

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

In the Matter of	)	
	)	
Paulino Bernal	)	File No.: EB-11-DL-0122
	)	NAL/Acct. No.: 201332500001
Owner of Antenna Structure No. 1066001	)	FRN: 0001696350
Tulia, TX	)	Facility ID: 1301
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER**

Adopted: March 7, 2013

Released: March 7, 2013

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

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Paulino Bernal, owner of antenna structure number 1066001 (the Antenna Structure), located in Tulia, TX, apparently willfully and repeatedly violated Section 17.57 of the Commission's rules (Rules),<sup>1</sup> by failing to notify the Commission upon a change in ownership information for the Antenna Structure. We conclude that Mr. Bernal is apparently liable for a forfeiture in the amount of six thousand dollars (\$6,000). In addition, we direct Mr. Bernal to submit, no later than thirty (30) calendar days from the release date of this NAL, a statement signed under penalty of perjury that updated ownership information for the Antenna Structure has been submitted to the Commission.

**II. BACKGROUND**

2. Mr. Bernal is the licensee of AM Station DKTUE in Tulia, Texas<sup>2</sup> and acquired the station from Dove Media, LLP (Dove Media) on September 24, 2004.<sup>3</sup> According to the radio station purchase agreement, Mr. Bernal also acquired a "207 foot Andrews 4-face angle iron AM broadcast tower" in Tulia, Texas from Dove Media on September 24, 2004.<sup>4</sup> On February 10, 2012, an agent from the Enforcement Bureau's Dallas Office (Dallas Office) informed Station DKTUE staff via telephone that Mr. Bernal must update the ownership information in the Commission's Antenna Structure Registration (ASR) database. As of January 25, 2013, the Commission's ASR database still lists "KLGD Attention to Bruce Campbell"<sup>5</sup> as the owner of the Antenna Structure.

<sup>1</sup> 47 C.F.R. § 17.57.

<sup>2</sup> See License File No. BAL-RA1104XU.

<sup>3</sup> See License File No. BAL-20040601AAA.

<sup>4</sup> *Id.*

<sup>5</sup> Bruce Campbell is the Vice President of Dove Media, LLP. See License File No. BAL-20040601AAA.

### 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.<sup>6</sup> 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.<sup>7</sup> 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,<sup>8</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>9</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>10</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>11</sup>

#### A. Failure to Update Ownership Information for the Antenna Structure

4. 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.<sup>12</sup> According to Commission records, Mr. Bernal acquired ownership of the Antenna Structure on September 24, 2004, but, as of January 25, 2013, has not filed the required FCC Form 854 to update the Antenna Structure’s ownership. Based on the evidence before us, we find that Mr. Bernal 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.

#### B. Proposed Forfeiture Amount and Reporting Requirement

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.<sup>13</sup> In assessing the

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<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 U.S.C. § 312(f)(1).

<sup>8</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> 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 . . . .”).

<sup>9</sup> 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).

<sup>10</sup> 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).

<sup>11</sup> 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.

<sup>12</sup> 47 C.F.R. § 17.57.

<sup>13</sup> *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.

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.<sup>14</sup> Maintaining current ownership contact information in the ASR database is particularly important, because it enables the Commission and individuals to notify the antenna structure owner promptly in the event of a lighting failure or other malfunction. Because Mr. Bernal failed to notify the Commission regarding the change in ownership for over eight years, we find this violation particularly egregious and warranting an upward adjustment of \$3,000.<sup>15</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Bernal is apparently liable for a forfeiture in the amount of \$6,000.

6. We direct Mr. Bernal to submit a written statement, pursuant to Section 1.16 of the Rules,<sup>16</sup> signed under penalty of perjury, stating that he has submitted an FCC Form 854 to the Commission to update the ownership information for the Antenna Structure. Mr. Bernal shall also certify that he will otherwise comply with the Commission's painting and lighting requirements for the Antenna Structure.<sup>17</sup> This statement must be provided to the Dallas Office at the address listed in paragraph 9 within thirty (30) calendar days of the release date of this NAL.

#### IV. ORDERING CLAUSES

7. 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, Paulino Bernal is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of six thousand dollars (\$6,000) for violation of Section 17.57 of the Rules.<sup>18</sup>

8. **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, Paulino Bernal **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. **IT IS FURTHER ORDERED** that Paulino Bernal **SHALL SUBMIT** a written statement, as described in paragraph 6, 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, Dallas Office, 9330 LBJ Freeway, Suite 1170, Dallas, TX 75243. Paulino Bernal shall also e-mail the written statement to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

10. 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. Paulino Bernal shall also send electronic notification on the date said payment is made to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov). Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be

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<sup>14</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>15</sup> See *Quinn Broadcasting Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 5787 (Enf. Bur. 2012) (proposing \$6,000 forfeiture for failure to update ASR ownership information for over eight years).

<sup>16</sup> 47 C.F.R. § 1.16.

<sup>17</sup> See 47 U.S.C. § 303(q); 47 C.F.R. §§ 17.1 – 17.57. If the Antenna Structure is dismantled, Mr. Bernal must submit another FCC Form 854 to the Commission within 24 hours of completion of the dismantlement. See 47 C.F.R. § 17.57.

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

submitted.<sup>19</sup> 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 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.<sup>20</sup> 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](mailto:ARINQUIRIES@fcc.gov).

12. 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.<sup>21</sup> Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Dallas Office, 9330 LBJ Freeway, Suite 1170, Dallas, TX 75243 and include the NAL/Acct. No. referenced in the caption. Paulino Bernal also shall e-mail the written response to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

13. 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.

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<sup>19</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>20</sup> See 47 C.F.R. § 1.1914.

<sup>21</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).

14. **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 Paulino Bernal at 307 East Jackson, P.O. BOX 252, McAllen, TX 78505-0252.

FEDERAL COMMUNICATIONS COMMISSION

James D. Wells  
District Director  
Dallas Office  
South Central Region  
Enforcement Bureau