
Federal Communications Commission

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

In the Matter of)	
)	
Burken Broadcasting, LLC)	File Number: EB-09-LA-0027
)	
Antenna Structure Registrant)	NAL/Acct. No.: 200932900005
Las Vegas, Nevada)	FRN: 0016727562
ASR # 1219542)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: August 31, 2009

By the District Director, Los Angeles Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Burken Broadcasting, LLC ("Burken"), registered owner of antenna structure # 1219542, in Las Vegas, Nevada, apparently repeatedly violated Section 17.57 of the Commission's Rules ("Rules")¹ by failing to immediately notify the Commission of a change in ownership information for antenna structure # 1219542. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that Burken is apparently liable for a forfeiture in the amount of three thousand dollars (\$3,000).

II. BACKGROUND

2. On February 26, 2009, the Enforcement Bureau's Los Angeles Office received information that the Antenna Structure Registration ("ASR") for antenna structure # 1219542, did not list the current owner.³ On February 26, 2009, the Commission's ASR database listed the owner as Far West Radio, Inc.

3. On March 4, 2009, a Los Angeles Office agent spoke on the telephone with an employee of KRLV, an AM station licensed to Burken Broadcasting LLC, and was informed the antenna structure was owned by KRLV.

4. On March 10, 2009, the Los Angeles Office issued a Letter of Inquiry ("LOI") to Burken asking if it was the owner of antenna structure # 1219542. On April 9, 2009, the Los Angeles Office received a response to the LOI from Burken stating it was the current owner of the antenna structure. According to the response, Burken acquired antenna structure # 1219542 on November, 8, 2007. Burken stated that the previous owner, Far West Radio, Inc., failed to file the necessary ownership change form, as required by Section 17.57.

¹ 47 C.F.R. § 17.57.

² 47 U.S.C. § 503(b).

³ Antenna structure # 1219542 is required to have painting and lighting in accordance with FAA Chapters 3, 4, 5, and 13 of FAA Circular Number 70/7460-1J.

5. Currently, the Commission's ASR database lists Burken as the owner of antenna structure # 1219542. The record lists an update request received on March 23, 2009.

III. DISCUSSION

6. 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) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁴ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁵

7. Section 17.57 of the Rules requires the owner of an antenna structure to immediately notify the Commission, using FCC Form 854, upon any change in ownership information. We require antenna structure owners to maintain current antenna structure registration information with the Commission and post ASR numbers at the base of antenna structures to allow for easy contact if problems arise.⁶

8. According to the LOI Response, Burken acquired antenna structure # 1219542 on November 8, 2007. As of February 26, 2009, the Commission's ASR database showed Far West Radio, Inc., as the owner of the structure. Burken's application to update the ownership information in the Commission's ASR database was received on March 23, 2009.

9. In the LOI Response, Burken states that the previous owner failed to file the required forms required under Section 17.57. It appears Burken is misinterpreting Section 17.57. Since Burken is the current owner, it is they (not the previous owner) who are subject to Section 17.57. The appropriate form to indicate an ownership change is FCC Form 854. The instructions state "[f]or an ownership change, the assignee (*i.e.* the entity acquiring ownership of the structure) must provide the new ownership information and sign the form."

10. From November 8, 2007, until March 23, 2009, Burken failed to notify the Commission that it had acquired antenna structure # 1219542. This violation occurred for more than one day, therefore, it is repeated. Based on the evidence before us, we find that Burken apparently repeatedly violated Section 17.57 of the Rules by failing to immediately notify the Commission about a change in ownership for antenna structure # 1219542 in Las Vegas, Nevada.

11. 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 file required forms or information is \$3,000.⁷ In

⁴ 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).

⁵ 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."

⁶ See, e.g., *American Tower Corporation*, 16 FCC Rcd 1282 (2001)) (Notice of Apparent Liability); *American Tower Corporation*, 16 FCC Rcd 14937 (2001) (Consent Decree between the Commission and American Tower Corporation).

⁷ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

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.⁸ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Burken is apparently liable for a \$3,000 forfeiture.

IV. ORDERING CLAUSES

12. 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, Burken Broadcasting, LLC, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of three thousand dollars (\$3,000) for violation of Section 17.57 of the Rules.⁹

13. **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, Burken Broadcasting, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/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. 20554.¹⁰ Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Burken Broadcasting, LLC will also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

15. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Los Angeles Office, 18000 Studebaker Road, Suite 660, Cerritos, California, 90703 and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall be sent to WR-Response@fcc.gov.

16. 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

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 17.57.

¹⁰ See 47 C.F.R. § 1.1914.

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financial documentation submitted.

17. **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 Burken Broadcasting, LLC.

FEDERAL COMMUNICATIONS COMMISSION

Nader Haghighat
District Director
Los Angeles Office
Western Region
Enforcement Bureau