

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

In the Matter of)
Union Broadcasting, Inc.) File No.: EB-FIELDSCR-12-00005365
Owner of Antenna Structure No. 1014880) NAL/Acct. No.: 201332560007
Nashua, MO) FRN: 0008263642

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 16, 2013

Released: May 16, 2013

By the District Director, Kansas City Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Union Broadcasting, Inc. (Union), owner of antenna structure number 1014880 (Antenna Structure) in Nashua, Missouri, apparently willfully and repeatedly violated Section 303(q) of the Communications Act of 1934, as amended (Act), and Section 17.56(a) of the Commission’s rules (Rules), by failing to repair the lighting on the Antenna Structure as soon as practicable. We conclude that Union is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. On November 9, 2012, an agent from the Kansas City Office of the Enforcement Bureau (Kansas City Office) inspected the Antenna Structure and found that all of the lights on the structure were unlit. According to Union’s representative, Union first reported the lighting outage to the Federal Aviation Administration (FAA) on August 5, 2010 and re-reported the outage every two weeks thereafter.

3. On November 28, 2012, the Kansas City Office issued a Notice of Violation (NOV) to Union for, among other things, failing to repair the Antenna Structure’s lights as soon as practicable in violation of Section 17.56(a) of the Rules. In response, Union did not deny that the lights on the Antenna Structure had been inoperable since at least August 5, 2010, but stated that the repairs were complicated due to “concerns with the modifications creating changes to the nighttime pattern and additional problems

1 47 U.S.C. § 303(q).

2 47 C.F.R. § 17.56(a).

3 The Antenna Structure is 91.4 meters above ground in overall height. See Antenna Structure Registration database for antenna structure number 1014880. See also 47 C.F.R. § 17.21 (requiring antenna structures more than 60.96 meters in height to be painted and lighted); 47 C.F.R. § 17.51(a) (requiring all red obstruction lighting to be exhibited from sunrise to sunset).

4 The agent confirmed on November 8, 2012 that the FAA had issued a Notice to Airmen for the Antenna Structure.

5 Union Broadcasting, Inc., Notice of Violation, NOV No. V201332560008 (rel. Nov. 28, 2012).

resulting from a copper theft at the facility.”⁶ Union also stated that “[a]t this point in time, [Union] has repaired the problems with the lighting.”⁷

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.⁸ 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.⁹ 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,¹⁰ and the Commission has so interpreted the term in the Section 503(b) context.¹¹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹² The term “repeated” means the commission or omission of such act more than once or for more than one day.¹³

A. Failure to Timely Repair Antenna Structure Lighting

5. The evidence in this case is sufficient to establish that Union violated Section 303(q) of the Act and Section 17.56(a) of the Rules. 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.”¹⁴ Section 17.56(a) of the Rules requires that “[r]eplacing or repairing of lights . . . shall be accomplished as soon as practicable.”¹⁵ The Antenna Structure is 91.4 meters above ground in overall height and is required

⁶ Letter from Nancy Ory, Lerman Senter PLLC, attorney for Union Broadcasting, Inc., to Kansas City Office, Enforcement Bureau at 4 (Dec. 18, 2012) (on file in EB-FIELDSCR-12-00005365) (*NOV Response*).

⁷ *Id.*

⁸ 47 U.S.C. § 503(b).

⁹ 47 U.S.C. § 312(f)(1).

¹⁰ 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 . . .”).

¹¹ 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).

¹² 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).

¹³ 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.

¹⁴ 47 U.S.C. § 303(q).

¹⁵ 47 C.F.R. § 17.56(a).

to be painted and lighted.¹⁶ According to Union, the Antenna Structure's lights were extinguished at least as of August 5, 2010. An agent from the Kansas City Office confirmed that the Antenna Structure's lights were still unlit on November 9, 2012, and Union asserts the lights were not repaired until around December 18, 2012. Union has failed to provide a sufficient explanation that would reasonably prevent it from repairing the light outage for more than two years. By any reasonable interpretation of the requirement that repairs be made "as soon as practicable," Union has failed to comply with that requirement.¹⁷ Based on the evidence before us, we find that Union apparently willfully and repeatedly violated Section 303(q) of the Act and Section 17.56(a) of the Rules by failing to repair antenna structure lighting as soon as practicable.

B. Proposed Forfeiture

6. 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/or marking is \$10,000.¹⁸ 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.¹⁹ We believe that Union's continued failure to correct the light outage for more than two years demonstrates a deliberate disregard for the Commission's rules and warrants an upward adjustment of \$5,000.²⁰ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Union is apparently liable for a total forfeiture in the amount of \$15,000 for violations of Section 303(q) of the Act and Section 17.56(a) of the Rules.

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, Union Broadcasting, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for violations of Section 303(q) of the Act and Section 17.56(a) of the Rules.²¹

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, Union 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.

¹⁶ See Antenna Structure Registration database for antenna structure number 1014880. See also 47 C.F.R. § 17.21 (requiring antenna structures more than 60.96 meters in height to be painted and lighted).

¹⁷ See, e.g., *Telava Wireless, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 3246 (Enf. Bur. 2012) (holding that failing to repair antenna structure lights for over two years was not acting "as soon as practicable") (*Telava Wireless NAL*).

¹⁸ *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.

¹⁹ 47 U.S.C. § 503(b)(2)(E).

²⁰ See *Telava Wireless NAL*, 27 FCC Rcd at 3249 (proposing \$15,000 forfeiture for failing to repair antenna structure lighting for over two years).

²¹ 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 17.56(a).

9. 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. Union Broadcasting, Inc. 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.²² 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.

10. Any request for making full payment over time 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. 20554.²³ 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.

11. 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 1.16 and 1.80(f)(3) of the Rules.²⁴ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Kansas City Office, 520 N.E. Colbern Rd., 2nd Floor, Lees Summit, MO 64086-4711, and include the NAL/Acct. No. referenced in the caption. Union Broadcasting, Inc. also shall e-mail the written response to SCR-Response@fcc.gov.

12. 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 principles (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.

²² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²³ See 47 C.F.R. § 1.1914.

²⁴ 47 C.F.R. §§ 1.16, 1.80(f)(3).

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to Union Broadcasting, Inc. at 6721 West 121 Terrace, Overland Park, KS 66209, and to its counsel, Nancy A. Ory at Lerman Senter PLLC, 2000 K Street, NW, Suite 600, Washington, DC 20006-1809.

FEDERAL COMMUNICATIONS COMMISSION

Ronald D. Ramage
District Director
Kansas City Office
South Central Region
Enforcement Bureau