

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

In the Matter of)	
)	
Kemp Broadcasting, Inc.)	File No.: EB-FIELDWR-13-00008283
Owner of Antenna Structure No. 1061958)	NAL/Acct. No.: 201432900003
Moapa, Nevada)	FRN: 0007648348

FORFEITURE ORDER

Adopted: January 8, 2015

Released: January 9, 2015

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$8,000 against Kemp Broadcasting, Inc. (Kemp) for failing to monitor and exhibit the required lighting on its antenna structure and notify the Federal Aviation Administration (FAA) of known light outages. Kemp does not deny the violations, but requests reduction or cancellation of the proposed forfeiture because of its prompt and extensive efforts to correct the lighting issues. We find that Kemp's actions after it first received notice from FCC agents of the outage do not excuse the violations or warrant cancellation of the forfeiture. We concur, however, that a forfeiture reduction is warranted based on Kemp's good faith efforts to repair and replace the lighting at the time of the second outage as well as its history of compliance with the Commission's rules.

2. Specifically, we issue a monetary forfeiture to Kemp, owner of antenna structure number 1061958 located in Moapa, Nevada (Antenna Structure), for willfully and repeatedly violating Section 303(q) of the Communications Act of 1934, as amended (Act),¹ and Sections 17.47(a), 17.48(a), and 17.51(b) of the Commission's rules (Rules).²

II. BACKGROUND

3. On February 27, 2014, the Enforcement Bureau's Los Angeles Office issued a Notice of Apparent Liability for Forfeiture and Order (*NAL*) proposing a \$14,000 forfeiture against Kemp for failing to monitor the Antenna Structure's obstruction lighting on a daily basis or maintain a functioning alarm system, exhibit required daytime medium intensity obstruction lighting, and notify the FAA of known lighting outages.³ In addition to a \$10,000 base forfeiture for the initial outage occurring in April 2013, the *NAL* included a \$4,000 upward forfeiture adjustment in light of Kemp's failure to comply with the Commission's antenna structure monitoring, lighting, and notification requirements during a second outage occurring in September 2013.⁴ In its *NAL Response*, Kemp does not deny the violations, but requests reduction or cancellation of the proposed forfeiture because of the prompt steps it took to repair the lighting

¹ 47 U.S.C. § 303(q).

² 47 C.F.R. §§ 17.47(a), 17.48(a), 17.51(b). The Commission recently amended Sections 17.47, 17.48, and 17.51 of the Rules. See *2004 and 2006 Biennial Regulatory Review – Streamlining and Other Revisions of Parts 1 and 17 of the Commission's Rules Governing Construction, Marking and Lighting of Antenna Structures*, Report and Order, 29 FCC Rcd 9787 (2014). The Rules cited to in this Forfeiture Order, however, were the Rules in effect at the time of the violations.

³ *Kemp Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 29 FCC Rcd 1967 (Enf. Bur. 2014) (*NAL*). A recitation of the facts of this case can be found in the *NAL* and is incorporated herein by reference.

⁴ *NAL*, 29 FCC Rcd at 1970, para. 10.

system after receiving a Notice of Violation (NOV) from the Los Angeles Office regarding the initial outage.⁵ In particular, Kemp argues that the forfeiture “fails to take into account Kemp’s continuous attempts since the issuance of the NOV to be in compliance,” including extensive and costly repairs to the Antenna Structure’s lighting and monitoring systems prior to the second outage.⁶

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁷ Section 1.80 of the Rules,⁸ and the *Forfeiture Policy Statement*.⁹ In examining Kemp’s *NAL 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.¹⁰ As discussed below, we have fully considered Kemp’s *NAL Response* in light of these statutory factors and find that reduction of the proposed forfeiture is warranted.

5. Kemp does not deny any of the facts in the *NAL* and we therefore affirm the *NAL*’s findings that Kemp willfully and repeatedly violated Section 303(q) of the Act and Sections 17.47(a), 17.48(a), and 17.51(b) of the Rules by failing to monitor the Antenna Structure’s obstruction lighting on a daily basis or maintain a functioning alarm system, exhibit required daytime medium intensity obstruction lighting, and notify the FAA of known lighting outages on the Antenna Structure.¹¹ In its *NAL Response*, Kemp requests reduction or cancellation of the proposed forfeiture, arguing that it promptly took steps to repair the lighting system after receipt of the *NOV* from the Los Angeles Office.¹² While the Commission will generally reduce an assessed forfeiture based on the good faith corrective efforts of a violator, those corrective efforts must be taken *prior* to notification of the violation.¹³ As the Commission has repeatedly stated, “corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations.”¹⁴ Consequently, we have reduced

⁵ See Response of Kemp Broadcasting, Inc., to Los Angeles Office, Western Region, Enforcement Bureau (Apr. 14, 2014) (on file in EB-FIELDWR-13-00008283) (*NAL Response*); *Kemp Broadcasting, Inc.*, Notice of Violation, V201332900025 (rel. May 16, 2013) (*NOV*).

⁶ *NAL Response* at 2.

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

⁹ *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*).

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ See *NAL supra* note 3.

¹² *NAL Response* at 1–2.

¹³ See, e.g., *Sutro Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 15274, 15277, para. 10 (2004) (stating that the Commission will generally reduce a forfeiture “based on the good faith corrective efforts of a violator when those corrective efforts were taken prior to Commission notification of the violation”); *Catholic Radio Network of Loveland, Inc.*, Forfeiture Order, 29 FCC Rcd 121, 122–23, para. 5 (Enf. Bur. 2014) (“The Commission will generally reduce an assessed forfeiture based on the good faith corrective efforts of a violator when those corrective efforts were taken *prior* to Commission notification of the violation.”) (emphasis in original); *Argos Net, Inc.*, Forfeiture Order, 28 FCC Rcd 1126, 1127, para. 4 (Enf. Bur. 2013) (“[C]orrective action taken after notification or inspection by the Commission does not mitigate the violation . . .”).

¹⁴ See, e.g., *Seawest Yacht Brokers*, Notice of Forfeiture, 9 FCC Rcd 6099, 6099, para. 7 (1994) (citations omitted); *Exec. Broad. Corp.*, Memorandum Opinion and Order, 3 FCC 2d 699, 700, para. 6 (1966) (“The fact that prompt corrective action was taken . . . does not excuse the prior violations.”).

proposed forfeitures when a licensee demonstrates that it contracted to resolve a violation prior to inspection.¹⁵ Kemp has presented no evidence that it took steps to repair the lighting on the Antenna Structure prior to receiving the *NOV* from the Los Angeles Office. We therefore find that no forfeiture reduction is warranted for the initial outage at the Antenna Structure. However, Kemp provides evidence that it engaged contractors and expended funds to correct the Antenna Structure's lighting and alarm systems immediately after receiving the *NOV* and that those efforts were ongoing when the September 2013 outage occurred. While this new evidence does not excuse the violations or warrant cancellation of the forfeiture, we reduce the proposed forfeiture to \$10,000 in light of Kemp's good faith efforts to come into compliance with the Commission's rules.

6. We also note that Kemp had a history of compliance at the time of the initial inspection of the Antenna Structure.¹⁶ Therefore, after consideration of the entire record and the factors listed above, we find that a forfeiture in the amount of \$8,000 is warranted.¹⁷

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Rules, Kemp 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), 17.48(a), and 17.51(b) of the Rules.¹⁸

8. 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.¹⁹ 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.²⁰ Kemp Broadcasting, Inc., shall send electronic notification of payment to WR-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.²¹ 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

¹⁵ See, e.g., *Bold Gold Media WBS, L.P.*, Forfeiture Order, 29 FCC Rcd 6016 (Enf. Bur. 2014) (reducing proposed forfeiture where licensee contracted to acquire required Emergency Alert System equipment prior to inspection).

¹⁶ We note that an affiliate of Kemp, Kemp Communications, Inc., received Notices of Violation in May 2013 concerning a failure to post antenna structure registration signage on a four-tower array, in violation of Section 17.4(g) of the Rules. See *Kemp Communications, Inc.*, Notices of Violation, V201332900027, V201332900028, V201332900029, V201332900030 (rel. May 23, 2013). The inspection underlying these Notices of Violation took place on April 17, 2013, the same day as the initial inspection of the Antenna Structure. Consequently, at the time of the violation, Kemp had a history of compliance with the Rules. See *One Mart Corp.*, Forfeiture Order, 22 FCC Rcd 16679 (Enf. Bur. 2007) (a subject will be considered to have a history of compliance if it has received no sanctions or warnings prior to the day the violation under consideration took place).

¹⁷ See, e.g., *Centro Colegial Cristiano, Inc.*, Forfeiture Order, 28 FCC Rcd 14734 (Enf. Bur. 2013) (proposed forfeiture reduced based on history of compliance with the Rules).

¹⁸ 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), 17.48(a), 17.51(b).

¹⁹ 47 C.F.R. § 1.80.

²⁰ 47 U.S.C. § 504(a).

²¹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

9. 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. 20554.²² 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.

10. **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 Kemp Broadcasting, Inc., 3800 Howard Hughes Parkway, 17th Floor, Las Vegas, Nevada 89169, and its attorney, James A. Koerner, Esquire, Koerner & Olender, 11913 Grey Hollow Court, North Bethesda, Maryland 20852.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

²² See 47 C.F.R. § 1.1914.