

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

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| In the Matter of |) | File No. EB-10-IH-0557 |
| |) | |
| TURNER BROADCASTING SYSTEM, INC. |) | NAL Account No. 201032080036 |
| |) | |
| Parent Company of CNN America, Inc. and |) | FRN No. 0006873228 |
| Courtroom Television Network LLC, Holders |) | |
| of Various Licenses in the Wireless and |) | |
| International Services |) | |
| |) | |
| Apparent Liability for Forfeiture |) | |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 10, 2010

Released: September 10, 2010

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Turner Broadcasting System, Inc (“Turner”), parent company of CNN America, Inc. and Courtroom Television Network LLC, holders of various licenses in the wireless and international radio services, apparently willfully and repeatedly violated section 310(d) of the Communications Act of 1934, as amended,¹ and sections 25.119 and 1.948 of the Commission’s rules (“Rules”),² in connection with an internal company reorganization. Pursuant to section 503(b) of the Act,³ we conclude that Turner is apparently liable for a forfeiture in the total amount of \$16,000.

II. BACKGROUND

2. Turner is an Atlanta-based corporation which provides programming for the cable industry. Among its wholly-owned subsidiaries at the time of the license transfers at issue was Cable News Network, LP LLLP (“CNN-LP”), holder of 49 licenses in various wireless and international radio services. According to Turner, on December 31, 2006, its controlling 10 percent general partnership interest in CNN-LP was contributed to Turner’s wholly owned subsidiary, CNN Investment Company, Inc., which at the time held the remaining 90 percent limited partnership interest. Immediately thereafter, CNN-LP was merged into CNN Investment Company, Inc., the latter of which was the surviving entity. CNN Investment Company, Inc. simultaneously changed its name to Cable News Network, Inc. (“CNN-Inc.”). All of these events occurred on the same day and resulted in a *pro forma* transfer of control of

¹ 47 U.S.C. § 310(d).

² 47 C.F.R. §§ 25.119, 1.948.

³ See 47 U.S.C. § 503(b).

CNN-LP, immediately followed by a *pro forma* assignment of the 49 subject licenses, to CNN-Inc.⁴ Turner did not seek or obtain prior Commission consent for either transaction.

3. Turner states that in May 2009 it undertook a review of its licensing portfolio in preparation for another corporate restructuring. This restructuring contemplated the *pro forma* assignment of nine of the 49 licenses from CNN-Inc. to Turner, 38 of the licenses to wholly-owned subsidiary CNN America, Inc. (“CNN America”), and two of the licenses to wholly-owned subsidiary Courtroom Television Network LLC (“Court TV”).⁵ According to Turner, at this time it discovered that CNN-LP still held the licenses.⁶

4. Turner thereafter prepared and filed appropriate applications seeking Commission consent to the assignment of the 49 licenses from CNN-LP to Turner, CNN America and Court TV, respectively.⁷ The Wireless Telecommunications Bureau and International Bureau subsequently granted the respective applications pending before them and referred the matters to the Enforcement Bureau (“Bureau”) for investigation.⁸ The Bureau immediately commenced an investigation on March 9, 2010, by directing a letter of inquiry to Turner requesting information and documents relating to the referenced transactions.⁹ In its response, dated April 8, 2010, Turner represented, among other things, that it had incorrectly believed no prior FCC approval was required for the 2006 transactions because the operations and ultimate control of the affected licenses did not change as a result of the reorganization.¹⁰

III. DISCUSSION

5. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹¹ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.¹² The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,¹³ and the Commission has so interpreted the term in the section 503(b) context.¹⁴ The Commission may also assess

⁴ See *Response of Turner Broadcasting System, Inc. to the Enforcement Bureau’s March 9, 2010 Letter of Inquiry*, dated April 8, 2010 at 2 (“LOI Response”).

⁵ See *Id.* at 2.

⁶ *Id.*

⁷ See File Nos. 0003974137, 0003974367, SES-ASG-20090911-01155, SES-ASG-20090911-01162 and SES-ASG-20090911-01163.

⁸ See *Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications, Designated Entity Reportable Eligibility Event Applications, and Designated Entity Annual Reports*, Public Notice, Report Number 5360 (rel. Oct. 21, 2009); *Satellite Communications Services Information RE: Actions Taken*, Public Notice, Report No. SES-01217 (rel. Feb. 3, 2010).

⁹ See Letter from Gary Schonman, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, FCC, to Junan Gibson, Cable News Network, LP LLLP, dated March 9, 2010 (“LOI”).

¹⁰ See LOI Response at 2.

¹¹ See 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

¹² 47 U.S.C. § 312(f)(1).

¹³ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁴ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (*Southern California Broadcasting Co.*).

a forfeiture for violations that are merely repeated, and not willful.¹⁵ “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.¹⁶ In order to impose such a penalty, the Commission must issue a notice of apparent liability, the notice must have been received or have been sent to the last known address of the person against whom the notice has been issued, and such person must have an opportunity to show, in writing, why no such penalty should be imposed.¹⁷ The Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.¹⁸

6. Section 310(d) of the Act states that “[n]o construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.”¹⁹ In accordance with sections 25.119 and 1.948 of the Rules, a transfer of a station license or wireless authorization by transfer of control of any corporation or any other entity holding such license requires application to and prior approval from the Commission.²⁰

7. In the instant case, Turner effectuated an internal corporate reorganization in 2006 that resulted in the *pro forma* transfer of control and *pro forma* assignment of 49 wireless and international licenses without prior Commission approval. Turner concedes that it did not seek or obtain prior Commission consent for either transaction and that the dereliction continued at least until remedial applications were filed in 2009.²¹ Under the circumstances presented herein, we conclude that Turner engaged in the unauthorized transfer of control and unauthorized assignment of the 49 subject licenses in apparent willful violation of section 310(d) of the Act, and sections 25.119 and 1.948 of the Rules.

8. In determining the amount of a forfeiture penalty, section 503(b)(2)(E) of the Act²² and section 1.80(a)(4) of the Rules direct the Commission to take into account “the nature, circumstances, extent, and gravity of the violation . . . and the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²³ In this regard, we note that every case presents a unique set of circumstances and turns on its specific facts. Pursuant to the *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for a *pro forma* unauthorized assignment of license or transfer of control is \$1,000.²⁴ The Commission has found, however, that while the number of licenses involved should be considered an aggravating factor, multiplying the base forfeiture amount by

¹⁵ See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) (“*Callais Cablevision*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁶ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

¹⁷ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

¹⁸ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

¹⁹ 47 U.S.C. § 310(d).

²⁰ 47 C.F.R. §§ 25.119(d), 1.948.

²¹ See LOI Response at 2.

²² 47 U.S.C. § 503(b)(2)(E).

²³ 47 C.F.R. § 1.80(a)(4).

²⁴ See *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17115 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”); 47 C.F.R. § 1.80.

the number of licenses at issue could result in an excessive forfeiture.²⁵ We also consider other mitigating and aggravating factors, such as the nature of the transaction, including whether the transfer was *pro forma* or substantial, and the length of time prior to the filing of corrective applications, if any. In this case, we recognize that the unauthorized transfer involved 49 licenses, but was *pro forma* in nature and resulted from a single transaction. However, the length of time that it took for Turner to file corrective applications was clearly excessive. We therefore find the fact that the unauthorized license transfers occurred as a result of a single transaction is a mitigating factor. The number of licenses and the period of operation (over two-and-one-half years) prior to filing corrective applications are aggravating factors. Based on the precedent cited herein and applying the factors set forth in section 503(b)(2)(E) of the Act and section 1.80 of the Rules,²⁶ we conclude that Turner is apparently liable for a total forfeiture of \$16,000.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.311, 0.314 and 1.80 of the Rules, Turner Broadcasting System, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of sixteen thousand dollars (\$16,000) for apparently willfully violating section 310(d) of the Act and sections 25.119 and 1.948 of the Rules.

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules, that within thirty (30) days of the release date of this Notice, Turner **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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 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. Payments by wire transfer may be made to ABA Number 021030004, receiving bank Federal Reserve Bank of New York, 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). Turner will also send electronic notification within forty-eight (48) hours of the date said payment is made to Gary.Schonman@fcc.gov and Pam.Slipakoff@fcc.gov.

12. The response, if any, to this *Notice of Apparent Liability for Forfeiture* must be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554 and must include the NAL/Acct. No. referenced above.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices

²⁵ See, e.g., *ARINC, Inc.*, Order and Consent Decree, 24 FCC Rcd 5325 (Enf. Bur., IHD 2009). The *ARINC* Consent Decree required the company to pay a voluntary contribution of \$15,000 for the unauthorized *pro forma* transfer of control of 163 licenses, after taking into consideration the fact that the transfers occurred as a result of a single transaction, the company’s voluntary disclosure, the number of licenses at issue and the two month period prior to filing corrective applications.

²⁶ 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80.

(GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this *Notice of Apparent Liability for Forfeiture* under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. For answers to questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov.²⁷

15. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by certified mail, return receipt requested, to Turner Broadcasting System, Inc., Michelle Hylton, Senior Counsel, One CNN Center, Atlanta, GA 30303-2762.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

²⁷ 47 C.F.R. § 1.1914.