

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

In the Matter of)	
)	
James A. Davis)	File No.: EB-09-HU-0022
Owner of Antenna Structure No.: 1214169)	NAL/Acct. No.: 201232540003
Hearne, Texas)	FRN: 0021763453
)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: May 16, 2012

Released: May 16, 2012

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that James A. Davis, owner of antenna structure number 1214169 (the Antenna Structure), in Hearne, Texas, apparently willfully and repeatedly violated Section 303(q) of the Communications Act of 1934, as amended (Act), and Sections 17.48(a), 17.50, 17.51(a), and 17.57 of the Commission's rules (Rules)¹ by failing to: (1) notify immediately the Federal Aviation Administration (FAA) of an antenna structure light outage; (2) clean or repaint his antenna structure as often as necessary to maintain good visibility; (3) exhibit red obstruction lighting from sunset until sunrise; and (4) notify the Commission of a change in ownership of an antenna structure. We conclude that Mr. Davis is apparently liable for a forfeiture in the amount of thirteen thousand dollars (\$13,000). In addition, we direct Mr. Davis to submit, no later than thirty (30) calendar days from the date of this NAL, a statement signed under penalty of perjury that he has updated the ownership information for his antenna structure and that he has taken measures to come into compliance with the Commission's antenna structure rules.

II. BACKGROUND

2. On March 20, 2009, an agent from the Houston Office of the Enforcement Bureau (Houston Office) observed that the paint on antenna structure number 1214169 was severely faded, such that it no longer provided good visibility. In May 2009, the agent observed no change in the Antenna Structure's paint since March 20, 2009. On May 4 and May 8, 2009, an agent from the Houston Office inspected the Antenna Structure after local sunset and on each night observed that the red obstruction lights on the structure were not operational.² On May 4, 2009, the agent contacted the FAA and determined that a Notice to Airmen (NOTAM) had not been issued regarding the lighting outage.³ On May 13, 2009, an agent from the Houston Office learned that Clear Channel Communications⁴ sold antenna

¹ 47 U.S.C. § 303(q); 47 C.F.R. §§ 17.48(a), 17.50, 17.51(a), and 17.57.

² The agent observed the Antenna Structure's non-operational lights at 8:40 p.m. on both days. Local sunset on May 4 and May 8, 2009 was 8:07 p.m. and 8:10 p.m., respectively.

³ The agent informed the FAA of the lighting outage and a NOTAM was issued on May 4, 2009.

structure number 1214169 to Mr. Davis effective September 8, 2008.⁵ However, in May 2009, the Commission's Antenna Structure Registration (ASR) database did not list Mr. Davis as the owner of the structure.⁶

3. On March 16, 2010, the Houston Office issued a Citation to Mr. Davis.⁷ The Citation notified Mr. Davis that he violated Section 17.48(a) (failure to notify the FAA of an antenna structure light outage), Section 17.50 (failure to clean and repaint a structure as often as necessary to maintain good visibility), Section 17.51(a) (failure to exhibit red obstruction lighting from sunset to sunrise), and Section 17.57 (failure to update the Commission immediately upon change in ownership information of an antenna structure) of the Rules. The Citation warned Mr. Davis that his "failure to update the ownership information in the ASR database, failure to repaint the antenna structure, and failure to repair the light outage would constitute further violations of the Rules, which could subject [him] to substantial monetary forfeitures."⁸ Although Mr. Davis signed the certified mail delivery receipt, he did not respond to the Citation.

4. On October 4 and 5, 2011, an agent from the Houston Office re-inspected antenna structure number 1214169 and observed no change in the condition of the structure. The paint on the Antenna Structure was still severely faded and did not provide good visibility, and the red obstruction lights were not exhibited after local sunset.⁹ An active NOTAM was in place, because the agent from the Houston Office had notified the FAA of the lighting outage.¹⁰ There was no evidence that Mr. Davis had ever notified the FAA of the lighting outage. As of March 2, 2012, the ASR database still did not list Mr. Davis as the owner of antenna structure number 1214169.

III. DISCUSSION

5. 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.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

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⁴ Clear Channel Broadcasting, Inc. acquired the Antenna Structure from Equal Access Media, Inc. in 2006. See Letter from Steve Davis, Senior Vice President, Engineering, Facilities & Capital Management, Clear Channel Broadcasting, Inc., to Stephen P. Lee, Resident Agent, Houston Office, South Central Region, Enforcement Bureau (Apr. 30, 2012).

⁵ Bill of Sale from Clear Channel Broadcasting, Inc. to James Davis, executed Sept. 8, 2008. The antenna structure sold to Mr. Davis did not house any radio licensees and has remained vacant to date.

⁶ See Antenna Structure Registration database for antenna structure number 1214169.

⁷ Citation No. C201032540002 (rel. Mar. 16, 2010) (Citation).

⁸ *Id.*

⁹ The agent observed the Antenna Structure's non-operational lights at 7:35 p.m. on both evenings. Local sunset on October 4 and 5, 2011 was 7:08 p.m. and 7:07 p.m., respectively.

¹⁰ Agents from the Houston Office have been regularly notifying the FAA of the lighting outage on the structure every two weeks since May 2009.

¹¹ 47 U.S.C. § 503(b).

¹² 47 U.S.C. § 312(f)(1).

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 a forfeiture for violations that are merely repeated, and not willful.¹⁵ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁶

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

6. 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.¹⁷ Section 17.50 of the Rules states that “[a]ntenna structures requiring painting under this part shall be cleaned or repainted as often as necessary to maintain good visibility.”¹⁸ Section 17.48(a) of the Rules states that the owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications shall report immediately to the FAA any observed or otherwise known extinguishment of any top steady burning light or any flashing obstruction light, regardless of its position, not corrected within 30 minutes.¹⁹ Section 17.51(a) of the Rules states that “[a]ll red obstruction lighting shall be exhibited from sunset until sunrise unless otherwise specified.”²⁰

7. Antenna structure number 1214169 is 112.2 meters in overall height above ground and is required to be painted and lighted.²¹ As discussed above, during inspections of the Antenna Structure on October 4 and 5, 2011, an agent from the Houston Office observed that the paint on the Antenna Structure was severely faded and did not provide good visibility. The condition of the paint had deteriorated significantly from the time the Houston Office first inspected the Antenna Structure in March and May 2009, such that the agent was unable to discern alternating bands of color on the structure from any distance. On October 4 and 5, 2011, the agent also observed that the red obstruction lights on the Antenna Structure were extinguished after sunset. Moreover, there is no evidence that Mr. Davis ever notified the FAA of the lighting outage on the Antenna Structure. Based on the evidence before us, we

¹³ 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”).

¹⁴ 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).

¹⁵ 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).

¹⁶ 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.

¹⁷ 47 U.S.C. § 303(q).

¹⁸ 47 C.F.R. § 17.50.

¹⁹ 47 C.F.R. § 17.48(a).

²⁰ 47 C.F.R. § 17.51(a).

²¹ 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 1214169.

find that Mr. Davis apparently willfully and repeatedly violated Section 303(q) of the Act and Sections 17.48(a), 17.50, and 17.51(a) of the Rules by failing to: (1) clean and repaint the Antenna Structure to maintain good visibility; (2) exhibit required red obstruction lighting on the Antenna Structure; and (3) notify the FAA of the lighting outage.

B. Failure to Notify the Commission of Change in Ownership

8. Section 17.57 of the Rules states that the “owner [of a registered antenna structure] must also immediately notify the Commission, using FCC Form 854, upon any change in structure height or change in ownership information.”²² As of March 2, 2012, the ASR database still did not list Mr. Davis as the owner of antenna structure number 1214169. Based on the evidence before us, we find that Mr. Davis apparently willfully and repeatedly violated Section 17.57 of the Rules by failing to notify immediately the Commission of a change in ownership information for the Antenna Structure.

C. Proposed Forfeiture Amount and Reporting Requirement

9. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for failing to comply with prescribed lighting and marking is \$10,000 and failing to file required forms or information is 3,000.²³ 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.²⁴ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Davis is apparently liable for a total forfeiture of \$13,000, consisting of the following: \$10,000 for violations of Sections 17.48(a), 17.50, and 17.51(a) of the Rules and \$3,000 for violation of Section 17.57 of the Rules.

10. We direct Mr. Davis to submit a written statement, pursuant to Section 1.16 of the Rules,²⁵ signed under penalty of perjury by Mr. Davis, stating that he has updated the ownership information for the Antenna Structure in the ASR database and that he has complied with the Commission’s antenna structure painting and lighting requirements. The statement should specify any steps taken to come into compliance, including the timeframe for the repair or replacement of the structure’s red obstruction lighting and the repainting of the structure. Mr. Davis must also state that, until the lights are repaired or the structure is dismantled, he will ensure that the FAA maintains an active NOTAM regarding the structure. This statement must be provided to the Houston Office at the address listed in paragraph 13 within thirty (30) calendar days of the release date of this NAL.

IV. ORDERING CLAUSES

11. 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, James A. Davis is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of thirteen thousand dollars (\$13,000) for violations of Section 303(q) of the Act and Sections 17.48(a), 17.50, 17.51(a), and 17.57 of the Commission’s rules.²⁶

²² 47 C.F.R. § 17.57.

²³ *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.

²⁴ 47 U.S.C. § 503(b)(2)(E).

²⁵ 47 C.F.R. § 1.16.

²⁶ 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 17.48(a), 17.50, 17.51(a), and 17.57.

12. **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, James A. Davis **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. **IT IS FURTHER ORDERED** that James A. Davis **SHALL SUBMIT** a written statement as described in paragraph 10, 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 the Federal Communications Commission, Enforcement Bureau, South Central Region, Houston Office, 9597 Jones Road, #362, Houston, Texas 77065. James A. Davis shall also e-mail the written statement to SCR-Response@fcc.gov.

14. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the 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 (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. 20554.²⁷ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. James A. Davis shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

15. 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.²⁸ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Houston Office, 9597 Jones Road, #362, Houston, Texas, 77065 and include the NAL/Acct. No. referenced in the caption. James A. Davis also shall email the written response to SCR-Response@fcc.gov.

16. 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 current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

²⁷ See 47 C.F.R. § 1.1914.

²⁸ 47 C.F.R. §§ 1.16, 1.80(f)(3).

17. **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 regular mail, to James A. Davis at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Stephen P. Lee
Resident Agent
Houston Office
South Central Region
Enforcement Bureau