

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

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|---------------------------------------|---|---------------------------|
| In the Matter of |) | File Number EB-03-AT-197 |
| |) | |
| Brown Broadcasting System, Inc. |) | NAL/Acct. No.200432480001 |
| Owner of Antenna Structure located in |) | |
| Jefferson, Georgia |) | FRN 0009 7708 84 |
| Athens, Georgia |) | |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 8, 2003

By the Enforcement Bureau, Atlanta Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Brown Broadcasting Systems, Inc. (“Brown Broadcasting”), owner of an unregistered antenna structure located in Jefferson, Georgia, apparently liable for a forfeiture in the amount of three thousand dollars (\$3,000) for the willful and repeated violation of Section 17.4(a) of the Commission's Rules (“Rules”).¹ Specifically, we find Brown Broadcasting apparently liable for failure to register its antenna structure with the Commission

II. BACKGROUND

2. On October 19, 1999, an agent from the FCC Enforcement Bureau’s Atlanta Office (“Atlanta Office”) inspected the tower of AM radio station WBKZ licensed to Jefferson, Georgia.² There was no antenna structure registration number posted near the base of the tower. The agent found no record of antenna structure registration in the FCC Antenna Structure Registration (“ASR”) tower database.

3. On October 21, 1999, the Atlanta Office issued a Notice of Violation (“NOV”) for failure to register the antenna structure with the Commission as well as for other violations noted during the inspection.

4. On June 1, 2000, agents from the Atlanta Office inspected the tower of AM Radio station WBKZ in Jefferson, Georgia. The agents found no antenna structure registration number posted at the base of the tower. Also, the agents conducted a search of the ASR tower database and found no record of any antenna structure registration number for the tower.

5. On June 6, 2000, the Atlanta Office issued a NOV for failure to register the antenna structure with the Commission as well as for other violations noted during an inspection that was conducted on June

¹ 47 C.F.R. § 17.4(a).

² Brown Broadcasting is licensee of radio station WBKZ and owns the antenna structure utilized by the station.

1, 2000.

6. On October 22, 2003, an agent with the Atlanta Office inspected the tower of AM radio station WBKZ, Jefferson, Georgia. There was no registration number posted near the base of the tower. The FCC antenna structure registration database showed no record of registration for the tower and the General Manager, Melvin Geter, verified the tower was not registered.

III. DISCUSSION

7. Section 17.4(a) of the Rules provides that the owner of an antenna structure that requires notice of proposed construction to the Federal Aviation Administration (“FAA”) must register the structure with the Commission. Brown Broadcasting’s antenna structure required notification to the FAA because the structure exceeded 200 feet in height. Brown Broadcasting failed to register the antenna structure. The failure to register the antenna structure constitutes a willful and repeated violation because Brown Broadcasting has been issued two violation notices for the same violation, yet still failed for the past four years to register the tower.

8. Based on the evidence before us, we find Brown Broadcasting System, Inc. willfully³ and repeatedly⁴ violated Section 17.4(a) of the Rules by failing to register its antenna structure with the Commission.

9. Pursuant to Section 1.80(b)(4)⁵ of the Rules, the base forfeiture amount for failure to register the antenna structure (failure to file required forms or information) is \$3000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D)⁶ of the Communications Act of 1934, as amended (“Act”), which include 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. Considering the entire record and applying the factors listed above, this case warrants a \$3,000 forfeiture.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁷ and Sections

³Section 312(f)(1) of the Communications Act of 1934, as amended (“Act”), 47 U.S.C. 312(f)(1), which applies equally to Section 503(b) of the Act, provides that the 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...”Southern Broadcasting Co., 6 FCC Rcd 4387(1991).

⁴The 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.”

⁵47 U.S.C. § 1.80(b)(4).

⁶47 U.S.C. § 503(b)(2)(D).

⁷47 U.S.C. § 503(b).

0.111, 0.311 and 1.80 of the Rules⁸Brown Broadcasting, Inc., is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of three thousand dollars (\$3,000) for willful and repeated violation of Section 17.4(a) of the Rules by failing to register their antenna structure with the Commission.

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Brown Broadcasting System, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. 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 should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

13. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street S.W., Washington, D.C. 20554, Attn: Enforcement Bureau-Spectrum Enforcement Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

14. 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.

15. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

⁸ 47 U.S.C. § 0.111, 0.311 and 1.80

⁹ 47 C.F.R. § 1.1914.

16. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Brown Broadcasting System, Inc., 1186 W. Broad Street; Athens, Georgia 30606. Additionally, a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Brown Broadcasting System, Inc., P.O. Box 88; Athens, Georgia 30603.

FEDERAL COMMUNICATIONS COMMISSION

Fred L. Broce
District Director, Atlanta Office
Enforcement Bureau

Attachment