

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

In the Matter of)	
)	
)	
)	
Rifkin Acquisition Partners LLC)	File No. EB-01-CG-204
St. Louis, Missouri)	NAL/Acct. 200232320003
)	FRN 0001-6054-92
)	
Bresnan Telecommunications Company LLC)	File No. EB-01-PL-090
White Plains, New York)	NAL/Acct. No.
200232320004)	
)	FRN 0001-6097-34
)	
Interlink Communications Partners LLC)	File No. EB-01-DV-420
St. Louis, Missouri)	NAL/Acct. No. 200232320005
)	FRN 0001-6219-29
)	
Subsidiaries of Charter Communications)	
St. Louis, Missouri)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 23, 2002

Released: April 25, 2002

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find the captioned subsidiaries of Charter Communications (“Charter”) apparently liable for forfeitures totaling ten thousand dollars (\$10,000) for repeated and willful violations of Part 17 of the Commission’s Rules (“Rules”) relating to antenna structure construction, marking and lighting.¹

2. We find that during the period from April 24, 2001, through January 18, 2002, the captioned Charter subsidiaries apparently failed to comply with Part 17 requirements in three locations. In particular, we find that the captioned Charter subsidiaries are apparently liable for: two failures to post the Antenna Structure Registration (“ASR”) number in a conspicuous location so that it is visible near the base of the antenna structure (Section 17.4(g)); and two failures to notify the Commission of a change in the ASR

¹ 47 C.F.R. § 17.1 *et seq.*

ownership information (Section 17.57).²

II. BACKGROUND

3. The Commission's antenna structure construction, marking and lighting requirements operate in concert with FAA regulations to ensure that antenna structures do not present hazards to air navigation. Generally, the Commission's rules require that antenna structures located close to airports or that are greater than 200 feet in height comply with painting and lighting specifications designed to ensure air safety.³ The Commission requires antenna structure owners to register antenna structures with the Commission and post ASR numbers at the base of antenna structures to allow for easy contact if problems arise.⁴ The rules requiring antenna structure registration for all antenna structures that may pose a hazard to air navigation have been in effect since 1996.⁵ The Commission and the staff have repeatedly advised antenna structure owners that all existing, unregistered antenna structures subject to our rules must be registered immediately or the owners face a monetary forfeiture or other enforcement action.

4. Because of the substantial public safety issues involved, the Commission further requires antenna structure owners to monitor lights daily or install automatic alarm systems to ensure lights function properly.⁶ Antenna structure owners are required to maintain lighting equipment and replace or repair inoperative lights, indicators and control and alarm systems as soon as practicable.⁷ Additionally, antenna structure owners are required immediately to notify the FAA when major antenna structure lights are inoperative and cannot be repaired within 30 minutes.⁸ The FAA then issues a Notice to Airmen ("NOTAM") for a period of 15 days advising aircraft that there is an antenna structure at a specific location with a temporary light outage.

5. Commission field agents regularly inspect antenna structures to determine compliance with the antenna structure construction, marking and lighting requirements. During routine inspections of antenna structures on August 2 and November 21, 2001, Commission field agents discovered that antenna structures owned by Charter subsidiaries Bresnan Telecommunications Group LLC ("Bresnan") and Interlink

² 47 C.F.R. §§ 17.4(g) and 17.57.

³ 47 C.F.R. § 17.21.

⁴ 47 C.F.R. § 17.4.

⁵ Antenna structure owners were required to register existing antenna structures during a two-year filing period between July 1, 1996 and June 30, 1998, and to register new antenna structures prior to construction. *Streamlining the Commission's Antenna Structure Clearance Procedure*, 11 FCC Rcd 4272 (1995).

⁶ 47 C.F.R. § 17.47.

⁷ 47 C.F.R. § 17.56.

⁸ 47 C.F.R. § 17.48.

Communications Partners LLC (“Interlink LLC”) did not have the ASR numbers posted as required. On April 24, 2001, and January 16, 2002, Commission field agents discovered that the ownership information for towers owned by Charter subsidiaries Rifkin Acquisition Partners LLC (“Rifkin”) and Interlink LLC was not current. A brief description of these safety-related violations follows:

Mount Vernon, Illinois – File No. EB-01-CG-204

6. On April 24, 2001, an agent of the Commission’s Chicago, Illinois, Field Office (“Chicago Office”) received a telephone call concerning an expired NOTAM at an antenna structure located at 3000 Caroline, Mount Vernon, Illinois (ASR number 1062266). A search of Commission records revealed that the structure was registered to Cablevision Communications, an entity not owned by or affiliated with Charter. During a second telephone conversation on the same day, the agent was told that Cablevision Communications had sold the antenna structure to Charter in October 1999. On April 24, 2001, the Chicago Office issued an NOV to Charter citing its failure to notify the Commission of a change in the ASR ownership information, in violation of Section 17.57 of the Rules. In its May 3, 2001, reply to the NOV, Charter indicated that, on May 3, 2001, it filed FCC Form 854 changing the ASR ownership information for the Mount Vernon, Illinois, tower from Cablevision Communications to Rifkin, a Charter subsidiary.

Ely, Minnesota – File No. EB-01-PL-090

7. On August 2, 2001, an agent from the Commission’s St. Paul, Minnesota, Resident Agent Office (“St. Paul Office”) inspected an antenna structure located 1.8 miles northeast of Ely, Minnesota. The agent observed no ASR number posted at the site. A search of Commission records revealed that the structure was registered to Bresnan, a Charter subsidiary (ASR No. 1024436). On September 28, 2001, the St. Paul Office issued an NOV to Bresnan citing failure to post the antenna structure’s ASR number, in violation of Section 17.4(g) of the Rules. In its October 3, 2001 response to the NOV, Charter replied, on behalf of Bresnan, that it had posted a temporary sign at the site and had ordered a permanent ASR number sign.

Carrizozo, New Mexico – File No. EB-01-DV-420

8. On November 15, 2001, agents from the Denver Office inspected an antenna structure located at 1406 South Central, Carrizozo, New Mexico. The agents observed no ASR number posted at the site. A search of Commission records revealed that the structure (ASR number 1002769) was registered to Interlink Communications Partners, LLP (“Interlink LLP”), an entity not owned by or affiliated with Charter. On December 18, 2001, the Denver Office issued an NOV to Interlink LLP for its failure to post the antenna structure’s ASR number, in violation of Section 17.4(g) of the Rules. Because the Denver Office had received no response to the NOV, an agent made a telephone call on January 4, 2002, to the number listed for Interlink LLP in the ASR information and left a message; the person who returned the call told the agent that Interlink LLP had been sold to Charter, and that she had forwarded the NOV to Charter. In its January 16, 2002, response to the NOV, Charter replied that it had posted a sign indicating the ASR number and that it would change the ASR ownership information. The January 16, 2002, response also indicated that Charter owned the Carrizozo, New Mexico, antenna structure as of November 15, 2001. On January 16, 2002, the Denver Office issued an NOV to Charter citing its failure to notify the Commission of a change in the ASR ownership information, in violation of Section 17.57 of the Rules. In its March 15, 2002, reply to the NOV,

Charter indicated that, on January 18, 2002, it filed FCC Form 854 changing the ASR ownership information for the Carrizozo, New Mexico, tower from Interlink LLP, an entity not owned by Charter, to Interlink LLC, a Charter subsidiary.

III. DISCUSSION

9. Based on the evidence before us, we find that: Rifkin has apparently failed to notify the Commission of a change in the antenna structure ownership information, in willful violation of Section 17.57; Bresnan has apparently failed to post an ASR number in a conspicuous location so that it is readily visible near the base of the antenna structure, in willful violation of Section 17.4(g); and Interlink LLC has apparently failed to post an ASR number in a conspicuous location so that it is readily visible near the base of the antenna structure, in willful violation of Section 17.4(g), and has failed to notify the Commission of a change in the antenna structure ownership information, in willful violation of Section 17.57.⁹ We note that these violations were continuing and thus also repeated.¹⁰

10. Section 503(b) of the Act,¹¹ authorizes the Commission to assess a forfeiture for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act. In exercising such authority, we are to 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 such other matters as justice may require.”¹²

11. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”)¹³ and Section 1.80 of the Rules,¹⁴ the base forfeiture amount for failure to file required forms or information (e.g., failure to file an antenna registration form when there is a change in the antenna structure ownership information) is \$3,000.¹⁵

⁹ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4387-4388 (1991).

¹⁰ See *id.* at 4388; as defined in the Act, the 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.” 47 U.S.C. § 312(f)(2).

¹¹ 47 U.S.C. § 503(b).

¹² 47 U.S.C. § 503(b)(2)(D).

¹³ 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999).

¹⁴ 47 C.F.R. § 1.80.

¹⁵ *American Tower Corp.*, 16 FCC Rcd 1282, 1284 (2001) (“*American Tower*”).

The *Forfeiture Policy Statement* does not establish a base forfeiture amount for failure to post the antenna structure registration number.¹⁶ The Commission has determined, however, that an appropriate base forfeiture amount for failure to post the ASR number is \$2,000 per violation.¹⁷

12. Application of the base amounts to the captioned Charter subsidiaries' violations results in base forfeiture amounts of: Rifkin, \$3,000 for failure to notify the Commission of change in the ASR ownership information; Bresnan, \$2,000 for failure to post ASR number; and Interlink LLC, \$5,000 for failure to post ASR number and failure to notify the Commission of change in the ASR ownership information. The total base forfeiture amount for violations by the captioned Charter subsidiaries is \$10,000.

13. Taking the factors specified by Section 503(b) into account and the *Forfeiture Policy Statement* as well, we find the following Charter subsidiaries apparently liable as follows: Rifkin for a forfeiture in the amount of \$3,000; Bresnan for a forfeiture in the amount of \$2,000; and Interlink LLC for a forfeiture in the amount of \$5,000. The total amount of these proposed monetary forfeitures to the captioned Charter subsidiaries is \$10,000.

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, each of the captioned subsidiaries is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE as follows:

(a) Rifkin Acquisition Partners LLC in the amount of three thousand dollars (\$3,000) for willfully and repeatedly violating Section 17.57 of the Rules;

(b) Bresnan Telecommunications Company in the amount of two thousand dollars (\$2,000) for willfully and repeatedly violating Section 17.4(g) of the Rules; and

(c) Interlink Communications Partners LLC in the amount of five thousand dollars (\$5,000) for willfully and repeatedly violating Sections 17.4(g) and 17.57 of the Rules.

15. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, each of the listed subsidiaries SHALL PAY the full amount of its proposed

¹⁶ The fact that the *Forfeiture Policy Statement* does not specify a base amount does not indicate that no forfeiture should be imposed. The *Forfeiture Policy Statement* states that "any omission of a specific rule violation from the [forfeiture guidelines] . . . should not signal that the Commission considers any unlisted violation as nonexistent or unimportant." *Forfeiture Policy Statement*, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act. *Id.*

¹⁷ See *American Tower* at 1284-85.

forfeiture or SHALL FILE a written statement seeking reduction or cancellation of its proposed forfeiture.¹⁸

16. Payment of the forfeitures may be made by mailing (a) check(s) or similar instrument(s), payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment(s) should note the following:

- (a) Rifkin -- NAL/Acct. No. 200232320003 and FRN 0001-6054-92;
- (b) Bresnan -- NAL/Acct. No. 200232320004 and FRN 0001-6097-34; and
- (c) Interlink LLC -- NAL/Acct. No. 200232320005 and FRN 0001-6219-29.

A request for payment of the amounts related to the *NAL* under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, DC 20554.¹⁹

17. The response(s), if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, ATTN: Enforcement Bureau – Technical and Public Safety Division. The response(s) must include the NAL/Acct. Nos. and FRN numbers specified in Paragraph 16, above.

18. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent 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.

19. IT IS FURTHER ORDERED THAT copies of this *NAL* shall be sent by Certified Mail, Return Receipt Requested, to Charter Communications, Interlink Communications Partners LLC, and Rifkin Acquisition Partners LLC at 12444 Powerscout Drive, Suite 100, St. Louis, Missouri 63131; and to Bresnan Telecommunications Company LLC at 12444 Powerscout Drive, Suite 100, St. Louis, Missouri 63131 and at 709 Westchester Avenue, White Plains, New York 10604.

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¹⁸ Alternatively, Charter may pay the full amount of the captioned subsidiaries’ proposed forfeitures or file a written statement on behalf of the captioned subsidiaries seeking reduction or cancellation of the proposed forfeitures.

¹⁹ See 47 C.F.R. § 1.1914.

David H. Solomon
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