

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

In the Matter of)	
)	
The King's Musician Educational Foundation, Inc.)	File Number EB-09-HU-0046
)	
Owner of Antenna Structure)	NAL/Acct. No. 200932540004
ASR # 1249922)	
Fannett, Texas)	FRN 0013945555
)	

FORFEITURE ORDER

Adopted: October 13, 2009

Released: October 15, 2009

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of one thousand five hundred dollars (\$1,500) to The King’s Musician Educational Foundation, Inc. (“*Foundation, Inc.*”), owner of antenna structure number 1249922, in Fannett, Texas, for willful and repeated violation of Sections 17.4(g) and 17.51(b) of the Commission’s Rules (“*Rules*”).¹ The noted violations involve *Foundation, Inc.*’s failure to display the Antenna Structure Registration (“*ASR*”) number in a conspicuous place so that it is readily visible near the base of the antenna structure and its failure to exhibit all medium intensity obstruction lighting as specified.

II. BACKGROUND

2. On May 13, 2009, an agent from the Commission’s Houston Office of the Enforcement Bureau (“*Houston Office*”) inspected antenna structure number 1249922. The top daytime medium intensity obstruction lighting was not working at the time of the inspection. Additionally, the ASR number was not displayed anywhere near the antenna structure base. The agent confirmed on May 16, 2009 that the Federal Aviation Administration (“*FAA*”) had not been informed of the outage.

3. On May 18, 2009, an agent with the Houston Office contacted the President of *Foundation, Inc.*, who stated that the top daytime medium intensity obstruction light had been out for two months, that they had not notified the FAA of the outage, and that the FAA had not issued a Notice to Airmen (“*NOTAM*”) regarding the antenna structure. He also confirmed that the ASR number was not posted for the antenna structure. The FAA issued a NOTAM regarding the antenna structure on May 18, 2009.

4. On September 3, 2009, the Houston Office issued a *Notice of Apparent Liability for Forfeiture* to *Foundation, Inc.* in the amount of twelve thousand dollars (\$12,000), for the apparent willful and repeated violation of Sections 17.4(g) and 17.51(b) of the Rules.² *Foundation, Inc.* submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture.

¹ 47 C.F.R. § 17.4(g) and 17.51(b).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200932540004 (Enf. Bur., Houston Office, September 3, 2009) (“*NAL*”).

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) (“*Forfeiture Policy Statement*”). In examining Foundation Inc.’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.⁵

6. Section 17.4(g) of the Rules requires that the ASR number be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. On May 10, 2009, an agent from the Houston Office observed that the ASR number for antenna structure number 1249922 was not posted anywhere near the base of the structure. On May 18, 2009, the President of Foundation, Inc. admitted that the ASR number was not posted for antenna structure number 1249922. In its response to the *NAL*, Foundation, Inc. did not dispute any of the facts surrounding its failure to post the ASR number near the base of its antenna structure. Thus, based on the evidence before us, we find that Foundation, Inc. willfully⁶ and repeatedly⁷ violated Section 17.4(g) of the Rules by failing to post the ASR number near the base of antenna structure number 1249922 on May 10 and 18, 2009.

7. Section 17.51(b) of the Rules requires that all medium intensity obstruction lighting be exhibited as specified. Antenna structure number 1249922 is required to have a dual lighting system exhibiting red obstruction lights at nighttime and medium intensity obstruction lighting during the daytime. On May 10, 2009, an agent from the Houston Office observed the top medium intensity obstruction light on antenna structure number 1249922 was not functioning during the day. On May 16, 2009, the agent confirmed that the FAA had not issued a NOTAM regarding the antenna structure. On May 18, 2009, the President of Foundation, Inc. stated the daytime top medium intensity obstruction light on antenna structure number 1249922 had been out for two months and that Foundation, Inc. had not notified the FAA regarding the outage.

8. In response to the *NAL*, Foundation, Inc. does not deny the lighting violation. However, Foundation, Inc. clarifies that, subsequent to the conversation on May 18, 2009, the President of Foundation, Inc. was informed by his Vice-President that Foundation, Inc. did not become aware of the lighting outage until the beginning of May 2009. Thus, based on the evidence before us, we find that Foundation, Inc. willfully and repeatedly violated Section 17.51(b) of the Rules by failing to exhibit all medium intensity obstruction lighting as specified, between May 10 and 18, 2009.

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(E).

⁶ 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’, when used with reference to the commission or omission of any act, 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).

⁷ 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. 97th 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).

9. Foundation, Inc. requests a reduction of the forfeiture associated with the tower lighting violation based on its corrective actions taken prior to the Commission notification. Foundation, Inc. states that soon after it discovered the outage, and prior to the Commission notification, it contacted the engineer who originally assisted with the tower construction to request that he come back out to the tower to diagnose the problem. The engineer, however, informed Foundation, Inc. that he was not available for at least three weeks. Foundation, Inc. says that it began attempts to find another tower company to climb the tower but was unsuccessful prior to the inspection. Foundation Inc. seeks a reduction based on its pre-notification efforts, citing *Texas Educational Broadcasting Co-operative, Inc.*⁸ and *Max Media of Montana.*⁹

10. By its own admission, Foundation, Inc. was aware of the lighting outage at the beginning of May 2009 and yet failed to notify the FAA of the outage prior to the Commission notification on May 18, 2009.¹⁰ In light of its willful failure to notify the FAA of the outage, we find that its efforts to contact a contractor to diagnose and repair the problem prior to notification of the outage by the Commission's agent did not constitute a good faith effort to comply with the rules and do not justify a reduction in forfeiture. Moreover, the cases cited by Foundation, Inc. are not persuasive precedent, because the violators in the two cited case remedied the violations prior to Commission involvement. In *Texas Educational Broadcasting Co-operative, Inc.*, the licensee corrected its violation of the alien ownership rules by reducing the number of foreign nationals serving on its board of directors prior to submitting its renewal application. Thus, by the time the Commission became aware of the violation, the licensee was no longer in violation of the rules. Similarly, in *Max Media of Montana*, the tower owner restored the tower lights prior to being contacted by the Commission about the outage. In this case, Foundation, Inc. did not notify the FAA about the lighting outage until after being contacted by the Commission.

11. Finally, Foundation, Inc. requests a reduction of the forfeiture, based on its inability to pay and its history of compliance with the rules. With regard to an individual's or entity's inability to pay, the Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.¹¹ We have reviewed our records and Foundation, Inc.'s documentation and conclude that the forfeiture should be reduced to \$1,500, based on Foundation Inc.'s history of compliance with the rules and its documented inability to pay the forfeiture.

12. We have examined Foundation Inc.'s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we reduce the proposed forfeiture to \$1,500, based on Foundation Inc's history of compliance with the rules and inability to pay.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, The King's Musician Educational Foundation, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand five hundred dollars (\$1,500) for violations of Sections 17.4(g) and 17.51(b) of

⁸ *Memorandum Opinion and Order and Notice of Apparent Liability*, 22 FCC Rcd 13038 (MB 2002).

⁹ *Forfeiture Order*, 18 FCC Rcd 21375 (EB 2003).

¹⁰ See 47 C.F.R. § 17.48 (owners shall report immediately to the FAA any observed or known extinguishment or improper functioning of any top steady burning light not corrected within 30 minutes).

¹¹ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

the Rules.¹²

14. 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 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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Foundation, Inc. will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

15. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to The King’s Musician Educational Foundation, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau

¹² 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 17.4(g), 17.51(b).

¹³ 47 U.S.C. § 504(a).