

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

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|--|---|-----------------------------|
| 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                        | ) |                             |
|  | ) |                             |

**FORFEITURE ORDER**

**Adopted:** March 1, 2013

**Released:** March 1, 2013

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 eight thousand dollars (\$8,000) to Martin Broadcasting, Inc. (Martin Broadcasting), owner of antenna structure number 1060813 (the Antenna Structure), located in Beaumont, Texas, for the willful and repeated violations of 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).<sup>1</sup> The noted violations involved Martin Broadcasting's failure to (1) exhibit red obstruction lighting from sunset until sunrise, and (2) monitor the Antenna Structure lighting on a daily basis.

**II. BACKGROUND**

2. On June 5, 2012, the Enforcement Bureau's Houston Office (Houston Office) issued a Notice of Apparent Liability for Forfeiture and Order (NAL)<sup>2</sup> to Martin Broadcasting for antenna structure lighting and monitoring violations. In response to the NAL, Martin Broadcasting does not contest the violations, but nonetheless urges cancellation or reduction of the proposed \$10,000 forfeiture, asserting that it has not been cited for any violations since it obtained the Antenna Structure nearly 20 years ago and that its "financial conditions . . . raise the issue of its ability to pay the forfeiture proposed."<sup>3</sup> Martin Broadcasting also certified that the lighting on the Antenna Structure was restored on January 5, 2012, and that it is monitoring the structure's lighting as required.<sup>4</sup>

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

<sup>2</sup> *Martin Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 6017 (Enf. Bur. 2012). A comprehensive recitation of the facts and history of this case can be found in the NAL and is incorporated herein by reference.

<sup>3</sup> Letter from Barry A. Friedman, Counsel for Martin Broadcasting, Inc., to the Houston Office, South Central Region, Enforcement Bureau, at 1-2 (July 11, 2012) (on file in EB-11-HU-0052) (*NAL Response*).

<sup>4</sup> *Id.* at 1. *See also* Letter from Barry A. Friedman, Counsel for Martin Broadcasting, Inc., to the Houston Office, South Central Region, Enforcement Bureau (June 28, 2012) (on file in EB-11-HU-0052).

### III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and the *Forfeiture Policy Statement*.<sup>7</sup> In examining Martin Broadcasting's response, Section 503(b)(2)(E) 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.<sup>8</sup> As discussed below, we have considered Martin Broadcasting's response in light of these statutory factors, and find that a reduction of the forfeiture is warranted based solely on its history of compliance with the Rules.

4. First, we affirm the *NAL*'s uncontested finding that Martin Broadcasting violated Section 303(q) of the Act, and Sections 17.47(a) and 17.51(a) of the Rules.<sup>9</sup> 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.<sup>10</sup> Section 17.51(a) of the Rules states that "[a]ll red obstruction lighting shall be exhibited from sunset until sunrise unless otherwise specified."<sup>11</sup> 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 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. . . ."<sup>12</sup> As reflected in the *NAL*, 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 November 28 and 29, 2011. Martin Broadcasting also admitted that it was not observing the Antenna Structure's lights once every 24 hours and had no automatic alarm system. Based on the evidence before us, we conclude that Martin Broadcasting 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 (1) exhibit red obstruction lighting on the Antenna Structure from sunset until sunrise, and (2) monitor the Antenna Structure's lights as required.

5. Martin Broadcasting nonetheless requests cancellation or reduction of the \$10,000 forfeiture based on its history of compliance with the Rules and its inability to pay. After reviewing the Commission's records, we find that reduction of the forfeiture based on Martin Broadcasting's history of compliance with the Commission's rules is warranted and reduce the forfeiture by \$2,000. With regard to an individual or entity's inability to pay claim, the Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.<sup>13</sup> As Martin Broadcasting notes, the Commission has in a few limited cases looked to other factors, including profits and losses, to determine

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<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> *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), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

<sup>8</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>9</sup> See *NAL*, *supra* note 2.

<sup>10</sup> 47 U.S.C. § 303(q).

<sup>11</sup> 47 C.F.R. § 17.51(a).

<sup>12</sup> 47 C.F.R. § 17.47(a).

<sup>13</sup> 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).

ability to pay.<sup>14</sup> Those cases, however, involved licensees in severe financial distress. Although it states it “has either sustained an operating loss or had no taxable income” over the past three years,<sup>15</sup> Martin Broadcasting has failed to demonstrate that it is experiencing a comparable level of financial distress or that it otherwise should qualify for an exception to our gross revenues policy. For example, unlike *First Greenville*, Martin Broadcasting has not indicated that its owners have personally funded its losses, loaned it significant funds, and received no income from it.<sup>16</sup> Moreover, unlike *Rish*, Martin Broadcasting services a city with a population of 118,296.<sup>17</sup> Based on the financial documents provided by Martin Broadcasting, we thus conclude its gross revenues are sufficient to support the forfeiture and decline to reduce on inability to pay on these grounds.<sup>18</sup>

#### IV. ORDERING CLAUSES

6. 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, Martin Broadcasting, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violations of Section 303(q) of the Act and Sections 17.47(a) and 17.51(a) of the Commission’s rules.<sup>19</sup>

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.<sup>20</sup> If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.<sup>21</sup> Martin Broadcasting, Inc. shall send electronic notification of payment to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov) on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>22</sup> 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-

<sup>14</sup> See, e.g., *First Greenville Corporation*, Memorandum Opinion and Order and Forfeiture Order, 11 FCC Rcd 7399 (1996) (*First Greenville*), *Benito Rish*, Memorandum Opinion and Order, 10 FCC Rcd 2861 (1995) (*Rish*).

<sup>15</sup> *NAL Response* at 2.

<sup>16</sup> *Cf. First Greenville*, 11 FCC Rcd at 7403 (considered that the station’s losses exceeded its income and that the sole shareholder funded those losses and received no income from the station when reducing proposed forfeiture).

<sup>17</sup> According to the 2010 Census, Beaumont City, Texas has a population of 118,296. <http://2010.census.gov/2010census/popmap/ipmtext.php?fl=48> (last visited Aug. 10, 2012). *Cf. Rish*, 10 FCC Rcd at 2862 (considered the station’s unprofitable history and the fact that it was a directional daytime-only AM station serving a small community of license with a population of 425 when reducing proposed forfeiture).

<sup>18</sup> The \$10,000 forfeiture falls within the percentage range that the Commission has previously found acceptable. The \$2,000 reduction based on history of compliance with the Rules also reduces the financial penalty imposed against Martin Broadcasting.

<sup>19</sup> 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 17.47(a), 17.51(a).

<sup>20</sup> 47 C.F.R. § 1.80.

<sup>21</sup> 47 U.S.C. § 504(a).

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

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.

8. 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.<sup>23</sup> 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](mailto:ARINQUIRIES@fcc.gov).

9. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class Mail and Certified Mail, Return Receipt Requested, to Martin Broadcasting, Inc. at P.O. Box 419, Baytown, Texas 77522-0419, and to its counsel, Barry A. Friedman at Thompson Hine LLP, 1919 M Street, N.W., Suite 700, Washington, DC 20036-1600.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>23</sup> See 47 C.F.R. § 1.1914.