

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

In the Matter of)	
)	
Emmis Television License Corporation)	File Number EB-02-OR-053
Owner of Antenna Structure No. 1022410)	NAL/Acct.No. 200232620004
New Orleans, LA)	FRN 0002-8842-52
)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: May 31, 2002

By the Enforcement Bureau, New Orleans Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that Emmis Television License Corporation (“Emmis”), owner of antenna structure no. 1022410, willfully violated Sections 17.47(a)(2) and 17.57 of the Commission’s Rules (“Rules”),¹ by failing to provide a properly maintained automatic alarm system monitoring its tower lights, and failing to notify the Commission using FCC Form 854 of a change in tower ownership. The violation of Section 17.57 of the Rules also is a repeated violation. We conclude that Emmis is apparently liable for a forfeiture in the amount of five thousand dollars (\$5,000).

II. BACKGROUND

2. On or about April 1, 2002, the FCC Enforcement Bureau’s New Orleans Field Office (“New Orleans Office”) received a report of an unlit top beacon on the tower used by WVUE(TV) located in Chalmette, Louisiana. The Antenna Structure Registration Number for this tower is 1022410 and it is located at N29°57’14” x W089°56’58”. On April 4, 2002, a New Orleans Office agent inspected the antenna structure and determined that the top beacon was not capable of operation due to a blown fuse. However, the structure’s automatic alarm system failed to detect the malfunction. It was later determined that a faulty limit set point on the remote control was responsible for the automatic alarm system failure. In addition, although an assignment of license to Emmis occurred in December 2000² and Emmis owns the structure, the Antenna Structure Registration ownership information for antenna structure no. 1022410 was never updated and still showed SF New Orleans License Subsidiary, Inc. as the structure

¹ 47 C.F.R. §§ 17.47(a)(2), 17.57

² The license for WVUE(TV) was assigned from SF New Orleans License Subsidiary, Inc., to Emmis TV License Corporation of New Orleans on June 23, 1998. A subsequent assignment of license to Emmis Television License Corporation occurred on December 6, 2000. The Antenna Structure Registration database still showed SF New Orleans License Subsidiary, Inc. as owner at the time of inspection on April 4, 2002.

owner.

III. DISCUSSION

3. Section 17.47(a)(2) of the Rules requires that the owner of an antenna structure which is registered with the Commission and has been assigned lighting specifications shall provide and properly maintain an automatic alarm system designed to detect any failure of such lights and to provide indications of such failure to the owner.³ On April 4, 2002, Emmis' automatic alarm system was improperly maintained resulting in failure of the alarm system to notify Emmis of a lighting failure on its antenna structure.

4. Section 17.57 of the Rules requires that the owner of an antenna structure must immediately notify the Commission using FCC Form 854 upon any change in structure height or change in ownership information. Emmis failed to update the antenna structure ownership information from the time Emmis became owner of the tower on or about December 6, 2000, until at least April 23, 2002.

5. Based on the evidence before us, we find that Emmis willfully⁴ violated Section 17.47(a)(2) of the Rules by failing to provide a properly maintained automatic alarm system for its antenna structure lighting, and willfully and repeatedly⁵ violated Section 17.57 of the Rules by failing to notify the Commission using FCC Form 854 of a change in antenna structure ownership.

6. Pursuant to Section 1.80(b)(4) of the Commission's Rules, the base forfeiture amount for failure to properly maintain an automatic alarm system for antenna structure lighting is \$2,000 (failure to conduct required monitoring), and for failure to notify the Commission of a change in antenna structure ownership is \$3,000 (failure to file required forms or information).⁶ Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), requires us 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 other such matters as justice may require."⁷ Considering the entire record and applying the statutory factors listed above, this case warrants a \$5,000 forfeiture.

³ Alternatively, the owner may make observations of the antenna structure's lights at least once each 24 hours either visually or by observing a properly maintained indicator designed to register any failure of such lights. *See* 47 C.F.R. § 17.47(a)(1)

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally to 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*

⁵ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which applies equally to 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."

⁶ 47 C.F.R. § 1.80(b)(4)

⁷ 47 U.S.C. § 503(b)(2)(D)

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁸ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,⁹ Emmis Television License Corporation is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of five thousand dollars (\$5,000) for willful violation of Section 17.47(a)(2) of the Rules and willful and repeated violation of Section 17.57 of the Rules.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Emmis Television License Corporation 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 may be made by mailing a check or similar instrument, 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 must include the FRN and NAL/Acct. No. referenced in the letterhead above.

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. and FRN referenced in the letterhead above.

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.

12. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

⁸ 47 U.S.C. § 503(b)

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80

¹⁰ See 47 C.F.R. § 1.1914

13. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Emmis Television License Corporation at 3500 West Olive Avenue, Suite 300, Burbank, California 91505.

FEDERAL COMMUNICATIONS COMMISSION

James C. Hawkins
District Director, New Orleans Office
Enforcement Bureau