

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

In the Matter of)	
)	
Latin Broadcasting Company)	File Number: EB-FIELDSCR-12-00003967
)	NAL/Acct. No.: 201332560004
Owner of Antenna Structure Number 1250803)	FRN: 0003763976
Dallas Center, IA)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: March 11, 2013

Released: March 11, 2013

By the District Director, Kansas City Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Latin Broadcasting Company (LBC), owner of antenna structure number 1250803 (the Antenna Structure), located in Dallas Center, Iowa, apparently willfully and repeatedly violated Section 303(q) of the Communications Act of 1934, as amended (Act)¹ and Sections 17.48(a), 17.51(a), and 17.57 of the Commission’s rules (Rules)² by failing to (1) exhibit red obstruction lighting from sunset to sunrise, (2) notify the Federal Aviation Administration (FAA) of a known lighting outage, and (3) notify the Commission upon a change in ownership information for the Antenna Structure. We conclude that LBC is apparently liable for a forfeiture in the amount of fourteen thousand dollars (\$14,000). In addition, we direct LBC to submit, no later than thirty (30) calendar days from the release date of this NAL, a statement signed under penalty of perjury stating that it now complies with the Commission’s antenna structure lighting, notification, and monitoring requirements.

II. BACKGROUND

2. The Antenna Structure is 152.4 meters in height above ground and is required to be painted and lighted.³ On July 13, 2012, in response to a complaint of a light outage, an agent from the Enforcement Bureau’s Kansas City Office (Kansas City Office) asked a deputy with the Dallas County Sheriff’s Department to observe the Antenna Structure. Later that day, the deputy reported that, at approximately 11:30 P.M., the top half of the Antenna Structure was not lit. Also that day, an agent from the Kansas City Office contacted the FAA and learned that no Notice to Airmen (NOTAM) had been issued for the Antenna Structure.⁴

¹ 47 U.S.C. § 303(q).

² 47 C.F.R. §§ 17.48(a), 17.51(a), 17.57.

³ See Antenna Structure Registration database for antenna structure number 1250803. See also 47 C.F.R. § 17.21 (requiring antenna structures more than 60.96 meters in height above ground to be painted and lighted).

⁴ See 47 C.F.R. § 17.48 (requiring tower owners to notify the FAA immediately of any known outages of tower lighting lasting more than 30 minutes). The agent informed the FAA of the lighting outage and the FAA issued a NOTAM for the Antenna Structure on July 13, 2012.

3. On July 19, 2012, an agent from the Kansas City Office inspected the Antenna Structure and observed that the top beacon and top set of side lamps on the Antenna Structure were not lit after sunset. On July 20, 2012, the agent met with the general manager of LBC to discuss the Antenna Structure. Although the Antenna Structure Registration (ASR) database listed Perry Broadcasting Company as the owner of the Antenna Structure, the general manager stated that it was owned by LBC. Neither the general manager, nor LBC's engineer, who was consulted via telephone, was aware of any light outages on the Antenna Structure, and neither knew who was responsible for observing the Antenna Structure lights. Both agreed, however, that the Antenna Structure lights were not monitored by an automatic alarm system. The general manager thought that the lights were monitored at least once a week, while the engineer stated the lights were observed once daily.

4. On July 24, 2012, the Kansas City Office issued a Letter of Inquiry (*LOI*) to LBC.⁵ In its *LOI Response*, LBC stated that it acquired the Antenna Structure from Perry Broadcasting Company in December 2008, and that its attorney "has been contacted to update the registration and contact information."⁶ LBC also claimed that its operations manager made daily observations of the Antenna Structure lights at approximately 11:00 P.M. from January 1, 2012 through July 20, 2012 and provided an initialed daily observation log for July 1 through July 20, 2012 as part of its *LOI Response*.⁷ However, LBC's *LOI Response*, contained several inconsistencies regarding the Antenna Structure's lights. LBC stated that the "tower lighting system was last known to be operational on July 7, 2012 at or around 11 pm"⁸ based on visual observations by the operations manager, but in the detailed observation information, the operations manager wrote that the lights were "ok" for all days between July 1 and July 20, 2012, except one, July 10, 2012.⁹ For July 10, 2012, the operations manager wrote "Light out ok."¹⁰ LBC also stated that "no outages have been reported in the logs from 1/1/12 to 7/20/12."¹¹ LBC claimed that on July 10, 2012, the operations manager "attempted to report the outage by filing a NOTAM with the FAA. However, he misunderstood the English prompts and did not properly file the NOTAM."¹² Finally, LBC stated that the lighting was repaired on July 27, 2012, but malfunctioned again on August 3, 2012.¹³ LBC stated that the lighting will be repaired again by August 18, 2012, that its operations manager is currently making daily observations of the Antenna Structure, and that it is in the process of installing an automated alarm system.¹⁴

III. DISCUSSION

5. 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

⁵ Letter from Ronald D. Ramage, District Director, Kansas City Office, Enforcement Bureau, to Latin Broadcasting Company (July 24, 2012) (on file in EB-FIELDSCR-12-00003248).

⁶ Letter from Catalina Barreto, General Manager, Latin Broadcasting Company, to Kansas City Office, Enforcement Bureau at 4 (Aug. 14, 2012) (on file in EB-FIELDSCR-12-00003248) (*LOI Response*).

⁷ *LOI Response* at 1.

⁸ *Id.* at 5.

⁹ *Id.* at 1.

¹⁰ *Id.*

¹¹ *Id.* at 3.

¹² *Id.* at 7.

¹³ *Id.* at 6.

¹⁴ *Id.* at 7.

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.¹⁵ 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 The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹⁷ and the Commission has so interpreted the term in the Section 503(b) context.¹⁸ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁹ The term “repeated” means the commission or omission of such act more than once or for more than one day.²⁰

A. Failure to Exhibit Required Obstruction Lighting on the Antenna Structure and Notify the FAA of the Lighting Outage

6. 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.²¹ Section 17.51(a) of the Rules states that “[a]ll red obstruction lighting shall be exhibited from sunset until sunrise unless otherwise specified.”²² Section 17.47(a) of the Rules states that owners of antenna structures “(1) shall make an observation of the antenna structure’s lights at least once each 24 hours either visually . . . to insure that all such lights are functioning properly as required; or alternatively (2) shall provide and properly maintain an automatic alarm system designed to detect any failure of such lights and to provide indication of such failure to the owner.”²³ Section 17.48(a) of the Rules states that owners of antenna structures “shall report immediately by telephone or telegraph to the nearest Flight Service Station or office of the Federal Aviation Administration any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes”²⁴

¹⁵ 47 U.S.C. § 503(b).

¹⁶ 47 U.S.C. § 312(f)(1).

¹⁷ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms”).

¹⁸ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹⁹ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

²⁰ 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.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

²¹ 47 U.S.C. § 303(q).

²² 47 C.F.R. § 17.51(a).

²³ 47 C.F.R. § 17.47(a).

²⁴ 47 C.F.R. § 17.48(a).

7. The evidence in this case is sufficient to establish that LBC violated Section 303(q) of the Act and Sections 17.48(a) and 17.51(a) of the Rules. LBC admits that a lighting outage on the Antenna Structure occurred on July 10, 2012. On July 13 and July 19, 2012, a deputy with the local sheriff's department and an agent from the Kansas City Office, respectively, observed that the top half of the Antenna Structure was not lit after sunset. LBC admits that it failed to notify the FAA of the lighting outage on the Antenna Structure,²⁵ and an agent confirmed that fact on July 13, 2012. Based on the evidence before us, we find that LBC apparently willfully and repeatedly violated Section 303(q) of the Act and Sections 17.51(a), and 17.48(a) of the Rules by failing to (1) exhibit all required red obstruction lighting from sunset to sunrise on the Antenna Structure, and (2) report the light outage to the FAA.

B. Failure to Update Ownership Information for the Antenna Structure

8. Section 17.57 of the Rules requires owners of registered antenna structures to immediately notify the Commission, using FCC Form 854, upon any change in structure height or change in ownership information.²⁶ LBC stated that it acquired the Antenna Structure in December 2008. LBC did not file the required FCC Form 854 to update the Antenna Structure's ownership until August 20, 2012.²⁷ Based on the evidence before us, we find that LBC apparently willfully and repeatedly violated Section 17.57 of the Rules by failing to notify the Commission of a change in ownership for the Antenna Structure.

C. Proposed Forfeiture Amount and Reporting Requirement

9. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for failing to comply with prescribed lighting and marking is \$10,000 and for failing to file required forms or information is \$3,000.²⁸ 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, any history of prior offenses, ability to pay, and other such matters as justice may require.²⁹ Maintaining current ownership contact information in the ASR database is particularly important, because it enables the Commission and individuals to notify the structure owner promptly in the event of a lighting failure or other malfunction. Because LBC failed to notify the Commission regarding the change in ownership for over three and a half years, we find this violation particularly egregious and warranting an upward adjustment of \$1,000.³⁰ Applying the *Forfeiture Policy Statement*,

²⁵ Although LBC claimed it attempted to notify the FAA of the outage on July 10, 2012, we do not find such efforts worthy of reduction or cancellation of the proposed forfeiture. LBC stated its operations manager mistakenly thought he had notified the FAA. However, we do not find this assumption reasonable. Upon calling the telephone number listed by LBC, the caller must speak or enter the two letter abbreviation for the state, at which point, the caller is routed to a live operator. The caller then provides the detailed information about the outage to the operator. As the operations manager never reached a live operator, he was provided no opportunity to enter the antenna structure number or coordinates of the antenna structure. Without providing that basic information, we find it unreasonable for LBC to assume that the FAA was properly notified of the lighting outage.

²⁶ 47 C.F.R. § 17.57.

²⁷ See Antenna Structure Registration database for antenna structure number 1250803.

²⁸ *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) (*Forfeiture Policy Statement*), recons. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

²⁹ 47 U.S.C. § 503(b)(2)(E).

³⁰ See, e.g., *Quinn Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 5787 (Enf. Bur. 2012) (proposing \$6,000 forfeiture for failing to update ASR ownership information for over eight years).

Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that LBC is apparently liable for a total forfeiture in the amount of \$14,000, consisting of the following: \$10,000 for the antenna structure lighting and notification violations and \$4,000 for the registration violation.

10. We further order LBC to submit a written statement, pursuant to Section 1.16 of the Rules,³¹ signed under penalty of perjury by an officer or director of LBC, stating that the lights on the Antenna Structure have been restored, including the date of restoration. LBC shall also certify that it will notify the FAA to ensure a NOTAM remains in place until the Antenna Structure lights are restored. In addition, LBC shall state that it installed the automatic alarm system, including the date of installation, or otherwise continues to comply with the Section 17.47 monitoring requirements. This statement must be provided to the Kansas City Office at the address listed in paragraph 13 within thirty (30) calendar days of the release date of this NAL.

IV. ORDERING CLAUSES

11. 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 of the Commission's rules, Latin Broadcasting Company is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fourteen thousand dollars (\$14,000) for violations of Section 303(q) of the Act and Sections 17.48(a), 17.51(a), and 17.57 of the Commission's rules.³²

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Latin Broadcasting Company **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. **IT IS FURTHER ORDERED** that Latin Broadcasting Company **SHALL SUBMIT** a written statement, as described in paragraph 10, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Kansas City Office, 520 N.E. Colbern Rd., 2nd Floor, Lees Summit, MO 64086-4711. Latin Broadcasting Company shall also e-mail the written statement to SCR-Response@fcc.gov.

14. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Latin Broadcasting Company shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. 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.

³¹ 47 C.F.R. § 1.16.

³² 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 17.48(a), 17.51(a), 17.57.

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.

15. Any request for full payment 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.

16. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.³⁵ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Kansas City Office, 520 N.E. Colbern Rd., 2nd Floor, Lees Summit, MO 64086-4711, and include the NAL/Acct. No. referenced in the caption. Latin Broadcasting Company also shall e-mail the written response to SCR-Response@fcc.gov.

17. 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.

18. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to Latin Broadcasting Company at 301 Ashworth Rd., West Des Moines, IA 50265.

FEDERAL COMMUNICATIONS COMMISSION

Ronald D. Ramage
District Director
Kansas City Office
South Central Region
Enforcement Bureau

³⁴ See 47 C.F.R. § 1.1914.

³⁵ 47 C.F.R. §§ 1.16, 1.80(f)(3).