

Federal Communications Commission

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

In the Matter of
Baybridge Communications, L.L.C.
Antenna Structure Registrant
Vallejo, California
ASR No. 1023097
File Number: EB-09-SF-0010
NAL/Acct. No.: 200932960003
FRN: 0006133953

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: April 9, 2009

By the District Director, San Francisco Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Baybridge Communications, L.L.C. ("Baybridge"), registrant of antenna structure #1023097 near Vallejo, California, apparently repeatedly violated Section 303(q) of the Communications Act of 1934, as amended, ("Act"), and Section 17.51(a) of the Commission's Rules ("Rules") by failing to exhibit the structure's red obstruction lighting from sunset to sunrise; and by failing to monitor the antenna structure's lights, using a properly maintained indicator to register any failure of such lights, a violation of Section 17.47(a) of the Rules. Baybridge's failure to make the required observations of the lighting on the antenna structure resulted in its failure to notify the nearest Flight Service Station of the Federal Aviation Administration ("FAA") of the outage of the flashing obstruction lights, a violation of Section 17.48 of the Rules. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), that Baybridge Communications, L.L.C. is apparently liable for forfeiture in the amount of eight thousand dollars (\$8,000).

II. BACKGROUND

2. Antenna structure #1023097 is an antenna tower of 70.4 meters (approximately 231 feet) in height above ground. It is a tower used by KDYA to serve Vallejo, California. According to the antenna structure registration ("ASR") for antenna structure #1023097, the structure is required to be painted and lit

1 47 U.S.C. § 303(q).

2 47 C.F.R. § 17.51(a).

3 47 C.F.R. § 17.47(a).

4 47 C.F.R. § 17.48.

5 47 U.S.C. § 503(b).

6 Baybridge is also the licensee of KDYA.

in accordance with specific Chapters of the FAA Advisory Circular for Obstruction Marking and Lighting.<sup>7</sup> Specifically, the structure is required to be painted and have, at its top, a 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.<sup>8</sup>

3. On February 17, 2009, the Enforcement Bureau's San Francisco Office received a complaint that antenna structure #1023097 located near Vallejo, California was not lighted. An agent of the San Francisco Office contacted the Federal Aviation Administration ("FAA") Flight Service Station to determine if the tower light outage had been reported. The FAA informed the San Francisco agent that no prior light outage report had been made for antenna structure #1023097, and issued a 15 day Notice to Airmen ("NOTAM"). The San Francisco agent then contacted the Vallejo Police Department, Vallejo, California, and asked that they dispatch an officer, after 5:30 p.m., to observe antenna structure #1023097 at 3267 Sonoma Blvd., Vallejo, California.<sup>9</sup> At about 6:00 p.m. the Vallejo Police Department left a message for the San Francisco agent stating that they observed the tower sometime after 5:30 p.m. and the light was not "blinking."

4. On February 18, 2009, the San Francisco agent contacted the Vallejo Police Department and confirmed that the previous evening an officer observed the antenna structure sometime between 5:30 p.m. and 6:00 p.m. and reported that the nighttime red obstruction lights were not functioning. That evening the San Francisco agent drove to Vallejo, California. The agent observed, at approximately 5:35 p.m. and until about 6:30 p.m., that the nighttime red obstruction top beacon light for antenna structure #1023097 was not functioning.

5. On February 19, 2009, the San Francisco agent went to the studio location for KDYA in Richmond, California, and interviewed the station's Managing Director concerning the light outage on antenna structure #1023097. The Managing Director told the San Francisco agent that he was unaware of any lighting problems on antenna structure #1023097. An inspection at the tower structure site revealed that the remote control unit appeared to be indicating that the tower lights had remained off for several days but this information was not being conveyed or reviewed by appropriate personnel and was not being interpreted properly. The remote control system was not set to alert the Managing Director or other station personnel that there was a tower light outage, thus, for antenna structure #1023097, the monitoring system did not indicate there was a light outage. The Managing Director also acknowledged that station personnel did not make daily observations of the lights on antenna structure #1023097. The San Francisco agent then examined the records for KDYA and the antenna structure and found no log entries concerning any light outages for antenna structure #1023097.

6. On February 21, 2009, the KDYA Managing Director telephoned the San Francisco agent and advised that the top beacon on antenna structure #1023097 had been replaced on February 20, 2009, and was functioning properly. The Managing Director also informed the agent that he had contacted the FAA to cancel the NOTAM for antenna structure #1023097.

### **III. DISCUSSION**

7. 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

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<sup>7</sup> See FAA Circular Number 70/7460-1J, Chapters 3, 4, 5 and 13.

<sup>8</sup> FAA Circular Number 70/7460-1J, Appendix 1, Figure 11.

<sup>9</sup> According to the U.S. Naval Observatory, sunset in the Vallejo, California, area occurred at 5:50 p.m., PST, on February 17, 2009.

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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.<sup>10</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>11</sup>

8. 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.<sup>12</sup> Section 17.51(a) of the Rules states that all red obstruction lighting shall be exhibited from sunset to sunrise unless otherwise specified.<sup>13</sup> The FAA Advisory Circular chapters for antenna structure #1023097 require that the structure be painted and have, at its top, a flashing beacon equipped with two lamps and red filters, along with mid-point steady burning red side obstruction lights.<sup>14</sup> Section 17.47(a) of the Rules requires that the owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications shall make an observation of the antenna structure's lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure.<sup>15</sup> Section 17.48 of the Rules requires that registered antenna structures that have been assigned lighting specifications shall report immediately by telephone or telegraph to the FSS or FAA any observed or otherwise known extinguishment of any flashing obstruction light not corrected within 30 minutes.<sup>16</sup>

9. On February 17, 2009, a complainant alerted the Commission that a light on a tower structure in Vallejo, California had been out for several weeks. When the San Francisco agent contacted the FAA Flight Service Station and found that Baybridge had not reported the outage, the San Francisco agent made the report requesting the NOTAM.<sup>17</sup> Sometime between 5:30 p.m. and 6:00 p.m., a Vallejo Police Officer observed that the top flashing beacon red obstruction light on antenna structure #1023097 was not functioning. On February 18, 2009, at approximately 5:35 p.m., and until approximately 6:30 p.m., a San Francisco agent observed that the red obstruction light on antenna structure #1023097 was not functioning. When the San Francisco agent inspected the KDYA main studio and transmitter site on February 19, 2009, he could find no logs concerning the light outage on antenna structure #1023097, and the KDYA Managing Director acknowledged that he was unaware of the light outage. The Managing Director reviewed the monitoring equipment for antenna structure #1023097 and found that the system did not alert him of any failure of the lights on the structure. The Managing Director also acknowledged that KDYA personnel did

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<sup>10</sup> 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).

<sup>11</sup> 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."

<sup>12</sup> 47 U.S.C. § 303(q).

<sup>13</sup> 47 C.F.R. § 17.51(a).

<sup>14</sup> FAA Circular Number 70/7460-1J, Chapters 3, 4, 5 and 13, Appendix 1, Figure 11.

<sup>15</sup> 47 C.F.R. § 17.47(a).

<sup>16</sup> 47 C.F.R. § 17.48.

<sup>17</sup> The San Francisco agent's request to issue a NOTAM was done to protect the public safety, given that the FAA-mandated lighting on the structure was not functioning and that the antenna structure was therefore a potential hazard to air navigation. We caution antenna structure owners, however, that it is incumbent upon them, and not a third party, to notify the FAA of any extinguishments or malfunctioning lights.

not make daily observations of antenna structure #1023097. Baybridge's failure to properly observe and maintain an indicator designed to register any lighting failure resulted in Baybridge's failure to monitor the lights on antenna structure #1023097. This failure to monitor resulted in Baybridge's failure to notify the FAA Flight Service Station of the outage of the flashing obstruction light, which is required to be exhibited from sunset to sunrise. Based on the evidence before us, we find that Baybridge apparently repeatedly violated Section 303(q) of the Act, and Sections 17.51(a), 17.47(a) and 17.48 of the Rules, by failing to maintain the required red obstruction lighting on antenna structure #1023097; by failing to monitor the antenna structure's lights, using a properly maintained indicator designed to register any lighting failure; and by failing to report the extinguishment of the flashing obstruction lighting on antenna structure #1023097.

10. 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"),<sup>18</sup> 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. 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,<sup>19</sup> 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. In post-inspection correspondence with the San Francisco District Office, Baybridge asserts that the proximity of the tower to a prominent hill and the fact that the mid-level lights were operating mitigated the safety issue, and noted Baybridge's history of compliance with the Commission's Rules. We do not concur that the external factors Baybridge noted mitigate the violation as the FAA had determined that antenna structure #1023097 was required to maintain, at its top, a flashing beacon equipped with two lamps and red filters. Based on a review of the Commission's records, however, we concur that Baybridge does have a history of compliance with the Commission's rules. Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, including a reduction of the \$10,000 base forfeiture for Baybridge's history of compliance, we conclude that Baybridge is apparently liable for an \$8,000 forfeiture.

#### **IV. ORDERING CLAUSE**

11. 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, Baybridge Communications, L.L.C. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violations of Section 303(q) of the Act, and Sections 17.47(a), 17.48 and 17.51(a) of the Rules.<sup>20</sup>

12. **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, Baybridge Communications, L.L.C., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. 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

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<sup>12</sup> 12 FCC Rcd 17087(1997), *recon. denied* 15 FCC Rcd 303 (1999).

<sup>13</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>14</sup> 47 U.S.C. §§ 303(q), 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80, 17.47(a), 17.48, 17.51(a).

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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.<sup>21</sup> Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Baybridge Communications, L.L.C., shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, San Francisco Office, 5653 Stoneridge Drive, Suite 105, Pleasanton, California 94588 and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall be sent to WR-Response@fcc.gov.

15. 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.

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 Baybridge Communications, L.L.C., 3260 Blume Drive, Suite 520, Plaza II, Richmond, California 94806.

### FEDERAL COMMUNICATIONS COMMISSION

Thomas N. VanStavern  
District Director  
San Francisco Office  
Western Region  
Enforcement Bureau

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<sup>21</sup> See 47 C.F.R. § 1.1914.