

Federal Communications Commission

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

In the Matter of)	
)	File No: EB-09-AT-0024
Big Fish Broadcasting LLC)	
)	File No: EB-09-AT-0071
Owner of Antenna Structure Numbers)	
1044859 and 106600)	NAL/Acct. No.: 201032480003
Chappells and Greenwood, SC)	
)	FRN: 0016128993

CORRECTED COPY

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 26, 2010

By the District Director, Atlanta Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Big Fish Broadcasting, L.L.C. (“Big Fish”), owner of antenna structure number 1044859 in Chappells, SC and antenna structure number 1066000 in Greenwood, SC, apparently willfully and repeatedly violated Sections 17.51(a) and 17.48 of the Commission’s Rules (“Rules”)¹ by failing to exhibit the structures’ red obstruction lighting from sunset to sunrise and failing to notify the Federal Aviation Administration (“FAA”) immediately of lighting outages. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that Big Fish is apparently liable for forfeiture in the amount of twenty thousand dollars (\$20,000).

II. BACKGROUND

2. Antenna structure number 1044859 is an antenna tower of 129 meters (approximately 423 feet) in height about ground. Antenna structure number 1066000 is an antenna tower of 110 meters (approximately 360 feet) in height about ground. According to the Antenna Structure Registration (“ASR”) database, both antenna structures are required to be painted and lit with a top, flashing beacon equipped with two lamps and red filters, along with steady burning red side obstruction lights at the mid-point of its overall height.

3. On April 27, 2009, the electricity to antenna structure number 1066000 was disconnected. On June 18, 2009, the electricity to antenna structure number 1044859 was disconnected. Accordingly, as of those respective dates, the lights on the antenna structures were unlit.

4. On June 29, 2009, in response to a complaint of unlit towers, an agent of the Commission’s Atlanta Office of the Enforcement Bureau (“Atlanta Office”) contacted the FAA to determine if tower light

¹ 47 C.F.R. §§ 17.48, 17.51(a).

² 47 U.S.C. § 503(b).

outages had been reported for antenna structure numbers 1044859 and 1066000. The FAA informed the agent that no one had contacted them about a light outage for either antenna structure and that no Notice to Airmen (“NOTAM”) had been issued regarding the structures.³

5. On July 2, 2009, an agent from the Atlanta Office located Big Fish’s owner, who moved out of South Carolina,⁴ and informed him of his responsibility to maintain the lights on antenna structure numbers 1044859 and 1066000 and notify the FAA in the event of a light outage. The agent specifically told Big Fish’s owner that FAA NOTAMs expire every 15 days and that NOTAMs must be kept current if the lights remain unlit. Big Fish’s owner stated he would check into the status of the antenna structures.

6. On July 14 and 31,⁵ 2009, Big Fish notified the FAA of lighting outages on antenna structure numbers 1044859 and 1066000, and the FAA issued NOTAMs regarding the structures. Big Fish did not contact the FAA again until September 21, 2009.⁶

7. On October 20, 2009,⁷ an agent from the Atlanta Office observed that no lights on antenna structure numbers 1044859 and 1066000 were lit at 7 P.M. and 8 P.M., respectively.⁸ The agent observed that the power meters had been removed from the electrical service entrances to the towers and that there was no power to either tower site. The agent contacted the FAA, who informed the agent that no one had reported outages on the structures, and that no current NOTAMs had been issued for the structures.⁹

8. On November 5, 2009, an agent from Atlanta Office observed that no lights on antenna structure numbers 1044859 and 1066000 were lit at 7:30 P.M. and 8:30 P.M., respectively.¹⁰ The agent observed that the power meters were still missing, and that there was no power to either tower site.¹¹ The agent contacted the FAA, who stated that no one had reported outages on the structures and that no current NOTAMs had been issued.¹²

III. DISCUSSION

9. 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,

³ The FAA issued NOTAMs regarding the structures at that time.

⁴ The contact information listed in the ASR database was not current.

⁵ Big Fish’s owner notified the FAA of the lighting outages after an agent from the Atlanta Office reminded him of his responsibility to keep NOTAMs current while tower lights are out.

⁶ Big Fish’s owner notified the FAA of the lighting outages after an agent from the Atlanta Office reminded him of his responsibility to keep NOTAMs current while tower lights are out.

⁷ On October 5, 2009, an agent from the Atlanta Office contacted the FAA and determined that no one had reported outages on the structures and that no current NOTAMs had been issued. The FAA issued NOTAMs for the structures after being contacted by the agent from the Atlanta Office.

⁸ Local sunset was 6:47 P.M.

⁹ The agent notified the FAA of the outages, and the FAA issued NOTAMs for the antenna structures.

¹⁰ Local sunset was 5:30 P.M.

¹¹ On October 28, 2009, the local electric utility confirmed that the power to antenna structure number 1044859 was disconnected on June 18, 2009 and had not been restored as of that date. On January 6, 2010, the local electric utility confirmed that the power to antenna structure number 1066000 was disconnected on April 27, 2009 and had not been restored as of that date.

¹² The agent notified the FAA of the outages, and the FAA issued NOTAMs for the antenna structures.

shall be liable for a forfeiture penalty. The term “willful” as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.¹³ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁴

10. Section 303(q) of the Act states that antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission.¹⁵ Section 17.51(a) of the Rules states that all red obstruction lighting shall be exhibited from sunset to sunrise unless otherwise specified.¹⁶ The FAA Advisory Circular chapters for antenna structure numbers 1044859 and 1066000 require that the structures be painted and have, at the top, flashing beacons equipped with two lamps and red filters, along with mid-point steady burning red side obstruction lights.¹⁷ Section 17.48 of the Rules requires that owners of registered antenna structures that have been assigned lighting specifications report immediately by telephone or telegraph to the FAA any observed or otherwise known extinguishment of any flashing obstruction light not corrected within 30 minutes.¹⁸

11. Electricity to antenna structure numbers 1066000 and 1044859 was disconnected on April 27, 2009 and June 18, 2009, respectively. The electricity to both antenna structures was not restored as of November 5, 2009. Accordingly, all of the lights on antenna structures 1066000 and 1044859 were dark between April 27 and November 5, 2009 and June 18 and November 5, 2009, respectively. An agent visually confirmed that the lights and electricity on the antenna structures were out on October 20 and November 5, 2009. Big Fish only notified the FAA of the outages on its antenna structures on July 14, July 31, and September 21, 2009.¹⁹ Therefore, the lights on antenna structure number 1066000 were unlit between April 27 and July 13, 2009 before Big Fish notified the FAA of the outage. Similarly, the lights on antenna structure number 1044859 were unlit between June 18 and July 13, 2009 before Big Fish notified the FAA of the outage. Big Fish also failed to ensure that current NOTAMs were issued for its antenna structures. The lights on the antenna structures were unlit on October 5, October 20, and November 5, 2009, and no current NOTAMs were issued on those days prior to agent contact with the FAA. Based on the evidence before us, we find that Big Fish apparently willfully and repeatedly violated Sections 17.51(a) and 17.48 of the Rules by failing to maintain the required red obstruction lighting on antenna structure numbers 1044859 and 1066000 and failing to notify the FAA immediately of prolonged obstruction light outages.

12. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80*

¹³ 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).

¹⁴ 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.”

¹⁵ 47 U.S.C. § 303(q).

¹⁶ 47 C.F.R. § 17.51(a).

¹⁷ FAA Circular Number 70/7460-1J, Chapters 3, 4, 5 and 13, Appendix 1, Figure 11.

¹⁸ 47 C.F.R. § 17.48.

¹⁹ On June 29, July 31, September 21, October 5, October 20, and November 5, 2009, an agent from the Atlanta Office contacted the FAA and determined that no one had reported an outage on the structures and that no current NOTAMs had been issued. On June 29, October 5, October 20, and November 5, 2009, the FAA issued NOTAMs for the structures after being contacted by the agent from the Atlanta Office. On July 31 and September 21, 2009, the agent reminded Big Fish of the need to notify the FAA of the outages. On these days, the FAA issued NOTAMs for the structures after being contacted by Big Fish.

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)(E) 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*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Big Fish is apparently liable for a \$20,000 forfeiture.

IV. ORDERING CLAUSES

13. 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, Big Fish Broadcasting LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for violations of Sections 17.51(a) and 17.48 of the Rules.²²

14. **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, Big Fish Broadcasting LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the 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. 20554.⁸ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, Big Fish will send electronic notification on the date said payment is made to SCR-Response@fcc.gov

16. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Atlanta Office, 3575 Koger Blvd, Ste 320, Duluth, GA 30096 and must include the NAL/Acct. No. referenced in the caption.

17. 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.

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

²¹ 47 U.S.C. § 503(b)(2)(E).

²² 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 17.48, 17.51(a).

⁸ See 47 C.F.R. § 1.1914.

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18. **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 Big Fish Broadcasting LLC at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Douglas Miller
District Director
Atlanta Office
South Central Region
Enforcement Bureau