

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

In the Matter of)
Coastal Television Broadcasting Company LLC) File No.: EB-FIELDWR-13-00005960
Owner of Antenna Structure No. 1004021,) NAL/Acct. No.: 201432780001
Anchorage, Alaska) FRN: 0016824336

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 24, 2013

Released: October 25, 2013

By the Resident Agent, Anchorage Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Coastal Television Broadcasting Company LLC (Coastal), owner of antenna structure number 1004021 (the Antenna Structure), in Anchorage, Alaska, 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 Coastal is apparently liable for a forfeiture in the amount of four thousand, two hundred dollars (\$4,200).

II. BACKGROUND

2. On January 7, 2013, an agent from the Enforcement Bureau's Anchorage Office (Anchorage Office) inspected the Antenna Structure² located in Anchorage, Alaska.³ At the time of the inspection, a search of the Commission's Antenna Structure Registration (ASR) database indicated that the Antenna Structure was registered to Piedmont Television of Anchorage License LLC (Piedmont). When the Anchorage agent called the contact number listed on the ASR for the Antenna Structure, the agent learned that the listed contact for Piedmont had not been at the number for ten years. Through further investigation, the agent learned that Piedmont was no longer the current tower owner and that the new owner was Coastal. The agent contacted Coastal's corporate operating officer and discussed the failure to notify the Commission of a change in antenna structure ownership. Subsequently, Coastal's counsel updated the ownership information on January 7, 2013.

3. On January 28, 2013, the Anchorage Office issued a Notice of Violation (NOV) to Coastal concerning its failure to immediately notify the Commission about the change in ownership information for the Antenna Structure.⁴ In its NOV Response, Coastal stated that, within eight hours after notification of the failure to change ownership information, Coastal submitted a Form 854 to update the ownership

1 47 C.F.R. § 17.57.

2 Coastal is also the licensee of TV station KTBV(DT), Anchorage, Alaska, and utilizes antenna structure number 1004021 to broadcast Station KTBV(DT).

3 The Antenna Structure is 88.7 meters in overall height and is required to have painting and lighting in accordance with Chapters 3, 4, 5, and 9, of FAA Circular Number 70/7460-1G.

4 See Notice of Violation to Coastal (Jan. 28, 2013) (on file in EB-FIELDWR-13-00005960) (NOV).

information.⁵ Coastal further stated that this failure was due to an inadvertent administrative oversight, and that the ownership change filing was apparently not completed at the time Coastal acquired the antenna structure as part of its acquisition of television Station KTBY(DT), located in Anchorage, Alaska.⁶ Commission records show that Coastal consummated the assignment of the station license on May 7, 2008.⁷

III. DISCUSSION

4. 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

5. The evidence in this case establishes that Coastal violated Section 17.57 of the Rules. 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

⁵ See Coastal Television Broadcasting Company LLC Response to Notice of Violation (Feb 13, 2013) (on file in EB-FIELDWR-13-00005960) (NOV Response).

⁶ See *id.* at 1.

⁷ See Coastal Television Broadcasting Company LLC, Consummation Notice (filed May 8, 2008).

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., *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.

ASR numbers at the base of antenna structures to allow for easy contact if problems arise.¹⁵ Coastal acquired the Antenna Structure on May 7, 2008, but failed to update the ownership information for the structure until January 7, 2013, and only after notification from the Anchorage Office.¹⁶ Based on the evidence before us, we find that Coastal 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

6. 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 \$3,000.¹⁷ 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.¹⁸ 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 Coastal failed to notify the Commission regarding the change in ownership for over four and a half years, we find this violation particularly egregious and warranting an upward adjustment of \$1,200.¹⁹ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Coastal is apparently liable for a total forfeiture in the amount of \$4,200 for failure to notify the Commission of a change in ownership of an antenna structure.

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, Coastal Television Broadcasting Company LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand, two hundred dollars (\$4,200) for violation of Section 17.57 of the Rules.²⁰

¹⁵ See, e.g., *American Tower Corporation*, Notice of Apparent Liability, 16 FCC Rcd 1282 (proposing base 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).

¹⁶ Coastal states that its failure to immediately file the FCC Form 854 after it acquired the Antenna Structure was due to an inadvertent administrative oversight. See NOV Response at 1. The Commission has long held that administrative oversight or inadvertence does not serve to excuse a violation of Section 17.57; nor does it serve as a mitigating factor warranting a downward adjustment of a forfeiture. See *Hacienda San Eladio, Inc.*, Forfeiture Order, 28 FCC Rcd 1108, 1109, para. 5 (Enf. Bur. 2013). Further, the fact that Coastal promptly filed the FCC Form 854 after it was notified by the Anchorage Office about the required change in ownership filing does not serve to nullify or mitigate the violation, because corrective action taken to come into compliance with the Rules is expected. See *id.* at 1110, para. 6.

¹⁷ *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.

¹⁸ 47 U.S.C. § 503(b)(2)(E).

¹⁹ See, e.g., *Latin Broadcasting Company*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 2170 (Enf. Bur. 2013) (proposing \$4,000 forfeiture for failing to update ASR ownership information for over three and a half years).

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

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

9. 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. Coastal Television Broadcasting Company LLC shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²¹ 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.

10. 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. 20554.²² 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.

11. 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.²³ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Western Region, Anchorage Resident Agent Office, P.O. Box 231949, Anchorage, Alaska 99523-1949, and include the NAL/Acct. No. referenced in the caption. Coastal Television Broadcasting Company LLC also shall e-mail the written response to WR-Response@fcc.gov.

12. 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 principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial

²¹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²² See 47 C.F.R. § 1.1914.

²³ 47 C.F.R. §§ 1.16, 1.80(f)(3).

status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. **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 First Class Mail to Coastal Television Broadcasting Company LLC at 3615 Hunley Ct., Cumming, Georgia 30028, and to its counsel, Frank R. Jazzo, Esquire, at Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

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