

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

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

FORFEITURE ORDER

Adopted: January 22, 2014

Released: January 22, 2014

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of twenty thousand dollars (\$20,000) to Renacer Broadcasters Corporation (Renacer), owner of antenna structure number 1230863 (the Antenna Structure) in Maricao, Puerto Rico, for its willful and repeated violation of Section 303(q) of the Communications Act of 1934, as amended (Act) and Section 17.21 of the Commission's rules (Rules).¹ The noted violation involved Renacer's failure to paint and light the Antenna Structure.

II. BACKGROUND

2. 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. On August 1, 2012, the San Juan Office issued a Notice of Apparent Liability for Forfeiture and Order (*NAL*)² to Renacer for its apparent failure to paint and light the Antenna Structure.

3. Renacer submitted a response to the *NAL*³ requesting cancellation or reduction of the proposed \$20,000 forfeiture because Renacer participated in the Puerto Rico Radio Broadcasters Association's Alternative Broadcast Inspection Program (ABIP)⁴ and passed inspections in 2005 and 2008.⁵ Renacer asserts that it "reasonably" relied upon the certificates of compliance that it received

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

² *Renacer Broadcasters Corporation*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 8900 (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.

³ Letter from Francisco Montero, counsel for Renacer Broadcasters Corporation, Fletcher, Heald & Hildreth, PLC, to San Juan Office, Enforcement Bureau, at 2-3 (Aug. 31, 2012) (on file in EB-11-SJ-0059) (*NAL Response*).

⁴ See Agreement for State Broadcasters Association Sponsored Alternative Broadcast Inspection Program between Puerto Rico Radio Broadcasters Association and the Enforcement Bureau (Aug. 15, 2003) (on file in EB-11-SJ-0059) (*PR ABIP Agreement*).

⁵ NAL Response at 2-3.

following the two ABIP inspections and assumed that its Antenna Structure was in compliance with the Rules.⁶ Renacer also questions the appropriateness of the Bureau’s upward adjustment of the forfeiture because Renacer claims it did not consciously or deliberately violate the Rules.⁷

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁸ Section 1.80 of the Rules,⁹ and the *Forfeiture Policy Statement*.¹⁰ In examining Renacer’s response under Section 503(b)(2)(E) of the Act, the Commission must 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.¹¹ As discussed below, we have considered Renacer’s response in light of these statutory factors, and find that cancellation or reduction of the forfeiture is not warranted.

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 17.21(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.”¹³ The Antenna Structure is 90 meters above the ground in height and is required to be painted and lighted.¹⁴ It is undisputed that the Antenna Structure was built in 2001 and had no lights installed until the summer of 2012.¹⁵ Renacer’s belief that it was in compliance with the Rules is irrelevant with respect to the willfulness of the violation. 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.¹⁶ Renacer constructed the Antenna Structure and did not paint or light it. Thus, its violations were willful. Based on the evidence before us, we find that Renacer 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 as required.

6. Nevertheless, Renacer requests cancellation or reduction of the proposed forfeiture, because it asserts that it “consciously and deliberately sought to comply with the FCC rules at all times and brought

⁶ *Id.*

⁷ *Id.* at 4.

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ *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*).

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² 47 U.S.C. § 303(q).

¹³ 47 C.F.R. § 17.21(a).

¹⁴ See Antenna Structure Registration database for antenna structure number 1230863. See also Determination of No Hazard from the Federal Aviation Administration (FAA) requiring painting and lighting, FAA Study 01-ASO-0793-OE (Apr. 16, 2001). In a determination of “no hazard,” the FAA specifies the painting and lighting requirements it believes necessary to ensure that the antenna structure does not pose a hazard to air traffic.

¹⁵ See *NAL Response* at 1 (confirming structure constructed in 2001). Renacer obtained a new Determination of No Hazard from the FAA allowing daytime lighting for the Antenna Structure in lieu of paint on June 22, 2012. See FAA Study 2012-ASO-4855-OE.

¹⁶ 47 U.S.C. § 312(f)(1). Section 312(f)(1) of the Act also applies to violations for which forfeitures are assessed under Section 503(b) of the Act. 47 U.S.C. § 503(b).

an FCC-approved inspector in to ensure compliance had been achieved.”¹⁷ Renacer claims that passing two ABIP inspections in 2005 and 2008 and receiving certificates of compliance gave it confidence that “it was in complete FCC compliance” and that it would be “duplicitous . . . to penalize a tower owner and station license for reasonable reliance on the results of inspections conducted under that program.”¹⁸ Renacer further claims that because it made “no material changes to the station or Antenna Structure between the completion of construction and the [April 6,] 2005 inspection,” the licensee was “confident of its compliance from the inception of licensed station operations in 2002”¹⁹ until May 2011,²⁰ and that therefore the forfeiture should not have been upwardly adjusted by 100 percent.

7. Under the ABIP, a private party, usually a state broadcast association, enters into an agreement with the Enforcement Bureau to arrange inspections of participating broadcast stations to determine compliance with FCC regulations.²¹ ABIP inspectors are required to conduct a standard FCC Enforcement Bureau full-station inspection and the association or private inspector must then notify the local FCC District Office or Resident Agent Office, in writing, of those stations that pass the ABIP inspection and have received a Certificate of Compliance, which is then valid for three years.²² The Commission does not select the inspectors conducting the ABIP inspections.²³ Moreover, under the *PR ABIP Agreement*, the Bureau “may conduct an inspection of an ABIP Station if such inspection (i) relates to tower safety issues, [or] (ii) was initiated by a complaint against the station. . . .”²⁴ The Bureau may, at its sole discretion, take enforcement action for any noncompliance discovered during these inspections, and participation in the ABIP does not shield licensees from liability for such noncompliance.²⁵

8. We are not persuaded by Renacer’s claim that it had no reasonable basis to believe it was in noncompliance. As the sole owner of the Antenna Structure, Renacer obtained an FAA study for the Antenna Structure on April 16, 2001, and registered it in the Commission’s Antenna Structure Registration database on November 19, 2001 as being 90 meters in height and requiring painting and lighting.²⁶ As noted earlier, Commission rules clearly require such structures to be appropriately painted and lit.²⁷ Yet Renacer took no action to paint or light the Antenna Structure from its construction until release of the *NAL* in 2012. Although an ABIP inspector may have mistakenly informed Renacer that it was in compliance with the Commission’s antenna structure painting and lighting requirements at the

¹⁷ *NAL Response* at 4.

¹⁸ *NAL Response* at 3.

¹⁹ *NAL Response* at 3.

²⁰ Renacer passed an ABIP inspection on May 8, 2008, and ABIP Certificates of Compliance remain valid for a period of three years. *PR ABIP Agreement* at 4. Thus, Renacer asserts it thought it was in compliance until the end of its 2008 ABIP Certificate of Compliance in May 2011.

²¹ *PR ABIP Agreement* at 1.

²² *PR ABIP Agreement* at 4. An agent from the San Juan Office did sign certificates of compliance for Renacer. However, these certificates merely acknowledged that, based on information received from the ABIP inspector, Renacer had passed an ABIP inspection. As the agent did not participate in the ABIP inspections, his signatures did not constitute a finding that Renacer was in compliance with the Rules.

²³ The Puerto Rico Radio Broadcasters Association “shall select one or more persons whom [*sic*] it believes in good faith has the requisite competence, experience, training and integrity to perform properly the duties as inspector under the ABIP.” *PR ABIP Agreement* at 2.

²⁴ *PR ABIP Agreement* at 4.

²⁵ *Id.* See also *Cumulus Licensing Corporation*, Forfeiture Order, 18 FCC Rcd 21234 (Enf. Bur. 2003) (upholding forfeiture and noting Field Offices expressly reserve the right to inspect a station during the period covered by an ABIP certificate of compliance on the basis of, among other things, a complaint or a targeted compliance program).

²⁶ See *supra* note 14.

²⁷ See *supra* note 13.

time of the ABIP inspections in 2005 and 2008, Renacer was clearly on notice of its obligations when it first registered the Antenna Structure, years before those inspections. As such, it had no reasonable basis upon which to believe it was in compliance and remains responsible for any noncompliance as the owner of the structure.

9. Based on our review of the record in this case, we find no grounds to cancel or reduce the forfeiture due to Renacer’s participation in the ABIP. Even if we considered Renacer’s reliance on the ABIP inspector’s findings as evidence of good faith, that reliance would be outweighed by the egregiousness of the violation, which began more than three years before the first ABIP inspection,²⁸ lasted over 10 years in total, and was cured only after issuance of the NAL. The Bureau has previously increased forfeitures by 100 percent due to the significant duration of the violation.²⁹ Thus, we find the \$20,000 forfeiture to be appropriate here.

IV. ORDERING CLAUSES

10. 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, Renacer Broadcasters Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for violation of Section 303(q) of the Act and Section 17.21 of the Commission’s rules.³⁰

11. 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.³¹ 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.³² Renacer Broadcasters Corporation shall send electronic notification of payment to 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.³³ 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.

²⁸ The Antenna Structure was constructed in the 2001-2002 timeframe. *See NAL*, 27 FCC Rcd at 8901, para. 4.

²⁹ *See, e.g., Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 8263 (Enf. Bur. 2012) (imposed upward adjustment of \$4,000 for violation with base forfeiture of \$4,000 due to the ten-year duration of the violation); *Mt. Rushmore Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 8273 (Enf. Bur. 2012) (imposed upward adjustment of \$10,000 for violation with base forfeiture of \$10,000 due to the eleven-year duration of the violation).

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

³¹ 47 C.F.R. § 1.80.

³² 47 U.S.C. § 504(a).

³³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- 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.

12. 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. 20554.³⁴ 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.

13. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Renacer Broadcasters Corporation at PO Box 174, Lajas, PR 00667, and to its counsel, Francisco Montero, Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director
South Central Region
Enforcement Bureau

³⁴ See 47 C.F.R. § 1.1914.