

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

In the Matter of)	
)	
Crown Communication, Inc.)	File No. EB-00-SJ-048
)	
Owner of Antenna Structure)	NAL/Acct. No. X3268001
Registration # 1061395)	
Salinas, Puerto Rico)	

FORFEITURE ORDER

Adopted: November 3, 2000

Released: November 7, 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) to Crown Communication, Inc. (“*Crown*”) for willful and repeated violation of Section 17.51(b) of the Commission’s Rules (“*Rules*”).¹ The noted violation involves Crown’s failure to exhibit medium intensity obstruction lighting on its Salinas, Puerto Rico antenna structure.

2. On July 7, 2000, the Commission’s San Juan, Puerto Rico, Resident Agent Office (“*San Juan Office*”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Crown for a forfeiture in the amount of ten thousand dollars (\$10,000).² Crown filed a response to the *NAL* on August 7, 2000.

II. BACKGROUND

3. Crown owns an antenna tower in Salinas, Puerto Rico, with antenna structure registration (“*ASR*”) number 1061395. The *ASR* for the Salinas tower indicates that medium intensity obstruction lighting is required. On May 16, 2000, the Federal Aviation Administration’s (“*FAA*”) San Juan Flight Service Station (“*San Juan FSS*”) advised the FCC’s San Juan Office of an expired Notice to Airmen (“*NOTAM*”) ³ for the Salinas tower. On May 25, 2000, agents from the San Juan Office inspected the Salinas tower between the hours of 11:00 and 11:30 a.m. AST and observed that the tower’s medium intensity obstruction lighting was not operating. On May 26, an agent from the San Juan Office again

¹ 47 C.F.R. § 17.51(b).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. X3268001 (Enf. Bur., San Juan Office, released July 7, 2000).

³ Tower owners are required to report any obstruction lighting outages to the nearest Flight Service Station or FAA office immediately if the outage is not corrected within 30 minutes. See 47 C.F.R. § 17.48(a). The FAA then issues a NOTAM, a written advisory to aircraft pilots regarding a hazard or potential hazard of which they should be aware. A NOTAM expires automatically after 15 days, unless the tower owner calls the FAA to extend the NOTAM.

inspected the Salinas tower at approximately 2:00 p.m. AST and observed that the tower's medium intensity obstruction lighting was not operating.

4. On May 30, 2000, an agent from the San Juan Office contacted the San Juan FSS to find out whether there was a NOTAM in effect for the Salinas tower. The San Juan FSS informed the agent that there was no NOTAM in effect for this tower. The agent then contacted Crown's National Network Operating Center ("NOC"), which is Crown's central antenna site monitoring office, and spoke with the supervisor, Mary Duddenhoffer. The agent informed Ms. Duddenhoffer that the Salinas tower's medium intensity obstruction lighting was out and that there was no NOTAM in effect for this tower. Ms. Duddenhoffer told the agent that Crown was unaware of the lighting outage and that she would get a NOTAM issued immediately and call back with a status report. Ms. Duddenhoffer called the agent back later that day and informed him that she had gotten a NOTAM issued for the tower and that the NOC had received a call that morning from the landlord informing them that the light on the Salinas tower was out.

5. On June 1, 2000, the San Juan Office issued a Notice of Violation ("NOV") to Crown for failing to exhibit the required medium intensity obstruction lighting on the Salinas tower in violation of Section 17.51(b) of the Rules. Crown did not respond to the NOV.

6. On July 7, 2000, the San Juan Office issued an *NAL* for a forfeiture in the amount of \$10,000 to Crown for failing to exhibit the required medium intensity obstruction lighting on the Salinas tower in violation of Section 17.51(b) of the Rules. Crown filed a response to the *NAL* on August 7, 2000. In this response, Crown asserts that the forfeiture should be reduced based on the circumstances surrounding the violation. Crown states that when the Salinas tower first experienced a light outage due to a problem with the control box on March 29, 2000, Crown's Puerto Rico Office notified the FAA and opened a NOTAM. On April 13, 2000, Crown's NOC took over handling the NOTAM procedures for the Salinas tower and extended the first NOTAM because the control box was still experiencing problems. Crown states that prior to the expiration of this NOTAM, the NOC contacted the technician repairing the control box at the Salinas site, who incorrectly informed the NOC that the tower lights were in operation based on his mistaken belief that the lighting of the red beacon at the top of the tower was sufficient for the lighting on the tower to be considered operational. Crown asserts that the NOC therefore assumed that the tower lighting had been restored and failed to extend the NOTAM again or open a new NOTAM until May 30, 2000, when the FCC contacted the NOC and informed it of the light outage. In addition, Crown cites its actions taken in response to the violation as a mitigating factor. Crown states that at the time of the light outage, the Salinas site was not yet connected to the NOC's automatic alarm systems because it is located in a remote area with no telephone wirelines or reliable wireless service. Crown therefore had to rely on visual monitoring of the Salinas site. Crown states that the Salinas site is now connected to the NOC, which allows it to monitor the site's lighting system constantly through automatic alarms. Finally, Crown argues that the forfeiture should be reduced based on its "unblemished" record as a tower owner and licensee.

III. DISCUSSION

7. As the *NAL* explicitly states, the forfeiture amount in this case was assessed in accordance with Section 503 of the Communications Act of 1934, as amended ("Act"),⁴ Section 1.80 of

⁴ 47 U.S.C. § 503(b).

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*"). In examining Crown's response, Section 503(b) of the Act requires that 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.⁶

8. Section 17.51(b) of the Rules provides that all high and medium intensity obstruction lighting on antenna structures must be exhibited continuously unless otherwise specified in the ASR. We find that Crown willfully and repeatedly violated Section 17.51(b) by failing to exhibit medium intensity obstruction lighting on its Salinas tower as required by its ASR.⁷

9. We disagree with Crown's assertion that the circumstances surrounding the violation warrant a reduction in the forfeiture. To the extent that Crown faults the technician who incorrectly informed Crown's NOC that the tower's lighting had been restored, we note that daily observation of the Salinas tower would have alerted Crown to the fact that the tower's lighting was still out. Section 17.47(a)(1) of the Rules requires tower owners to "make an observation of the antenna structure's lights at least once every 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights."⁸ It does not appear from the record before us that any daily observation of the Salinas tower occurred between April 28, the date the April 13 NOTAM would have expired, and May 30, the date the FCC contacted Crown's NOC and informed it of the lighting outage. Moreover, Crown's remedial actions to correct the violation, while commendable, are not a mitigating factor. *See Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973). Finally, we reject Crown's argument that its overall history of compliance with the Commission's rules warrants mitigation of the forfeiture. Contrary to Crown's claim that it has an "unblemished" record as a tower owner and licensee, the Commission staff has issued at least seven NOVs to Crown since March 2000, five for failure to display the ASR number on a tower in violation of Section 17.4 of the Rules,⁹ one for failure to repair or replace malfunctioning tower lights as soon as practicable in violation of Section 17.56 of the Rules,¹⁰ and one for failure to make daily observations of tower lighting and to notify the FAA upon resumption of

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ The term "willfully" as employed in Section 503 of the Act does not require that the violation in question be intentional. It is necessary only that the licensee knew it was doing the act in question. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁸ 47 C.F.R. § 17.47(a)(1).

⁹ 47 C.F.R. § 17.4. NOVs were issued to Crown for failure to display the ASR number on a tower in violation of Section 17.4 of the Rules by the New Orleans, Louisiana Field Office on August 31, 2000; by the Atlanta, Georgia Field Office on June 1, 2000; by the Detroit, Michigan Field Office on May 24, 2000; by the San Juan, Puerto Rico Resident Agent Office on April 10, 2000; and by the Columbia, Maryland Field Office on March 7, 2000.

¹⁰ 47 C.F.R. § 17.56. The Dallas, Texas Field Office issued an NOV to Crown on August 30, 2000 for failure to repair or replace malfunctioning tower lights as soon as practicable on its antenna structure in Buffalo, Texas in violation of Section 17.56 of the Rules.

normal operation of tower lighting in violation of Sections 17.47(a)(1) and 17.48(a) of the Rules.¹¹ We consider tower lighting violations to be very serious due to the danger posed to aircraft. We are not persuaded that Crown's overall history of compliance justifies a reduction in the forfeiture.

10. We have examined Crown'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 Crown has failed to provide sufficient justification for canceling or mitigating the proposed forfeiture amount. Therefore, we affirm the forfeiture of ten thousand dollars (\$10,000).

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,¹² and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹³ Crown Communication, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for failure to exhibit medium intensity obstruction lighting on its antenna structure in willful and repeated violation of Section 17.51(b) of the Rules.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules¹⁴ within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁵ Payment may be made 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. referenced above. 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. 20554.¹⁶

¹¹ 47 C.F.R. §§ 17.47(a)(1) and 17.48(a). The Dallas, Texas Field Office issued an NOV to Crown on September 29, 2000 for failure to make daily observations of tower lighting and to notify the FAA upon resumption of normal operation of tower lighting on its antenna structure in Buffalo, Texas in violation of Sections 17.47(a)(1) and 17.48(a) of the Rules.

¹² 47 U.S.C. § 503(b).

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

¹⁴ 47 C.F.R. § 1.80.

¹⁵ 47 U.S.C. § 504(a).

¹⁶ See 47 C.F.R. § 1.1914.

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to Crown Communication, Inc., 375 Southpointe Boulevard, Canonsburg, Pennsylvania 15317, and to its counsel, Marjorie G. Spivak, Esq., Law Offices of Bennet & Bennet, PLLC, 1000 Vermont Avenue, N.W., 10th Floor, Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau