
Federal Communications Commission

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

In the Matter of)	
)	
The King's Musician Educational Foundation, Inc.)	File Number EB-09-HU-0046
)	
Owner of Antenna Structure)	NAL/Acct. No. 200932540004
ASR # 1249922)	
Fannett, Texas)	FRN 0013945555

Corrected Copy

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: September 3, 2009

By the Resident Agent, Houston Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that The King’s Musician Educational Foundation, Inc. (“Foundation, Inc.”), owner of antenna structure number 1249922, in Fannett, Texas, apparently willfully and repeatedly violated Sections 17.4(g) and 17.51(b) of the Commission's Rules (“Rules”)¹ by failing to display the Antenna Structure Registration (“ASR”) number in a conspicuous place so that it is readily visible near the base of the antenna structure and failing to exhibit all medium intensity obstruction lighting as specified. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that Foundation, Inc. is apparently liable for a forfeiture in the amount of twelve thousand dollars (\$12,000).

II. BACKGROUND

2. On May 13, 2009, an agent from the Commission’s Houston Office of the Enforcement Bureau (“Houston Office”) inspected antenna structure number 1249922. The top daytime medium intensity obstruction lighting was not working at the time of the inspection. Additionally, the ASR number was not displayed anywhere near the antenna structure base. The agent confirmed on May 16, 2009 that the Federal Aviation Administration (“FAA”) had not been informed of the outage.

3. On May 18, 2009, an agent with the Houston Office contacted the President of Foundation, Inc., who stated that the top daytime medium intensity obstruction light had been out for two months, that they had not notified the FAA of the outage, and that the FAA had not issued a Notice to Airmen (“NOTAM”) regarding the antenna structure. He also confirmed that the ASR number was not posted for the antenna structure. The FAA issued a NOTAM regarding the antenna structure on May 18, 2009.

¹ 47 C.F.R. § 17.4(g) and 17.51(b).

² 47 U.S.C. § 503(b).

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. The term “willful” as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.³ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁴

5. Section 17.4(g) of the Rules requires that the ASR number be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. On May 10, 2009, an agent from the Houston Office observed that the ASR number for antenna structure number 1249922 was not posted anywhere near the base of the structure. On May 18, 2009, the President of Foundation, Inc. admitted that the ASR number was not posted for antenna structure number 1249922. Based on the evidence before us, we find that Foundation, Inc. apparently willfully and repeatedly violated Section 17.4(g) of the Rules by failing to post the ASR number near the base of antenna structure number 1249922 on May 10 and 18, 2009.

6. Section 17.51(b) of the Rules requires that all medium intensity obstruction lighting be exhibited as specified. Antenna structure number 1249922 is required to have a dual lighting system exhibiting red obstruction lights at nighttime and medium intensity obstruction lighting during the daytime. On May 10, 2009, an agent from the Houston Office observed the top medium intensity obstruction light on antenna structure number 1249922 was not functioning during the day. On May 16, 2008, the agent confirmed that the FAA had not issued a NOTAM regarding the antenna structure. On May 18, 2009, the President of Foundation, Inc. stated the daytime top medium intensity obstruction light on antenna structure number 1249922 had been out for two months and that they had not notified the FAA regarding the outage. Based on the evidence before us, we find that Foundation, Inc. apparently willfully and repeatedly violated Section 17.51(b) of the Rules by failing to exhibit all medium intensity obstruction lighting as specified, between May 10 and 18, 2009.

7. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, (“*Forfeiture Policy Statement*”), and Section 1.80 of the Rules, the base forfeiture amount for failure to comply with prescribed lighting and/or marking is \$10,000. Section 1.80 of the Rules does not establish a base forfeiture amount for failure to post the ASR number. The commission has determined, however, that an appropriate base forfeiture amount for failure to post the ASR number is \$2,000 per violation.⁵ 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, and history of prior offenses, ability to pay, and other such matters as justice may require.⁶ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Foundation, Inc. is apparently liable for a \$12,000 forfeiture.

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[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 provision of this Act or any rule or regulation of the Commission authorized by this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ 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.”

⁵ *American Towers Corporation*, Notice of Apparent Liability, 16 FCC Rcd 1282 (2001).

⁶ 47 U.S.C. § 503(b)(2)(E).

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, The King's Musician Educational Foundation, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twelve thousand dollars (\$12,000) for violations of Sections 17.4(g) 17.51(b) of the Rules.⁷

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, The King's Musician Educational Foundation, Inc. **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 must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁸ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, Foundation, Inc. will send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

11. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Houston Office, 9597 Jones Road #362, Houston, Texas, 77065 and must include the NAL/Acct. No. referenced in the caption.

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.

⁷ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 17.4(g) and 17.51(b).

⁸ See 47 C.F.R. § 1.1914.

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13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to The King's Musician Educational Foundation, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Lee R. Browning
Resident Agent
Houston Office
South Central Region
Enforcement Bureau