

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

In the Matter of)	
)	
Martin Broadcasting, Inc.)	File No.: EB-11-HU-0052
)	NAL/Acct. No.: 201232540004
Owner of Antenna Structure No. 1060813)	FRN: 0003768603
Beaumont, Texas)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: June 5, 2012

Released: June 5, 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 Martin Broadcasting, Inc. (Martin Broadcasting), owner of antenna structure number 1060813 (the Antenna Structure), located in Beaumont, Texas, apparently willfully and repeatedly violated Section 303(q) of the Communications Act of 1934, as amended (Act), and Sections 17.47(a) and 17.51(a) of the Commission's rules (Rules)¹ by failing to exhibit red obstruction lighting from sunset until sunrise and to monitor the structure lighting on a daily basis. We conclude that Martin Broadcasting is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000). In addition, we direct Martin Broadcasting 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 lighting and monitoring requirements.

II. BACKGROUND

2. Antenna structure number 1060813 is 151.5 meters in overall height above ground and is required to be painted and lighted.² On November 28 and 29, 2011, in response to a complaint, an agent from the Enforcement Bureau's Houston Office (Houston Office) inspected the Antenna Structure after sunset³ and observed that the top and midpoint red obstruction lights and the ¾ side lights were not lit. On November 28, 2011, the agent contacted the Federal Aviation Administration (FAA) and determined that Martin Broadcasting had not notified the FAA about the light outages.⁴

¹ 47 U.S.C. § 303(q); 47 C.F.R. §§ 17.47(a), 17.51(a).

² 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 1060813.

³ Local sunset time was 5:16 p.m. Red obstruction lighting is required to be exhibited from sunset until sunrise. See 47 C.F.R. § 17.51(a).

⁴ A Notice to Airmen (NOTAM) had been issued for the Antenna Structure but the FAA had issued it internally, without notification by Martin Broadcasting. See 47 C.F.R. § 17.48 (requiring antenna structure owners to notify the FAA immediately of certain known lighting outages).

3. On January 4, 2012, an agent from the Houston Office telephoned Martin Broadcasting's owner. The owner stated that he learned of the light outages on the Antenna Structure from previous voice messages left by the agent. He also admitted that the lights on the Antenna Structure were not being observed on a daily basis, and that the structure did not have an alarm system to monitor the lights.⁵ He further stated that he had not contacted the FAA concerning the light outage.

III. DISCUSSION

4. 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.⁶ 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.⁷ 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,⁸ and the Commission has so interpreted the term in the Section 503(b) context.⁹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁰ The term "repeated" means the commission or omission of such act more than once or for more than one day.¹¹

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

5. 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.¹² Section 17.51(a) of the Rules states that "[a]ll red obstruction lighting shall be exhibited from sunset until sunrise unless otherwise specified."¹³ Section 17.47(a) of the Rules states that owners of antenna structures "(1) shall make an observation of the antenna structure's lights at least once each 24 hours either visually ... to insure that all

⁵ See 47 C.F.R. § 17.47 (requiring antenna structure owners to observe required lighting once every 24 hours or to install an automatic alarm system).

⁶ 47 U.S.C. § 503(b).

⁷ 47 U.S.C. § 312(f)(1).

⁸ 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").

⁹ 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).

¹⁰ 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).

¹¹ 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.

¹² 47 U.S.C. § 303(q).

¹³ 47 C.F.R. § 17.51(a).

such lights are functioning properly as required; or alternatively (2) shall provide and properly maintain an automatic alarm system designed to detect any failure of such lights and to provide indication of such failure to the owner. . . .”¹⁴

6. On November 28 and 29, 2011, an agent from the Houston Office observed that the top and midpoint red obstruction lights and the $\frac{3}{4}$ side lights on the Antenna Structure were extinguished after sunset. On January 4, 2012, Martin Broadcasting claimed that it was unaware that the lights on the Antenna Structure were extinguished yet admitted that it had learned of the outages from messages left by the FCC agent. Martin Broadcasting also admitted that it was not observing the structure’s lights once every 24 hours and had no automatic alarm system. Based on the evidence before us, we find that Martin Broadcasting apparently willfully and repeatedly violated Section 303(q) of the Act and Sections 17.47(a) and 17.51(a) of the Rules by failing to exhibit red obstruction lighting on the Antenna Structure from sunset until sunrise and to monitor the Antenna Structure’s lights as required.

B. Proposed Forfeiture Amount and Reporting Requirement

7. 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 \$10,000.¹⁵ 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.¹⁶ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Martin Broadcasting is apparently liable for a total forfeiture in the amount of \$10,000.

8. We direct Martin Broadcasting 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 Martin Broadcasting, stating that the lights on the Antenna Structure have been restored, including the date of restoration, or setting forth the timeframe for when the lights on the Antenna Structure will be repaired or replaced. In addition, an officer or director of Martin Broadcasting shall certify that it will notify the FAA to ensure that an active Notice to Airmen remains in place for the Antenna Structure until the lights on the Antenna Structure have been restored. Martin Broadcasting shall also state that it complies, or describe the steps it will take to comply with the Section 17.47 monitoring requirements. This statement must be provided to the Houston Office at the address listed in paragraph 11 within thirty (30) calendar days of the release date of this NAL.

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, 0.204, 0.311, 0.314 and 1.80 of the Commission’s rules, Martin Broadcasting, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of Section 303(q) of the Act and Sections 17.47(a) and 17.51(a) of the Commission’s rules.¹⁸

¹⁴ 47 C.F.R. § 17.47(a).

¹⁵ *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.

¹⁶ 47 U.S.C. § 503(b)(2)(E).

¹⁷ 47 C.F.R. § 1.16.

¹⁸ 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 17.47(a), 17.51(a).

10. **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, Martin Broadcasting, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. **IT IS FURTHER ORDERED** that Martin Broadcasting, Inc. **SHALL SUBMIT** a statement as described in paragraph 8 to the Houston Office 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 Federal Communications Commission, Enforcement Bureau, South Central Region, Houston Office, 9597 Jones Road, #362, Houston, Texas 77065. Martin Broadcasting shall also e-mail the written statement to SCR-Response@fcc.gov.

12. 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. Regardless of the form of payment, 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. 20554.¹⁹ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or E-mail: ARINQUIRIES@fcc.gov. Martin Broadcasting, Inc. shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

13. 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.²⁰ 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. Martin Broadcasting, Inc. also shall email the written response to SCR-Response@fcc.gov.

14. 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.

¹⁹ See 47 C.F.R. § 1.1914.

²⁰ 47 C.F.R. §§ 1.16, 1.80(f)(3).

15. **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 Martin Broadcasting, Inc. at P.O. Box 419, Baytown, Texas 77522-0419.

FEDERAL COMMUNICATIONS COMMISSION

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