

Federal Communications Commission

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

In the Matter of)	
)	
WLTH Radio, Inc.)	File No. EB-03-CG-054
WLTH)	
Gary, Indiana)	NAL/Acct. No. 200432320001
)	
)	FRN 0004 9887 62

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 23, 2003

By the District Director, Chicago Office, Enforcement Bureau:

I. Introduction

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that WLTH Radio, Inc. (“WLTH”), has apparently violated Sections 17.4(a), 17.48(a), and 17.51(a) of the Commission’s Rules (the “Rules”).¹ These violations occurred because WLTH failed to register its antenna structure, failed to notify the Federal Aviation Administration (“FAA”) of an antenna structure light outage and failed to exhibit the required red obstruction lighting. We conclude that WLTH is apparently liable for a forfeiture in the amount of sixteen thousand dollars (\$16,000).

II. Background

2. The Federal Communications Commission (“FCC”) received information that the lights on WLTH’s antenna structure were not operational. The complaint alleged that the lights had not functioned since February 14, 2003. While attempting to find a current address for WLTH, it became apparent that the antenna structure was not registered.

3. On March 5, 2003 an agent from the Chicago Office of the Federal Communications Commission (“FCC”), informed an employee of WLTH that the Commission had received the complaint. On March 6, 2003, the agent also informed the station’s engineer of the light outages. The engineer subsequently verified that there were problems with the lighting. WLTH did not notify the FAA of the tower light outage until March 12, 2003.

III. Discussion

¹ 47 C.F.R. §§ 17.4(a), 17.48(a), and 17.51(a).

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4. Section 17.4(a) of the Rules specifies that the owner an antenna structure that had been assigned painting and lighting requirements prior to July 1, 1996, was to register the structure prior to July 1, 1998. According to Commission records searched on May 5, 2003, WLTH's antenna structure, which had been assigned painting and lighting requirements, was not registered.

5. Section 17.48(a) of the Rules requires that a report of any observed or otherwise known extinguishment or improper functioning top steady burning light or flashing obstruction light, not corrected within 30 minutes shall be made immediately by telephone or telegraph to the nearest Flight Service Station or office of the FAA. An FCC agent initially informed WLTH of the tower light outage on March 5, 2003, and then again on March 6 and March 12, 2003. WLTH did not notify the FAA of the outage until March 12, 2003.

6. Section 17.51(a) of the Rules requires red obstruction lighting be exhibited from sunset to sunrise. WLTH failed to exhibit the required lights on its antenna structure from February 14, 2003 to March 12, 2003.

7. The Commission assesses monetary forfeitures pursuant to Section 503(b) of the Communications Act of 1934, *as amended*, (the "Act")² as implemented in Section 1.80 of the Rules.³ A forfeiture may be assessed against a person who the Commission finds to have willfully⁴ or repeatedly⁵ failed to comply with the provisions of the Act or the Rules. Forfeiture amounts are decided in accordance with Section 503(b)(2) of the Act⁶ and the Commission's forfeiture guidelines in Section 1.80(b)(4) of the Rules.⁷

8. Based on the evidence before us, we find that WLTH willfully and repeatedly violated Sections 17.4(a), 17.48(a) and 17.51(a) of the Rules by failing to register the antenna structure, failing to notify the FAA immediately of the antenna structure light outage, and failing to exhibit required obstruction lighting on its antenna structure between sunset and sunrise.

² 47 U.S.C. § 503(b).

³ 47 C.F.R. § 1.80.

⁴ Section 312(f)(1), which also applies to Section 503(b), provides: [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 provisions of the Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States. See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ Section 312(f)(2), which also applies to Section 503(b), provides: [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 U.S.C. § 503(b)(2).

⁷ 47 C.F.R. § 1.80(b)(4).

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9. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"), the base forfeiture amount for failing to comply with prescribed lighting is \$10,000, and the base amount for failing to file required information is \$3,000. Failing to register an antenna structure and failing to notify the FAA of an outage constitute failures to file required information. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934 ("ACT"), as amended, which include the nature, circumstances, extent, and gravity of the violation(s), 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.⁸ After applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, we believe that a sixteen thousand dollar (\$16,000) monetary forfeiture is warranted.

IV. Ordering Clauses

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80 of the Rules,⁹ WLTH Radio, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of sixteen thousand dollars (\$16,000) for failure to register the antenna structure, failure to notify the FAA of a tower light outage, and failure to exhibit red obstruction lighting in violation of Sections 17.4(a), 17.48(a), and 17.51(a).

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, WLTH Radio, 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. 200432320001 and FRN 0004 9887 62.

13. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Washington, D.C. 20402, and MUST INCLUDE THE NAL/Acct. No. 200432320001 and FRN 0004 9887 62.

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

⁸ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01.

⁹ 47 C.F.R. §§ 0.111, and 0.311.

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reference to the financial documentation submitted.

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

16. 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.

17. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to WLTH Radio, Inc., P. O. Box 2300, Gary, Indiana 46409.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
District Director
Chicago Office

¹⁰ See 47 C.F.R. § 1.1914.