

**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)	

FORFEITURE ORDER

Adopted: July 15, 2014

Released: July 15, 2014

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$11,000 against Latin Broadcasting Company (LBC) for violations of the Commission's antenna structure rules. The Enforcement Bureau alleged that LBC failed to exhibit required lighting on its antenna structure, notify the Federal Aviation Administration (FAA) of the lighting outage, and inform the Commission regarding a change in antenna structure ownership information. LBC does not dispute these violations, but argues that the penalty is unenforceable under the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA). The Commission has previously determined that its forfeiture policy complies with SBREFA, and the process for determining the penalty against LBC took into account its status as a small business, as required by statute. We also reject LBC's argument that it deserves a forfeiture reduction regarding the ownership reporting violation because it acquired the antenna structure as part of a "pro forma" change in control. However, we reduce the forfeiture based on LBC's history of compliance with the Commission's rules.

2. Specifically, we issue a monetary forfeiture to LBC, owner of antenna structure number 1250803 (the Antenna Structure), located in Dallas Center, Iowa, for willful and repeated violation of 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

II. BACKGROUND

3. On March 11, 2013, the Enforcement Bureau's Kansas City Office issued a Notice of Apparent Liability for Forfeiture and Order (*NAL*) to LBC proposing a \$14,000 forfeiture for violations of the Commission's antenna structure rules.³ LBC submitted a response to the *NAL*, arguing that the proposed forfeiture was unenforceable because the Commission "never complied with its obligation under the Small Business Regulatory Enforcement and Fairness Act of 1996"⁴ LBC also argues that the

¹ 47 U.S.C. § 303(q).

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

³ *Latin Broadcasting Company*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 2170 (Enf. Bur. 2013). A comprehensive recitation of the facts and history of this case can be found in the *NAL* and is incorporated herein by reference.

⁴ Opposition to Notice of Apparent Liability, David Tillotson, Counsel for Latin Broadcasting Company, to District Director, Kansas City Office at 3-4 (Apr. 8, 2013) (on file in EB-FIELDSCR-00003967) (*NAL Response*).

proposed forfeiture should be reduced because of its history of compliance with the Rules and because LBC's "pro forma" name change resulted in no substantial change in ownership.⁵

III. DISCUSSION

4. As LBC does not deny any of the facts stated in the *NAL*, we affirm the *NAL*'s findings and conclude that LBC willfully and repeatedly violated Section 303(q) of the Act and Sections 17.48(a), 17.51(a), and 1757 of the Rules by failing to (1) exhibit required lighting on the Antenna Structure, (2) notify the FAA of a known lighting outage, and (3) inform the Commission upon a change in ownership information for the Antenna Structure.

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ and the *Forfeiture Policy Statement*.⁸ In examining LBC'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.⁹ As discussed below, we have considered LBC's *NAL Response* in light of these statutory factors and find that a reduction of the forfeiture is warranted based on its history of compliance with the Rules.

6. LBC contends that the \$14,000 forfeiture proposed in the *NAL* is unenforceable because LBC is a "small entity" and the Commission never complied with its obligation under SBREFA¹⁰ "to adopt a specific policy or program concerning the reduction or waiver of forfeiture for small entities."¹¹ We find no merit in LBC's contention. The Commission has previously determined that its policies for assessing penalties established in the *Forfeiture Policy Statement* complied with the SBREFA.¹² In particular, the Commission found that its forfeiture policy complied with SBREFA by requiring consideration of a small entity's ability to pay, any good faith efforts to comply with the law, and other upward and downward adjustment factors that encompass many of SBREFA's exclusions and

⁵ *Id.* at 2–3.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ *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*).

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ P. Pub. L. No. 104-121, March 29, 110 Stat. 847 (1996.), as amended by P. Pub. L. May 25, No. 110-28, 121 Stat. 112 (2007.).

¹¹ *NAL Response* at 3–4.

¹² *Forfeiture Policy Statement*, 12 FCC Rcd at 17109, para. 52. See *Jerry Szoka*, Decision, 14 FCC Rcd 9857, 9866, para. 23 (1999) ("In amending our rules to adopt our forfeiture guidelines, we made clear that our existing policies comply with . . . SBREFA.")

conditions.¹³ In the instant case, we have no evidence of LBC's inability to pay or good faith efforts to comply with the law.¹⁴ As a result, we find no basis to cancel the forfeiture under the SBREFA.

7. LBC also requests a forfeiture reduction because it acquired the Antenna Structure from Perry Broadcasting Company as part of a pro forma name change¹⁵ with no change in the "actual ownership and the identity of the individuals to be contacted."¹⁶ We are not persuaded by this argument. LBC does not dispute that it acquired the Antenna Structure in December 2008, but did not update the Antenna Structure's ownership information until August 20, 2012. Section 17.57 of the Rules requires owners to notify the Commission of *any* change in ownership information, not only those involving a change of control.¹⁷ LBC failed to comply with that requirement for over three and a half years. Moreover, when LBC updated the Commission's database to reflect its ownership of the Antenna Structure, it changed more than just the entity name. LBC also updated the contact address, phone number, and e-mail. Thus, we find no basis to reduce the forfeiture associated with the ownership reporting violation under Section 17.57 of the Rules.

8. Finally, LBC requested a reduction in the forfeiture amount due to its overall history of compliance with the Rules.¹⁸ We have reviewed our records and concur that LBC has not been previously cited with a violation of the Rules. Accordingly, we reduce the proposed forfeiture to \$11,000 based on LBC's history of compliance.

IV. ORDERING CLAUS

9. 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, Latin Broadcasting Company **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eleven thousand dollars (\$11,000) for violations of Section 303(q) of the Act and Sections 17.48(a), 17.51(a), and 17.57 of the Rules.¹⁹

10. 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.²⁰ 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.²¹ Latin Broadcasting Company shall send electronic notification of payment to SCR-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

¹³ *Forfeiture Policy Statement*, 12 FCC Rcd at 17109, para. 52. *See United States v. Neely*, 595 F. Supp. 2d 662 (D.S.C. 2009) (SBREFA does not require reduction of a forfeiture assessed by the Commission where the *Forfeiture Policy Statement* established procedures and guidelines through which the Commission could consider whether small entities had the ability to pay a particular forfeiture amount or the ability to submit the same kind of documentation as larger entities to corroborate their inability to pay); *see also N. Cnty. Broad. Corp.*, Memorandum Opinion and Order, 29 FCC Rcd 2624 (Enf. Bur. 2014) (assessment of forfeiture against small radio licensee that took into account the broadcaster's history of compliance and ability to pay was consistent with the SBREFA); *Pac. Empire Radio Corp.*, Forfeiture Order, 29 FCC Rcd 1177 (Enf. Bur. 2014) (same).

¹⁴ LBC does not allege or request a reduction based on an inability to pay.

¹⁵ *See* License File No. BALH-20081201BQW.

¹⁶ *See NAL Response* at 2-3.

¹⁷ 47 C.F.R. § 17.57.

¹⁸ *See NAL Response* at 3.

¹⁹ 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 17.48(a), 17.51(a), 17.57.

²⁰ 47 C.F.R. § 1.80.

²¹ 47 U.S.C. § 504(a).

FCC Form 159 (Remittance Advice) must be submitted.²² 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.
- 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.

11. 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. 20554.²³ 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.

12. **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 Latin Broadcasting Company at Latin Broadcasting Company at 301 Ashworth Rd., West Des Moines, IA 50265 and to its counsel, David Tillotson, 4606 Charleston Terrace, NW, Washington, DC 20007.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau

²² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²³ See 47 C.F.R. § 1.1914.