

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

In the Matter of)	
)	
Lazer Broadcasting Corporation)	File Numbers EB-08-LA-0344
Antenna Structure Registrant)	EB-08-LA-0345
ASR Nos. 1013829 and 1013830)	
Santa Barbara, California)	NAL/Acct. No.200932900003
)	FRN:0000013466

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: May 14, 2009

By the District Director Los Angeles Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Lazer Broadcasting Corporation ("Lazer Broadcasting"), owner of antenna structures numbers 1013829 and 1013830, in Santa Barbara, California, apparently repeatedly violated Section 17.57 of the Commission's Rules ("Rules")¹ by failing to immediately notify the Commission of a change in ownership information for antenna structure numbers 1013829 and 1013830. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that Lazer Broadcasting is apparently liable for a forfeiture in the amount of six thousand dollars (\$6,000).

II. BACKGROUND

2. On October 16, and October 17, 2008, an agent of the Enforcement Bureau's Los Angeles Office inspected antenna structure numbers 1013829 and 1013830,³ located in Santa Barbara, California, which are a two-tower directional array for AM radio station KZER. A search of the Commission's Antenna Structure Registration ("ASR") database revealed that both antenna structures were registered to Engles Enterprises Inc., d/b/a KTMS radio ("Engles Enterprises").

3. On November 28, 2008, having been unable to contact Engles Enterprises, the Los Angeles agent contacted the corporate owner of KZER, which was Lazer Licenses, LLC, a wholly-owned subsidiary of Lazer Broadcasting, and was told by an employee that the antenna structures had been purchased several years earlier as part of the acquisition of the station from a previous licensee. The agent advised the Lazer employee that the antenna structures needed to be re-registered to the new owner as soon as possible and the employee stated that this would be accomplished. A subsequent review of the Commission's ASR database revealed that both antenna structures were registered to Lazer Broadcasting

¹ 47 C.F.R. § 17.57.

² 47 U.S.C. § 503(b).

³ Antenna structure numbers 1013829 and 1013830 are both required to have painting and lighting in accordance with FCC Paragraphs 1, 3, 12, 21.

on December 4, 2008.

4. On March 10, 2009, the Los Angeles Office sent a letter of Inquiry ("LOI") to Lazer Broadcasting asking when Lazer Broadcasting acquired antenna structure numbers 1013829 and 1013830. In its March 24, 2009, response to the LOI, Lazer Broadcasting reported that it had purchased the antenna structures as part of the acquisition of the associated radio station on January 7, 2004. The response stated Lazer's position that any violation of the Commission's tower registration rules was inadvertent and innocent and was timely remedied when brought to Lazer's attention.

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly 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 the acts or omissions are committed knowingly.⁴ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁵

6. Section 17.57 of the Rules requires that the owner of an antenna structure to immediately notify the Commission, using FCC Form 854, upon any change in ownership information. We require antenna structure owners to maintain current antenna structure registration information with the Commission and post ASR numbers at the base of antenna structures to allow for easy contact if problems arise.⁶ Lazer Broadcasting acquired antenna structure numbers 1013829 and 1013830 in January of 2004 but failed to update the ownership information for the antenna structures until December 4, 2008, after an inspection by the Commission's Los Angeles Office.

7. From January of 2004, until December 4, 2008, Lazer Broadcasting failed to notify the Commission that it had acquired antenna structures numbers 1013829 and 1013830. This violation occurred for more than one day, therefore, it is repeated. Based on the evidence before us, we find that Lazer Broadcasting apparently repeatedly violated Section 17.57 of the Rules by failing to immediately notify the Commission about a change in ownership for antenna structure numbers 1013829 and 1013830 in Santa Barbara, California.

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 failure to file forms or required information is \$3,000.⁷ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the

⁴ 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 or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ Section 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."

⁶ See, e.g., *American Tower Corporation*, 16 FCC Rcd 1282 (2001) (Notice of Apparent Liability); *American Tower Corporation*, 16 FCC Rcd 14937 (2001) (Consent Decree between the Commission and American Tower Corporation).

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

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.⁸ Although Lazer Broadcasting subsequently updated the ownership information for both antenna structures after the Los Angeles Office inspection, we note that the Commission has stated in the past that an antenna structure owner is expected to correct errors when they are brought to the owner's attention and that such correction is not grounds for a downward adjustment in the forfeiture.⁹ Applying the Forfeiture Policy Statement, Section 1.80, and the statutory factors to the instant case, we conclude that Lazer is apparently liable for a \$3,000 forfeiture for each of the antenna structures, for a total forfeiture of \$6000.

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, 0.314 and 1.80 of the Commission's Rules, Lazer Broadcasting Corporation is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of six thousand dollars (\$6,000) for violations of Section 17.57 of the Rules.¹⁰

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, Lazer Broadcasting Corporation **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 must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹¹ Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Lazer Broadcasting Corporation will also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Los Angeles Office, 18000 Studebaker Rd., Suite 660, Cerritos, CA 90703 and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall be sent to WR-Response@fcc.gov.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871-76 (2002).

¹⁰ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 17.57.

¹¹ See 47 C.F.R. § 1.1914.

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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. **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 Lazer Broadcasting Corporation.

FEDERAL COMMUNICATIONS COMMISSION

Nader Haghigat
District Director,
Los Angeles Office
Western Region
Enforcement Bureau