

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

In the Matter of	)	
	)	
Westshore Broadcasting, Inc.	)	File No. EB-02-TP-331
Licensee of AM Radio Station WOCA in Ocala,	)	
Florida, and Owner of Antenna Structure #1027385	)	NAL/Acct. No. 200332700005
St. Petersburg, Florida	)	
	)	FRN 0003-7580-00

**FORFEITURE ORDER**

**Adopted: April 1, 2004**

**Released: April 5, 2004**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of twelve thousand dollars (\$12,000) to Westshore Broadcasting, Inc. (“Westshore”), licensee of AM station WOCA for willful and repeated violation of Sections 17.51, 17.57 and 73.49 of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violations involve Westshore’s failure to light the antenna structure for station WOCA, to notify the Commission of a change in the antenna structure’s ownership information, and to enclose WOCA’s antenna structure within an effective locked fence.

2. On November 1, 2002, the Commission’s Tampa, Florida, Field Office (“Tampa Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Westshore for a forfeiture in the amount of twenty thousand dollars (\$20,000).<sup>2</sup> Westshore responded to the *NAL* on December 3, 2002.

**II. BACKGROUND**

3. On July 1, 2002, the Tampa Office received a complaint indicating that the lights on WOCA’s antenna structure (#1027385), which Westshore owned, had been dark for at least six months. After receiving the complaint, an agent at the Tampa Office phoned the Federal Aviation Administration (“FAA”) and found that there was no Notice to Airmen (“NOTAM”) <sup>3</sup> on file for antenna structure #1027385.<sup>4</sup> Later on the same day, agents from the Tampa Office inspected WOCA’s transmitting

<sup>1</sup> 47 C.F.R. §§ 17.21(a), 17.57 and 73.49.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232700005 (Enf. Bur., Tampa Office, released November 1, 2002).

<sup>3</sup> Section 17.48(a) of the Rules, 47 C.F.R. § 17.48(a), requires tower owners to immediately report lighting outages that cannot be corrected within 30 minutes to the FAA. When the FAA receives a report of a lighting outage, it issues a “NOTAM” concerning the outage.

<sup>4</sup> According to records provided by Westshore, the most recent NOTAM was issued on May 8, 2002.

facilities. During their inspection, the agents observed that the gate to the fence surrounding antenna structure #1027385 was unlocked. When the agents covered the tower lights' photocell, they observed that the tower lights did not illuminate.

4. On July 2, 2002, agents from the Tampa Office again inspected station WOCA's transmitting facilities and again observed that the gate to the fence surrounding antenna structure #1027385 was unlocked. The station manager stated that the antenna structure lighting failed on or about September 26, 2001, and had not been repaired because Westshore's service company refused to climb the tower due to its poor structural integrity.

5. An agent from the Tampa office subsequently checked the FCC's Antenna Structure Registration ("ASR") data base and found that antenna structure #1027385 was still registered in the name of a previous owner.

6. On November 1, 2002, the Tampa Office issued a *NAL* for a forfeiture in the amount of \$20,000 to Westshore for willful and repeated violation of Sections 17.51, 17.57 and 73.49 of the Rules. In its response, filed December 3, 2002, Westshore admits that its tower lights failed on September 26, 2001; that the gate to the fence around its tower was unlocked at the time of the FCC inspection on July 2, 2002; and that its tower registration information was not current at the time of the inspection. Westshore, however, seeks reduction or cancellation of the proposed monetary forfeiture. Westshore contends that it timely notified the FAA of the lighting outage, that its tower could not be relighted because it was unsafe to climb and that it "has been working in good faith to correct the outage and bring the facility into compliance." Westshore states that it was unaware of the fencing and registration violations. Westshore also argues that, if the proposed forfeiture is imposed, it will place a serious financial burden on the company and provides copies of its 2000 and 2001 federal income tax returns to support this claim.

### 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"),<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> 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*"). Section 503(b) of the Act requires that the Commission, in examining Westshore's response, 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.<sup>7</sup>

8. According to the ASR data base, at the time of the inspection by the Tampa agents, red obstruction lighting was required for WOCA's antenna structure. Section 17.51 of the Rules requires that red obstruction lighting be exhibited between sunset and sunrise. In its December 3, 2002, response to the *NAL*, Westshore concedes that the red obstruction lighting of antenna structure #1027385 had not

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<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> 47 U.S.C. § 503(b)(2)(D).

functioned since September 26, 2001. We find that, by failing to relight the tower for over nine months, Westshore willfully<sup>8</sup> and repeatedly<sup>9</sup> violated Section 17.51 of the Rules.<sup>10</sup>

9. Section 17.57 of the Rules requires the owner of an antenna structure for which an ASR number has been obtained to notify the Commission of any change in the ownership information. Westshore concedes that it did not do so following an ownership change and that it acted only after being notified of the violation by the Commission.<sup>11</sup> Additionally Westshore claims it was unaware of this violation. Westshore's lack of awareness that it was violating the Rules indicates that it may not have intended to violate the Rules but does not negate the willfulness of the violation.<sup>12</sup> Moreover, licensees are expected to know and comply with the Commission's Rules.<sup>13</sup> We find that Westshore willfully and repeatedly violated Section 17.57 of the Rules.

10. Section 73.49 of the Rules requires the owner of an antenna structure to enclose it within an effective locked fence. The FCC agents' observations establish that the gate in the fence around Westshore's antenna structure was unlocked on July 1 and 2, 2002. Westshore claims that it was unaware of this violation and states its belief that grounds personnel or power company personnel accidentally left the gate open. Because Westshore has not provided any evidence of an inspection routine for checking the condition of the gate or to determine whether grounds personnel or power company personnel had left it open, we find Westshore responsible for the gate's being left open on July 1 and 2, 2002.<sup>14</sup> We, accordingly, find that Westshore willfully and repeatedly violated Section 73.49 of the Rules.

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<sup>8</sup> 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).

<sup>9</sup> As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. 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. 97<sup>th</sup> Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

<sup>10</sup> See, e.g., *Media Broadcasting Corporation*, 17 FCC Rcd 24583 (Enf. Bur. 2002).

<sup>11</sup> A check of the ASR data base indicates that Westshore updated the ownership information on March 14, 2003.

<sup>12</sup> See *Southern California Broadcasting Co.*, *supra*.

<sup>13</sup> *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979).

<sup>14</sup> See, e.g., *Tidewater Communications, Inc.*, 17 FCC Rcd 8586, 8588 (Enf. Bur. 2002) (failure of automated alarm system inadequate to overcome finding of willfulness of tower lighting violation where there is no evidence that tower owner ever monitored alarm system or tower lighting); *recon. granted*, 18 FCC 5524 (Enf. Bur. 2003) (forfeiture cancelled where tower owner produced evidence that it monitored tower lighting two days prior to the light outage); and *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21873 (2002) (forfeiture imposed for willful violation where there is no evidence of original compliance or of periodic inspections to learn of noncompliance). Cf. *Vernon Broadcasting*, 60 RR 2d 1275 (1986) (forfeiture reduced where licensee regularly inspected tower fencing and found it to be in good condition just prior to FCC inspection).

11. No mitigation is warranted on the basis of Westshore's correction of the violations. As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."<sup>15</sup>

12. Westshore states that it notified the FAA within 30 minutes after discovery of the outage on September 26, 2001, and arranged on September 27, 2001, to have the lights repaired but did not have them repaired at that time because the antenna structure was unsafe to climb. We agree with Westshore that the antenna structure was not safe to climb. However, the antenna structure was still unilluminated on the day of the inspection, more than nine months after the outage began.<sup>16</sup> Because Westshore's unilluminated tower was a hazard to air navigation, it was essential for Westshore to correct the violation within a reasonable amount of time.<sup>17</sup> We find that the nine months between the discovery of the outage and the FCC inspection was not a reasonable period to leave the lighting violation uncorrected. Westshore's response to the *NAL* indicates that, prior to the FCC investigation, Westshore had ordered and received a new tower but had not erected because it was unable to get permission from the City of Ocala, Florida, to erect it. While these circumstances do not excuse such a lengthy outage, we find that Westshore's actions in arranging for a new antenna structure demonstrate good faith and that the portion of the proposed forfeiture imposed on Westshore for violation of Section 17.51 of the Rules should be reduced from \$10,000 to \$5,000. We find, thus, that the total forfeiture amount should be reduced from \$20,000 to \$15,000.

13. Finally, Westshore argues that, if the proposed forfeiture is imposed, it will place a serious financial burden on the company. In support of its financial hardship claim, Westshore submits copies of its 2000 and 2001 federal income tax returns. The Commission has determined that, in general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.<sup>18</sup> After reviewing the financial data submitted, we find that the proposed monetary forfeiture should be further reduced to \$12,000.<sup>19</sup>

14. We have examined Westshore'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

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<sup>15</sup> See also *Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22629 (2002); *Radio Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966).

<sup>16</sup> Westshore actually did not correct the violation until 19 months after the discovery of the outage. According to the Commission's ASR data base, antenna structure #1027385 was dismantled on or about May 20, 2003. The Commission's records also indicate that station WOCA is now transmitting from a new 190 foot tower that is not required to be registered or illuminated.

<sup>17</sup> See 47 C.F.R. § 17.56.

<sup>18</sup> See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992).

<sup>19</sup> *Id.* at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Afton Communications Corp.*, 7 FCC Rcd 6741 (Com. Car. Bur. 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).

Westshore willfully and repeatedly violated Sections 17.51, 17.57 and 73.49 of the Rules. We also conclude that, while cancellation of the proposed \$20,000 monetary forfeiture is not warranted, a reduction to \$12,000 is justified.

#### IV. ORDERING CLAUSES

15. 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,<sup>20</sup> Westshore Broadcasting, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twelve thousand dollars (\$12,000) for failure to light its antenna structure, to notify the Commission of a change in the antenna structure's ownership information, and to enclose the antenna structure within an effective locked fence, in willful and repeated violation of Sections 17.51, 17.57 and 73.49 of the Rules.

16. 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.<sup>21</sup> 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. 200332700005 and FRN 0003-7580-00. 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.<sup>22</sup>

17. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Westshore Broadcasting, Inc., 311 112<sup>th</sup> Avenue, N.E., St. Petersburg, Florida 33716.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>20</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>21</sup> 47 U.S.C. § 504(a).

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