

Federal Communications Commission

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

In the Matter of)
)
New Northwest Broadcasters LLC) File Number: EB-03-AN-031
)
Registrant of Antenna Structure) NAL/Acct. No. 200432780002
Fairbanks, Alaska) FRN 0003799814
ASR #1023331)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 29, 2004

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that New Northwest Broadcasters LLC ("Northwest"), registrant of antenna structure #1023331, in Fairbanks, Alaska, apparently repeatedly violated Section 17.23 of the Commission's Rules ("Rules")¹ by failing to comply with the antenna structure lighting requirements specified for antenna structure #1023331.² We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),³ that Northwest is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On May 20, 2003, agents from the Anchorage Resident Agent Office inspected antenna structure #1023331, located at 605 Farmers Loop Road in Fairbanks, Alaska. The registered owner of the structure is Northwest.⁴ The antenna structure is required to have "Obstruction Marking and Lighting" in

¹47 C.F.R. § 17.23.

²Pursuant to Section 17.23, antenna structures to be registered must conform with the Federal Aviation Administration's ("FAA's") painting and light recommendation as set forth on the FAA Notice to the owner of the structure. The Notice contains the FAA's determination of "no hazard," as referenced in FAA Advisory Circulars: AC 70/7460-1J, "Obstruction Marking and Lighting, effective January 1, 1996, and AC 150/5345-43E, "Specification for Obstruction Lighting Equipment," dated October 19, 1995. These circulars are incorporated by reference in Section 17.23 of the Rules and "contain FAA recommendations for painting and lighting structures which pose a potential hazard to air navigation. For purposes of this part, the specifications, standards, and general requirements stated in these documents are mandatory." 47 C.F.R. § 17.23.

³47 U.S.C. § 503(b).

⁴According to Commission records, Northwest acquired ownership of antenna structure #1023331 on August 19, 2000.

accordance with the applicable chapters of FAA Advisory Circular 70/7460-1J.⁵ Specifically, the structure is required to have a “dual lighting” system which “consists of red lights for nighttime and high or medium intensity flashing white lights for daytime or twilight.”⁶ The FAA Notice announcing these requirements was issued to the original owner of the antenna structure on March 11, 1997. In their inspection on May 20, 2003, the agents observed one red beacon mounted on the top of the antenna structure and three red lights mounted at the mid level. The agents did not observe the required flashing white lights.

3. On February 10, 2004, the Anchorage Resident Agent Office sent Northwest a Letter of Inquiry requesting further information concerning the lighting installed on the antenna structure and asking whether Northwest was aware that the FAA Notice to the previous owner of the structure specifies a dual lighting system requirement for the structure.⁷ Northwest responded by letter dated March 16, 2004.⁸ In its Response, Northwest states that since its acquisition of the structure from Northern Television, Inc., (“Northern”) the structure has only had red obstruction lighting.⁹ Northwest asserts that when it acquired the structure from Northern, representations and warranties in the sales contract indicated that Northern’s operation of the assets, including the antenna structure, was in compliance with relevant legal standards.¹⁰ Northwest states that it first became aware that there was a compliance issue regarding the antenna structure’s lighting when it received the LOI.¹¹ Northwest also states that it obtained a copy of the FAA Notice on March 9, 2004, after contacting the FAA, and at that time was able to confirm the requirement of dual lighting for the structure.¹² Upon learning that the structure had a dual lighting requirement, Northwest states that it took steps to remedy the situation by placing an order for a dual lighting system, which has since been installed.¹³ Northwest asserts that it has taken prompt steps to remedy the situation, has been diligent in correcting the matter, and that the matter warrants no further Commission action.¹⁴

III. DISCUSSION

4. Section 503(b) of the Act provides that any person who willfully fails to comply substantially with the terms and conditions of any license, or willfully 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. The term “willful” as used in Section 503(b) has been interpreted to mean simply that

⁵March 11, 1997 Federal Aviation Administration Notice to Northern Television, Inc.: Aeronautical Study No. 97-AAL-0041-OE (“FAA Notice”). Pursuant to the FAA Notice, this antenna structure is required to conform to the obstruction marking and lighting requirements found in Chapters Four and Eight of FAA Advisory Circular 70/7460-1J.

⁶FAA Advisory Circular 70/7460-1J, Chapter Four.

⁷February 10, 2004 Letter of Inquiry from the Anchorage Resident Agent Office to Northwest (“LOI”).

⁸March 16, 2004 Letter from Northwest to the Anchorage Resident Agent Office (“Response”). Northwest requested, and received, a two-week extension to file its Response. February 27, 2004 Letter from David J. Charlton, Resident Agent, Federal Communications Commission to New Northwest Broadcasters, LLC.

⁹Response at 1.

¹⁰Response at 1.

¹¹Response at 1.

¹²Response at 2.

¹³Response at 2; May 13, 2004 Letter from M. Anne Swanson, Dow, Lohnes & Albertson, to Marlene Windel, Resident Agent, Federal Communications Commission.

¹⁴Response at 3. Northwest asserts that if the Commission disagrees with this assessment, Northwest should be subject to, at most, an admonishment. Response at 3.

the acts or omissions are committed knowingly.¹⁵ The term “repeated” means the commission or omission of such act more than one or for more than one day.¹⁶

5. Section 17.23 of the rules requires that registered antenna structures conform to the mandatory FAA painting and lighting recommendations set forth on the FAA Notice issued to the structure owner.¹⁷ The FAA Notice for antenna structure #1023331 requires that that the structure have a “dual lighting” system which “consists of red lights for nighttime and high or medium intensity flashing white lights for daytime or twilight.”¹⁸

6. Since 2000, Northwest has been the registered owner of antenna structure #1023331, located in Fairbanks, Alaska. Despite the structure’s dual lighting requirement described above, an inspection of the antenna structure on May 20, 2003 revealed that the required medium white lights were not mounted on the structure. By letter dated March 16, 2004, Northwest indicated that antenna structure #1023331 has not had the required white lighting for at least “approximately four years until the present.”¹⁹

7. Based on the evidence before us, we find that Northwest repeatedly violated Section 17.23 of the Rules by failing to conform to the FAA’s dual lighting requirements as set forth in the FAA Notice for antenna structure # 1023331.

8. 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*”), and Section 1.80 of the Rules, the base forfeiture amount for failing to comply with the prescribed lighting and/or marking for an antenna structure is \$10,000.²⁰ 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 Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.²¹ Applying the *Forfeiture Policy Statement* and the statutory factors, we conclude that a \$10,000 forfeiture is warranted.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, New Northwest Broadcasters LLC is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the

¹⁵Section 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 or any rule or regulation of the Commission authorized by this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁶Section 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.”

¹⁷47 C.F.R. § 17.23

¹⁸FAA Advisory Circular 70/7460-1J, Chapter Four.

¹⁹Response at.1.

²⁰12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

²¹47 U.S.C. § 503(b)(2)(D).

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amount of ten thousand dollars (\$10,000) for violations of Section 17.23 of the Rules.²²

10. 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 for Forfeiture, New Northwest Broadcasters LLC shall pay the full amount of the proposed forfeiture or shall file a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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 FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption.

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region. Anchorage Resident Agent Office, P.O. Box 221849, Anchorage, AK, 99522-1849 and must include the NAL/Acct. No. referenced in the caption.

13. 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.

14. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²³

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 Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Washington, D.C. 20554. 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.

²²47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80, 17.23.

²³See 47 C.F.R. § 1.1914.

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16. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to New Northwest Broadcasters LLC, 15405 S.E. 37th Street, Suite 130, Bellevue, Washington, 98006.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Windel, Resident Agent
Anchorage Resident Agent Office
Western Region
Enforcement Bureau

Enclosure: FCC List of Small Entities