

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

In the Matter of
KONA KOAST LEASING LLC
THOMAS M. JONES
Owner of Antenna Structure
Registration # 1063428
Kealakekua, Hawaii
File No. EB-00-HL-001
NAL/Acct. No. X3286001

FORFEITURE ORDER

Adopted: September 7, 2000 Released: September 8, 2000

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) against Kona Koast Leasing LLC ("Kona Koast") for willful violation of Section 73.1213(b) of the Commission's Rules ("Rules").

2. On May 10, 2000, the Commission's Honolulu, Hawaii, Resident Agent Office ("Honolulu Office"), issued the referenced Notice of Apparent Liability ("NAL") for a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Kona Koast for the noted violation.

II. BACKGROUND

3. Kona Koast owns an antenna tower ("tower") in Kealakekua, Hawaii, with the registration number 1063428. On July 13, 1999, agents from the Honolulu Office conducted an inspection of the tower and determined that it exceeds 200 feet in height and must, therefore, be painted in accordance with Section 17.21 of the Rules.

4. On July 15, 1999, the Honolulu Office issued an Official Notice of Violation ("NOV") to Kona Koast for failure to maintain the tower's paint. In its reply to the NOV, received August 9, 1999, Kona Koast stated that the tower users were seeking bids for the repainting of the tower.

1 47 C.F.R. § 73.1213(b).

2 Notice of Apparent Liability, NAL Acct. No. 915OR0003 (Enf. Bur., Honolulu Residednt Agent Office, Released July 8, 1999).

3 47 C.F.R. § 17.21.

2000, an FCC agent again inspected the tower and observed that the tower had not been repainted.

5. On May 10, 2000, the Honolulu Office issued the subject NAL to Kona Koast for inadequate painting of the tower, in apparent willful violation of Section 73.1213(b) of the Rules.

6. The Commission received Kona Koast's response to the NAL on June 7, 2000, and supplementary responses on June 30 and July 20, 2000. Kona Koast asserted that, after its receipt of the NOV, it took steps to bring the tower into compliance. In that regard, one of the licensees using the tower accepted a bid on August 31, 1999, to have the tower repainted. However, the company originally engaged to paint the tower was unable to schedule the work for "several months" and then could not perform the work by the anticipated date because of the departure of a key employee. According to Kona Koast, other companies contacted about doing the work had large backlogs of work because of "the huge explosion in the wireless industry." Kona Koast stated that the tower user who made arrangements to paint the tower eventually engaged a second company. By letter dated July 19, 2000, Kona Koast notified the Commission that the tower had been painted and was in compliance with the Commission's Rules.

III. DISCUSSION

7. As the NAL explicitly states, the forfeiture amount in this case was assessed in accordance with Section 503 of the Act,⁴ Section 1.80 of the Rules,⁵ and *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) ("*Policy Statement*"). Section 503(b) of the Communications Act of 1934, as amended ("Act"), requires that, in examining Kona Koast's response, the Commission take into account the nature, circumstances, extent and gravity of the violation 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. 47 U.S.C. § 503(b)(2)(D).

8. Section 73.1213(b) of the Rules requires owners of antenna towers to paint and illuminate those towers as specified in Part 17 of the Commission's Rules.⁶ In the instant case, Kona Koast contends its violations do not warrant a forfeiture because circumstances beyond its control prevented the repainting of the tower. Kona Koast knew by July 30, 1999, that its tower did not comply with the painting requirements of Part 17 of the Rules. However, Kona Koast did not correct the tower's painting deficiency until July 2000. Remedial action to correct a violation, although commendable, will not nullify a forfeiture penalty. *See Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1993). Kona Koast has provided a number of explanations as to why the tower painting deficiency required additional time to correct. Notwithstanding these explanations, there can be no satisfactory explanation for a such a long delay in correcting a violation – particularly where the violation creates a safety hazard. We, therefore, find that Kona Koast's violations were willful.⁷

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 47 C.F.R. § 17.1 *et seq.*

⁸ The word "willfully" as employed in Section 503 of the Act does not require that the violation in question be

9. We have examined Kona Koast's response to the NAL pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Kona Koast has failed to provide a sufficient justification for canceling or mitigating the proposed forfeiture amount.

IV. ORDERING CLAUSES

10. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Act, Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,⁸ Kona Koast Communications, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$10 ,000 for the willful violation of Section 73.1213(b) of the Rules setting forth the painting and lighting requirements for radio towers.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) days of the release of this Order. If the forfeiture is not paid within the specified period, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.⁹ Payment may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. X3286001. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

12. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by certified mail, return receipt requested to Kona Koast Leasing LLC, 488 Channelview Drive, Moneta, Virginia 24121.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

intentional. It is necessary only that a licensee knew it was doing the act in question. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁸ 47 C.F.R. §§ 0.111, 0.311 and 1.80(f)(4).

⁹ 47 U.S.C. § 504(a).

¹⁰ *See* 47 C.F.R. § 1.1914.