2003, the Chicago Office issued the subject *NAL* for WLTH's apparent willful and repeated violations of Sections 17.4(a), 17.48(a), and 17.51(a) of the Rules. In its initial response to the *NAL*, WLTH does not contest the fact that the tower was unregistered or unlighted for a period of time, but contends that its day antenna structure is less than 200 feet AGL and, therefore, is not subject to the Commission's antenna registration and lighting requirements. However, in its September 8, 2004, supplementary response, WLTH reports that it conducted a survey on September 4, 2004, which established that the day antenna structure's height is 202.97 feet AGL. In addition, WLTH contends that hunters caused the lighting outage by shooting out the antenna structure lights. Finally, WLTH claims that it notified the FAA of the outage on March 5, 2003.

III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁶ Section 1.80 of the Rules,⁷ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Policy Statement").⁸ Section 503(b) of the Act requires that, in examining WLTH's response, 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

⁴ As of the date of the adoption of this *Order*, the ASR data base indicates that WLTH's day antenna structure remains unregistered. On February 26, 2003, the Chicago Office sent WLTH a letter informing it of the lighting and registration violations.

⁵ On March 12, 2003, the Chicago Office issued a *Notice of Violation* to WLTH for its failure to notify the FAA of the outage as required by Section 17.48(a) of the Rules.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

to pay, and other such matters as justice may require.⁹

8. Section 17.4(a) of the Rules provides in pertinent part that the owner of an antenna structure that had been assigned painting and lighting requirements prior to July 1, 1996, must register the antenna structure prior to July 1, 1998. According to the Commission's records, WLTH's day antenna structure had been assigned painting and lighting requirements. WLTH concedes that its day antenna structure was not registered. We conclude that WLTH willfully¹⁰ and repeatedly¹¹ violated Section 17.4(a) of the Rules.

9. Section 17.21(a) of the Rules¹² requires that antenna structures exceeding 200 feet in height AGL be painted and lighted. As indicated above, WLTH's day antenna structure exceeds 200 feet in height AGL and is required to have red obstruction lighting. Section 17.51(a) of the Rules requires that the red obstruction lighting be exhibited between sunset and sunrise. On March 5 and 6, 2003, respectively an agent from the Chicago Office informed a WLTH of the outage.¹³ WLTH admitted in the March 12, 2003, telephone conversation and in its letter of March 26, 2003, that there was a lighting outage at its day antenna structure. The fact that WLTH notified the FAA of the lighting outage on March 12, 2003,¹⁴ is also an admission that the outage existed. In its response to the *NAL*, WLTH claims that hunters caused the outage by shooting out the antenna structure lights. This explanation differs from WLTH's earlier explanation during the March 12, 2003, telephone conversation that the outage resulted from a sporadic power loss. Furthermore, the tower described in WLTH's response to the *NAL* is in "a wooded, rural area"¹⁵ and is apparently WLTH's night antenna structure, which has no lighting requirement. We conclude that WLTH did not display the required red obstruction lighting at its day antenna structure, in willful and repeated violation of Section 17.51(a) of the Rules.

10. Section 17.48 of the Rules requires antenna structure owners to immediately notify the FAA of any lighting outage not corrected within 30 minutes. The Chicago Office notified WLTH of the

⁹ 47 U.S.C. § 503(b)(2)(D).

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 Company*, 6 FCC Rcd 4387, 4388 (1991).

¹¹ As provided by 47 U.S.C. § 312(f)(2), a violation that continues for more than one day is "repeated." 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. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Co.*, *supra*.

¹² 47 C.F.R. § 17.21(a).

¹³ The record does not reflect that WLTH was aware of the light outage pursuant to the tower owner responsibilities set out in Section 17.47(a) of the Rules, 47 C.F.R. § 17.47(a), to detect such light failures.

¹⁴ WLTH's assertion that it notified the FAA of the outage on March 5, 2003, is clearly erroneous in light of the station engineer's statement on March 12, 2003, that he had not notified the FAA, and the FAA records which indicated that WLTH notified the FAA on March 12, 2003.

¹⁵ WLTH's response dated January 23, 2004, to the *NAL*.

outage on March 5, 2004. WLTH now claims that it notified the FAA of the outage the on the same day. We must, however, reject that claim because it is inconsistent with the record. WLTH's station engineer stated, during his March 12, 2003, telephone conversation with the FCC agent that he had not notified the FAA of the outage. Furthermore, as of March 19, 2003, the FAA's records indicated that WLTH notified the FAA of the lighting outage on March 12, 2003. We conclude that WLTH did not immediately notify the FAA of a lighting outage not corrected within 30 minutes, in willful and repeated violation of Section 17.48 of the Commission's Rules.

11. We have examined WLTH'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 WLTH willfully and repeatedly violated Sections 17.4(a), 17.48 and 17.51(a) of the Rules and that neither reduction nor cancellation of the proposed monetary forfeiture is warranted.

12. As of the date of the adoption of this *Order*, WLTH has provided no information indicating that it has achieved compliance with Section 17.4(a) of the Rules. Accordingly, we will require, pursuant to Section 308(b) of the Act,¹⁶ that WLTH Radio, Inc., report to the Enforcement Bureau no more than thirty (30) days following the release of this order how it plans to achieve compliance with Section 17.4(a). WLTH's report must be submitted in the form of an affidavit or declaration signed by an officer or director.

IV. ORDERING CLAUSES

13. 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 WLTH Radio, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of sixteen thousand dollars (\$16,000) for willfully and repeatedly violating Sections 17.4(a), 17.48 and 17.51(a) of the Rules.

14. **IT IS FURTHER ORDERED** that, pursuant to Section 308(b) of the Act, WLTH must submit the report described in Paragraph 12, 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.

15. 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 of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank

¹⁶ 47 U.S.C. § 308(b).

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

¹⁸ 47 U.S.C. § 504(a).

Bank One, and account number 1165259. 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

16. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by regular mail Certified Mail Return Receipt Requested to WLTH Radio, Inc., P. O. Box 2300, Gary, Indiana 46409, and to its counsel, Allan G. Moskowitz, Kaye Scholer LLP, 901 15th Street, N.W., Suite 1100, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau

¹⁹ See 47 C.F.R. § 1.1914.