

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

In the Matter of)	
)	
Big Fish Broadcasting, LLC)	File No: EB-09-AT-0024
)	EB-09-AT-0071
)	
Owner of Antenna Structure Number)	NAL/Acct. No.: 201032480003
106600)	
Greenwood, SC)	FRN: 0016128993
)	
Former Owner of Antenna Structure Number)	
1044859)	
Chappells, SC)	
)	

FORFEITURE ORDER

Adopted: May 31, 2011

Released: May 31, 2011

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 seven thousand dollars (\$7,000) to Big Fish Broadcasting, LLC (“Big Fish”), former owner of antenna structure number 1044859 in Chappells, SC¹ and owner of antenna structure number 1066000 in Greenwood, SC, for willful and repeated violation of sections 17.51(a) and 17.48 of the Commission’s rules (“Rules”).² The noted violations involve Big Fish’s failure to: (1) exhibit the structures’ red obstruction lighting from sunset to sunrise; and (2) notify the Federal Aviation Administration (“FAA”) immediately of lighting outages.

II. BACKGROUND

2. Antenna structure number 1044859 is an antenna tower of 129 meters (approximately 423 feet) in height above ground. Antenna structure number 1066000 is an antenna tower of 110 meters (approximately 360 feet) in height above ground. According to the Antenna Structure Registration (“ASR”) database, both antenna structures are required to be painted and lit with a top, flashing beacon equipped with two lamps and red filters, along with steady burning red side obstruction lights at the mid-point of its overall height.

3. On April 27, 2009, the electricity to antenna structure number 1066000 was disconnected.³ On June 18, 2009, the electricity to antenna structure number 1044859 was disconnected.⁴ Accordingly, as of those respective dates, the lights on the antenna structures were unlit.

¹ Big Fish sold antenna structure number 1044859 to Radio Training Network, Inc. on April 22, 2010.

² 47 C.F.R. §§ 17.48, 17.51(a).

³ See Email from South Carolina Electric and Gas to Atlanta Office (October 28, 2009).

⁴ *Id.*

4. On June 29, 2009, in response to a complaint of unlit towers, an agent of the Enforcement Bureau's Atlanta Office ("Atlanta Office") contacted the FAA to determine if tower light outages had been reported for antenna structure numbers 1044859 and 1066000. The FAA informed the agent that no one had contacted them about a light outage for either antenna structure and that no Notice to Airmen ("NOTAM") had been issued regarding the structures.⁵

5. On July 2, 2009, an agent from the Atlanta Office informed Big Fish's owner/president of his responsibility to maintain the lights on antenna structure numbers 1044859 and 1066000 and to notify the FAA in the event of a light outage. Big Fish's owner/president stated he would check into the status of the antenna structures. Big Fish first notified the FAA of lighting outages on antenna structure numbers 1044859 and 1066000 on July 14, 2009.

6. On October 20, 2009 and November 5, 2009, an agent from the Atlanta Office confirmed that no lights on antenna structure numbers 1044859 and 1066000 were lit after sunset.⁶ On both days, the agent observed that the power meters had been removed from the electrical service entrances to the towers and that there was no power to either tower site.

7. On January 26, 2010, the Atlanta Office issued a *Notice of Apparent Liability for Forfeiture* to Big Fish in the amount of twenty thousand dollars (\$20,000), for the apparent willful and repeated violation of sections 17.51(a) and 17.48.⁷ Big Fish submitted a response to the *NAL* requesting reduction or cancellation of the proposed forfeiture based on its inability to pay, history of compliance, and its good faith efforts to comply with the rules.⁸ Big Fish's response does not dispute the violations identified in the *NAL*.

III. DISCUSSION

8. The proposed forfeiture amount in this case was assessed in accordance with section 503(b) of the Communications Act of 1934, as amended ("Act"),⁹ section 1.80 of the Rules,¹⁰ and the Commission's *Forfeiture Policy Statement*.¹¹ In examining Big Fish'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.¹² As discussed below, we conclude that the

⁵ The FAA issued NOTAMs regarding the structures at that time.

⁶ Local sunset on October 20, 2009 was 6:47 P.M. Local sunset on November 5, 2009 was 5:30 P.M. On October 20, 2009, the agent observed the towers at 7 P.M. and 8 P.M. On November 5, 2009, the agent observed the towers at 7:30 P.M. and 8:30 P.M.

⁷ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 201032480003 (Enf. Bur. Atlanta Office, rel. January 26, 2010) ("*NAL*").

⁸ After receiving an extension of time from the Atlanta Office, Big Fish responded to the *NAL* on March 10, 2010. See Letter from John C. Trent, Counsel for Big Fish Broadcasting, LLC, to Douglas Miller, District Director, Atlanta Office, dated March 10, 2010 ("*NAL Response*").

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. § 1.80.

¹¹ *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 (1997) ("*Forfeiture Policy Statement*"), recon. denied, 15 FCC Rcd 303 (1999).

¹² 47 U.S.C. § 503(b)(2)(E).

forfeiture should be reduced to \$7,000 based on Big Fish's documented inability to pay the proposed forfeiture.

9. Section 303(q) of the Act states that antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission.¹³ Section 17.51(a) of the Rules states that all red obstruction lighting shall be exhibited from sunset to sunrise unless otherwise specified.¹⁴ The FAA Advisory Circular chapters for antenna structure numbers 1044859 and 1066000 require that the structures be painted and have, at the top, flashing beacons equipped with two lamps and red filters, along with mid-point steady burning red side obstruction lights.¹⁵ Section 17.48 of the Rules requires that owners of registered antenna structures that have been assigned lighting specifications report immediately by telephone or telegraph to the FAA any observed or otherwise known extinguishment of any flashing obstruction light not corrected within 30 minutes.¹⁶

10. Electricity to antenna structure numbers 1066000 and 1044859 was disconnected on April 27, 2009 and June 18, 2009, respectively. The electricity to both antenna structures was not restored as of November 5, 2009. Big Fish first notified the FAA of the outages on its antenna structures on July 14, 2009. An agent visually confirmed that the lights and electricity on the antenna structures were out on October 20 and November 5, 2009. Therefore, the lights on antenna structure number 1066000 were unlit between April 27 and July 13, 2009 before Big Fish notified the FAA of the outage. Similarly, the lights on antenna structure number 1044859 were unlit between June 18 and July 13, 2009 before Big Fish notified the FAA of the outage. In its response to the *NAL*, Big Fish does not refute any of these facts and states that it has since restored power to the towers.¹⁷ Based on the facts and evidence described above, we find that Big Fish willfully¹⁸ and repeatedly¹⁹ violated sections 17.51(a) and 17.48 of the Rules by failing to maintain the required red obstruction lighting on antenna structure numbers 1044859 and 1066000 and failing to notify the FAA immediately of prolonged obstruction light outages.

11. Big Fish asserts that its good faith effort to comply and its record of compliance with the rules warrant mitigation of the forfeiture. Big Fish states that it did not receive the *NAL* until 30 days after its release, at which point, it had already taken steps to remedy the violations. Although the member/investor may have been unaware of the investigation and *NAL* before taking corrective action, the member/investor's actions took place after an agent observed the towers and contacted Big Fish's owner/president about the violations.²⁰ The Commission has long held that post-inspection corrective

¹³ 47 U.S.C. § 303(q).

¹⁴ 47 C.F.R. § 17.51(a).

¹⁵ FAA Circular Number 70/7460-1J, Chapters 3, 4, 5 and 13, Appendix 1, Figure 11.

¹⁶ 47 C.F.R. § 17.48.

¹⁷ *NAL Response* at 3.

¹⁸ 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, 4388 ¶ 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

¹⁹ 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 at 4388; *Western Wireless Corporation*, 18 FCC Rcd 10319, 10328 n.56 (2003).

²⁰ See *NAL* at para. 5 and notes 5 and 6.

action taken to come into compliance with the Rules is expected, and such corrective action does not nullify or mitigate any prior forfeitures or violations.²¹ We conclude that no good faith reduction is warranted, because the member/investor's actions were taken after Big Fish was notified of the violations. Regarding its history of compliance, although according to our records Big Fish has received no prior written violations, we conclude that a reduction based on history of compliance is not warranted, because Big Fish failed to notify the FAA of a lighting outage for over 2 months and failed to ensure that NOTAMs for its towers remained current.²²

12. Finally, Big Fish asserts that the forfeiture would pose a financial hardship and requests reduction or cancellation of the forfeiture on this basis. 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.²³ We have reviewed Big Fish's submitted documentation and conclude that the forfeiture should be reduced to \$7,000, based on its documented inability to pay the forfeiture amount proposed in the *NAL*.

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, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission's Rules, Big Fish Broadcasting, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seven thousand dollars (\$7,000) for violations of sections 17.48 and 17.51(a) of the Rules.²⁴

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.²⁵ 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 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

²¹ See e.g., *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994), *International Broadcasting Corporation*, Order on Review, 25 FCC Rcd 1538 (2010), *Rama Communications, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 4981 (Enf. Bur. 2009), *Bethune-Cookman College, Inc.*, Forfeiture Order, 24 FCC Rcd 4513 (South Central Region 2009).

²² NOTAMs expire 15 days after issuance. Accordingly, tower owners must notify the FAA of a prolonged tower lighting outage every 15 days to ensure that NOTAMs remain current. On June 29, July 31, September 21, October 5, October 20, and November 5, 2009, an agent from the Atlanta Office contacted the FAA and determined that no current NOTAMs had been issued. On June 29, October 5, October 20, and November 5, 2009, the FAA issued NOTAMs for the structures after being contacted by the agent from the Atlanta Office. On July 31 and September 21, 2009, the agent reminded Big Fish of the need to notify the FAA of the outages. On these days, the FAA issued NOTAMs for the structures after being contacted by Big Fish.

²³ See *PJB Communications of Virginia, Inc.*, Forfeiture Order, 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.*, Forfeiture Order, 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*, Forfeiture Order, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

²⁴ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 17.48, 17.51(a).

²⁵ 47 U.S.C. § 504(a).

(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. Big Fish shall 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 Big Fish Broadcasting LLC at its address of record and to its counsel, John C. Trent, 200 South Church Street, Woodstock, VA 22664.

FEDERAL COMMUNICATIONS COMMISSION

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