

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

In the Matter of
Renacer Broadcasters Corporation
Owner of Antenna Structure Number: 1230863
Maricao, PR
File No.: EB-11-SJ-0059
NAL/Acct. No.: 201232680006
FRN: 0009672916

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: August 1, 2012

Released: August 1, 2012

By the Resident Agent, San Juan Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Renacer Broadcasters Corporation (Renacer), owner of antenna structure number 1230863 (the Antenna Structure) in Maricao, Puerto Rico, apparently willfully and repeatedly violated Section 303(q) of the Communications Act of 1934, as amended (Act) and Section 17.21 of the Commission's rules (Rules) by failing to paint and light the Antenna Structure. We conclude that Renacer is apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000). In addition, we direct Renacer to submit, no later than thirty (30) calendar days from the date of this NAL, a statement signed under penalty of perjury stating that it is now in compliance with the Commission's antenna structure painting and lighting requirements.

II. BACKGROUND

2. The Antenna Structure is 90 meters overall in height above ground, is required to be painted and lighted, and was constructed in the 2001-2002 timeframe. On December 1, and again on December 8, 2011, in response to a complaint, an agent from the Enforcement Bureau's San Juan Office (San Juan Office) inspected the Antenna Structure and observed that the structure had never been painted and had no lights installed.

1 Although the Commission's Antenna Structure Registration database lists Santa Morales as the owner of the Antenna Structure, on December 2, 2011, Renacer's owner stated over the telephone that Ms. Morales is his wife and that she mistakenly listed herself as owner, rather than as contact person. Renacer's owner stated to the agent that Renacer owns the Antenna Structure. We direct Renacer to correct the ownership information in the Antenna Structure Registration database. See 47 C.F.R. § 17.57.

2 47 U.S.C. § 303(q); 47 C.F.R. § 17.21.

3 See 47 C.F.R. § 17.21(a) (requiring antenna structures more than 60.96 meters in height above the ground to be painted and lighted). See also Antenna Structure Registration database for antenna structure number 1230863.

III. DISCUSSION

3. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁴ 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.⁵ 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,⁶ and the Commission has so interpreted the term in the Section 503(b) context.⁷ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁸ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁹

A. Failure to Comply with Antenna Structure Painting and Lighting Requirements

4. 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.¹⁰ Section 17.21(a) of the Rules states that “[a]ntenna structures shall be painted and lighted when: (a) they exceed 60.96 meters (200 feet) in height above the ground or they require special aeronautical study.”¹¹ The Antenna Structure is 90 meters above the ground in height and is required to be painted and lighted.¹² In addition, according to the Commission’s Antenna Structure Registration database, the structure was constructed in the 2001-2002 timeframe.¹³ On December 1, and again on December 8, 2011, an agent from the San Juan Office observed that the Antenna Structure had never been painted and had no installed lights. Based on the evidence before us, we find that Renacer apparently willfully and repeatedly violated Section 303(q) of the Act and Section 17.21 of the Rules by failing to paint and light the Antenna Structure.

⁴ 47 U.S.C. § 503(b).

⁵ 47 U.S.C. § 312(f)(1).

⁶ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms”).

⁷ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

⁸ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

⁹ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

¹⁰ 47 U.S.C. § 303(q).

¹¹ 47 C.F.R. § 17.21(a).

¹² See Antenna Structure Registration database for antenna structure number 1230863.

¹³ *Id.*

B. Proposed Forfeiture Amount and Reporting Requirement

5. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for failing to paint and light the antenna structure is \$10,000.¹⁴ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, 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.¹⁵ Because the Antenna Structure has remained unpainted and unlit for more than ten years, we find this violation egregious and warranting an upward adjustment of \$10,000.¹⁶ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Renacer is apparently liable for a total forfeiture in the amount of \$20,000.

6. We direct Renacer to submit a written statement, pursuant to Section 1.16 of the Rules,¹⁷ signed under penalty of perjury by an officer or director of Renacer, stating that it is now in compliance with the Commission's antenna structure painting, lighting and monitoring¹⁸ requirements and has updated the Antenna Structure Registration database to reflect any new studies issued by the Federal Aviation Administration (FAA). This statement must be provided to the San Juan Office at the address listed in paragraph 9 within thirty (30) calendar days of the release date of this NAL.

IV. ORDERING CLAUSES

7. 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 of the Commission's rules, Renacer Broadcasters Corporation is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for violations of Section 303(q) of the Act and Section 17.21 of the rules.¹⁹

8. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Renacer Broadcasters Corporation **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. **IT IS FURTHER ORDERED** that Renacer Broadcasters Corporation **SHALL SUBMIT** a statement as described in paragraph 6 above, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to

¹⁴ *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*), recons. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁵ 47 U.S.C. § 503(b)(2)(E).

¹⁶ *Cf. Telava Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 3239 (Enf. Bur. 2012) (upwardly adjusted by \$5,000 because owner knew or should have known that its antenna structure lights were unlit for more than one year and took no action until being notified by Commission agents).

¹⁷ 47 C.F.R. § 1.16.

¹⁸ *See* 47 C.F.R. § 17.47 (requiring antenna structure owners to make an observation of antenna structure lights at least once every 24 hours or to employ an automatic light monitoring system). *See also* 47 C.F.R. § 17.48 (requiring antenna structure owners to notify the Federal Aviation Administration in the event of certain antenna structure lighting outages).

¹⁹ 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 17.21.

Federal Communications Commission, Enforcement Bureau, South Central Region, San Juan Office, U.S. Federal Building, Room 762, Hato Rey, PR 00918-1731. Renacer Broadcasters Corporation shall also e-mail the written statement to SCR-Response@fcc.gov.

10. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Renacer Broadcasters Corporation shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁰ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

11. Any request for full payment 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. 20554.²¹ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

12. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules.²² Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, San Juan Office, U.S. Federal Building, Room 762, Hato Rey, PR 00918-1731 and include the NAL/Acct. No. referenced in the caption. Renacer Broadcasters Corporation also shall email the written response to SCR-Response@fcc.gov.

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 (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s

²⁰ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²¹ See 47 C.F.R. § 1.1914.

²² 47 C.F.R. §§ 1.16, 1.80(f)(3).

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. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to Renacer Broadcasters Corporation at PO Box 174, Lajas, PR 00667.

FEDERAL COMMUNICATIONS COMMISSION

William Berry
Resident Agent
San Juan Office
South Central Region
Enforcement Bureau