

Federal Communications Commission

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

In the Matter of)	
)	
The Original Company, Inc.)	File No. EB-01-CG-155
Licensee: WBTO-FM)	
Petersburg, Indiana)	NAL/Acct. No. 200132320001

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: July 13, 2001

By the District Director, Chicago Office, Enforcement Bureau:

I. Introduction

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that The Original Company, Inc. (“Original”), licensee of Radio Station WBTO-FM, has apparently violated Sections 17.47(a)(1) and 17.48(a) of the Commission’s Rules (the “Rules”).¹ These violations occurred as a result of the failure of Radio Station WBTO-FM, located in Petersburg, Indiana, to make observations of the antenna structure’s lights at least once each 24 hours, and their failure to notify the Federal Aviation Administration (“FAA”) immediately of the extinguishment of a flashing obstruction light. We conclude that Original is apparently liable for a forfeiture in the amount of five thousand dollars (\$5,000).

II. Background

2. On March 30, 2001, the Federal Communications Commission’s (“FCC”) Chicago Office received information that the top light on Radio Station WBTO-FM’s antenna structure had not been working for approximately one month. An investigation by the Chicago office determined the top light was suspected to have been out since approximately March 1, 2001, but the station was not aware of the outage until March 26, 2001. WBTO-FM did not report the tower light outage to the FAA or Flight Service Station (FSS) until March 30, 2001.

3. On April 13, 2001, a Notice of Violation (“NOV”) was issued to Original for failure to make observations of the antenna structure’s lights at least once each 24 hours, failure to report the antenna structure’s light outage to the FAA or FSS, and failure to notify the Commission of change in ownership information for a registered antenna structure. The NOV cited Original for non-compliance with Sections 17.47(a), 17.48(a) and 17.57 of the Rules.²

¹ 47 C.F.R. §§ 17.47(a)(1) and 17.48(a).

² 47 C.F.R. § 17.57.

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4. On April 25, 2001, the Chicago Office received a response to the NOV from Original. In their reply, Original conceded that they were unaware that the tower lights were not being correctly checked. The reply also indicated Original had repaired a malfunctioning light sensor. Original also admitted they became aware of the outage on March 26, 2001, but the FAA was not notified until March 30, 2001. Original stated they were not aware of the requirement to file Form 854 when a station license and assets were transferred in one action.

III. Discussion

5. Section 17.47(a)(1) of the Rules requires the owner of the antenna structure registered with the Commission to make an observation of the antenna structure's lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator to insure that all such lights are functioning properly. Section 17.48(a) of the Rules requires the owners of an antenna structure that has been assigned lighting specifications to notify the FAA if the lights on the tower are extinguished and not corrected within 30 minutes.

6. The Commission assesses monetary forfeitures pursuant to Section 503(b) of the Communications Act of 1934, *as amended*, (the "Act")³ as implemented in Section 1.80 of the Rules.⁴ A forfeiture may be assessed against a person who the Commission finds to have willfully⁵ or repeatedly⁶ failed to comply with the provisions of the Act or the Rules. Forfeiture amounts are decided in accordance with Section 503(b)(2) of the Act⁷ and the Commission's forfeiture guidelines in Section 1.80(b)(4) of the Rules.⁸

7. Based on the evidence before us, we find that Original willfully and repeatedly violated Sections 17.47a(1) and 17.48(a) of the Rules by failing to make an observation of the antenna structure's lights at least once each 24 hours and failing to notify the FAA of extinguishment of tower lights. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"), the base forfeiture amount for failure to conduct required monitoring is \$2,000, and the base forfeiture amount for failure to file required information is \$3,000. The aggregated amount for these forfeitures

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ Section 312(f)(1), which also applies to Section 503(b), provides: [t]he term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provisions of the Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States. See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁶ Section 312(f)(2), which also applies to Section 503(b), provides: [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.

⁷ 47 U.S.C. § 503(b)(2).

⁸ 47 C.F.R. § 1.80(b)(4).

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is \$5,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934 (“ACT”), as amended, which include the nature, circumstances, extent, and gravity of the violation(s), 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.⁹ After applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, we believe a \$5,000 forfeiture is warranted.

IV. Ordering Clauses

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80 of the Rules,¹⁰ The Original Company, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of five thousand dollars (\$5,000) for failure to observe the antenna structure’s lights at least once each 24 hours and for failing to notify the FAA when Original became aware of the outage of the top beacon of their broadcast antenna structure, in violation of Sections 17.47(a)(1) and 17.48(a) of the Rules.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, The Original Company SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200132320001.

11. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20402 and MUST INCLUDE THE NAL/Acct. No. 200132320001.

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 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.

13. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹¹

⁹ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01.

¹⁰ 47 C.F.R. §§ 0.111, 0.311, and 1.80.

¹¹ See 47 C.F.R. § 1.1914.

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14. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to The Original Company, Inc., 1309 Old Orchard Road, Vincennes, IN 47591-0242.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
District Director
Chicago Office