

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

In the Matter of)	
)	
Alpha & Omega Communications, LLC)	File No.: EB-11-DV-0102
)	NAL/Acct. No.: 201232800003
Owner of Antenna Structure # 1040896)	FRN: 0005898093
West Valley City, Utah)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 10, 2012

Released: July 11, 2012

By the District Director, Denver Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Alpha & Omega Communications, LLC (A&O), owner of antenna structure number 1040896 (Antenna Structure), in West Valley City, Utah, apparently willfully and repeatedly violated Section 17.57 of the Commission's rules (Rules),¹ by failing to notify the Commission upon a change in ownership information for the Antenna Structure. We conclude that A&O is apparently liable for a forfeiture in the amount of three thousand dollars (\$3,000).

II. BACKGROUND

2. On May 17, 2011, an agent of the Enforcement Bureau's Denver Office (Denver Office) inspected the Antenna Structure,² located in West Valley City, Utah.³ A search of the Commission's Antenna Structure Registration (ASR) database revealed that the Antenna Structure was registered to KMRI Radio LLC. When the Denver agent contacted the General Manager of Station KMRI(AM), the agent was informed that the Antenna Structure and Station KMRI(AM) had been sold to A&O a few years earlier. On July 29, 2011, the Denver Office sent a Letter of Inquiry (LOI) to A & O.⁴ In its reply to the LOI,⁵ A&O stated that it had purchased the Antenna Structure as part of its acquisition of Station KMRI(AM) and that the transaction was consummated on January 1, 2008. A&O also stated that it updated the ASR information

¹ 47 C.F.R. § 17.57.

² The Antenna Structure is 78 meters in overall height and is required to have painting and lighting in accordance with FAA Chapters 3, 4, 5, and 13, of FAA Circular Number 70/7460-1J.

³ A&O is also the licensee of Station KMRI(AM), West Valley City, Utah, and utilizes antenna structure number 1040896 to broadcast KMRI(AM).

⁴ See Letter of Inquiry from Nikki P. Shears, District Director, Denver Office, Western Region, FCC Enforcement Bureau, to Alpha & Omega Communications, LLC (Jul. 29, 2011) (on file in EB-11-DV-0102).

⁵ Letter from Alpha & Omega Communications, LLC, to Nikki P. Shears, District Director, Denver Office, Western Region, FCC Enforcement Bureau (Aug. 13, 2011) (on file in EB-11-DV-0102) (LOI Response).

for the Antenna Structure to reflect A&O's ownership of the structure on August 9, 2011,⁶ subsequent to A&O's receipt of the *LOI*.⁷

III. DISCUSSION

3. Section 503(b) of the Communications Act of 1934, as amended (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.⁸ 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.⁹ 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,¹⁰ and the Commission has so interpreted the term in the Section 503(b) context.¹¹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹² The term "repeated" means the commission or omission of such act more than once or for more than one day.¹³

A. Failure to Update Ownership Information for the Antenna Structure

4. 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.¹⁴ Antenna structure owners must 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.¹⁵ A&O

⁶ See File No. A0734206, entered Aug. 9, 2011.

⁷ *LOI Response* at 1.

⁸ 47 U.S.C. § 503(b).

⁹ 47 U.S.C. § 312(f)(1).

¹⁰ 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").

¹¹ 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).

¹² 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).

¹³ 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.

¹⁴ 47 C.F.R. § 17.57.

¹⁵ See, e.g., *American Tower Corporation*, Notice of Apparent Liability, 16 FCC Rcd 1282 (proposing forfeitures of \$3,000 per violation for failure to update antenna structure registration), Order and Consent Decree, 16 FCC Rcd 14937 (2001) (resolving forfeiture proceeding and other potential antenna structure rule violation cases); *James A. Davis*, Notice of Apparent Liability for Forfeiture and Order, DA No. 12-755, 2012 WL 1790352 (Enf. Bur. rel. May 16, 2012) (proposing \$3,000 forfeiture for failure to update antenna structure registration for three years); *P&Y* (continued...)

acquired the Antenna Structure on January 1, 2008, but failed to update the ownership information for the structure until August 9, 2011, and only after receiving the *LOI* from the Denver Office. Based on the evidence before us, we find that A & O apparently willfully and repeatedly violated section 17.57 of the Rules by failing to immediately notify the Commission about a change in ownership for the Antenna Structure.

B. Proposed Forfeiture Amount

5. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for failing to file required forms or information is \$3,000.¹⁶ 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.¹⁷ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that A&O is apparently liable for a forfeiture in the amount of \$3,000.

IV. ORDERING CLAUSES

6. 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, Alpha & Omega Communications, 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.¹⁸

7. **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, Alpha & Omega Communications, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

8. 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. Alpha & Omega Communications, LLC, shall send electronic notification of payment to WR-Response@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁹ 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:

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Broadcasting Corporation, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 14444 (Enf. Bur. 2011) (proposing \$3,000 forfeiture for failure to update antenna structure registration for three years).

¹⁶ *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.

¹⁷ 47 U.S.C. § 503(b)(2)(E).

¹⁸ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 17.57.

¹⁹ 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 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.

9. 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. 20554.²⁰ 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.

10. 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.²¹ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Western Region, Denver Office, 215 S. Wadsworth Blvd., # 303, Lakewood, CO 80226 and include the NAL/Acct. No. referenced in the caption. Alpha & Omega Communications, LLC, also shall email the written response to WR-Response@fcc.gov.

11. 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.

²⁰ See 47 C.F.R. § 1.1914.

²¹ 47 C.F.R. §§ 1.16, 1.80(f)(3).

12. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and regular mail to Alpha & Omega Communications, LLC, P. O. Box 352, Salt Lake City, UT 84110.

FEDERAL COMMUNICATIONS COMMISSION

Nikki P. Shears,
District Director
Denver Office
Western Region
Enforcement Bureau