

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

In the Matter of	)	
	)	
Puerto Rico Tower Co., Inc.	)	File No. EB-00-SJ-089
	)	
Owner of Antenna Structure	)	NAL/Acct. No. X3268003
Registration # 1205510	)	
Playa de Ponce, Puerto Rico	)	

## FORFEITURE ORDER

**Adopted: January 3, 2001**

**Released: January 5, 2001**

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 Puerto Rico Tower Co., Inc. (“PRTC”) for willful and repeated violations of Section 17.51(a) and (b) of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violations involve PRTC’s failure to exhibit red obstruction lighting and medium intensity obstruction lighting on its Playa de Ponce, Puerto Rico antenna structure.

2. On September 25, 2000, the Commission’s San Juan, Puerto Rico, Resident Agent Office (“San Juan Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to PRTC for a forfeiture in the amount of ten thousand dollars (\$10,000).<sup>2</sup> PRTC filed a response to the NAL on October 26, 2000.

### II. BACKGROUND

3. PRTC owns an antenna tower located at Playa de Ponce, Puerto Rico, with antenna structure registration (“ASR”) number 1205510. The ASR for the Playa de Ponce tower indicates that red obstruction lighting and medium intensity obstruction lighting is required. On June 29, 2000, an agent from the Commission’s San Juan Office inspected the Playa de Ponce tower at 11:45 a.m. AST and observed that the tower’s medium intensity obstruction lighting was not operating and that the ASR number was not posted at the base of the structure. On July 2, 2000, the agent again surveyed the Playa de Ponce tower at approximately 7:30 p.m. AST and observed that the tower’s red obstruction lighting was not operating.

4. On July 3, 2000, an agent from the San Juan Office contacted the Federal Aviation Administration’s San Juan Flight Service Station (“San Juan FSS”) to find out whether there was a Notice

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<sup>1</sup> 47 C.F.R. § 17.51(a) and (b).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. X3268003 (Enf. Bur., San Juan Office, released September 25, 2000).

to Airmen (“NOTAM”)<sup>3</sup> in effect for the Playa de Ponce tower. The San Juan FSS informed the agent that there was no NOTAM in effect for this tower. The agent then contacted Mr. John Campbell, President of PRTC, and informed him that the Playa de Ponce tower’s red obstruction lighting and medium obstruction lighting was not operating and that there was no NOTAM in effect for this tower. Mr. Campbell told the agent that he would get a NOTAM issued for the tower immediately.

5. On September 14, 2000, two agents from the San Juan Office surveyed the Playa de Ponce tower at approximately 12:15 p.m. AST and observed that the tower’s medium intensity obstruction lighting was not operating. One of the agents subsequently contacted the San Juan FSS to find out whether there was a NOTAM in effect for the tower. The San Juan FSS informed the agent that there was no NOTAM in effect for this tower. The agent proceeded to have a NOTAM issued due to safety concerns.

6. On September 15, 2000, an agent from the San Juan Office contacted Mr. Tim Lang at PRTC and informed him that the Playa de Ponce tower’s lighting was not operating. Mr. Lang stated that he had just left the Playa de Ponce site and would return to the site to check the lights. Mr. Lang called back and informed the agent that indeed the lights were not functioning and that he had arranged to have an electrician repair the lights that afternoon. Mr. Lang called again later that day and left a message indicating that the lights had been repaired.

7. On September 25, 2000, the San Juan Office issued an *NAL* for a forfeiture in the amount of \$10,000 to PRTC for failing to exhibit the required red obstruction lighting and medium intensity obstruction lighting on the Playa de Ponce tower in willful violation of Section 17.51(a) and (b) of the Rules. PRTC filed a response to the *NAL* on October 26, 2000. In this response, PRTC accepts the facts set forth in the *NAL*, but denies that its failure to comply with the Commission’s rules regarding antenna structure lighting was “willful.” PRTC asserts that before Mr. Campbell spoke with the FCC agent on July 3, 2000, it believed that the tower was less than 200 feet high and did not need lighting because the tower’s lightning rod was not then installed. However, PRTC acknowledges that following Mr. Campbell’s conversation with the FCC agent on July 3, 2000, it reviewed the tower’s construction drawings and as-built plans and realized that the tower, when measured from ground level as per FCC regulations, has a height of approximately 203 feet, not including the lightning rod. PRTC further asserts that it made diligent efforts to bring the tower into compliance following notification of the lighting outages by the San Juan Office on July 3, 2000 and September 15, 2000.

### III. DISCUSSION

8. 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”),<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the*

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<sup>3</sup> 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.

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

*Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Policy Statement*”). In examining PRTC’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.<sup>6</sup>

9. Section 17.51(a) of the Rules provides that all red obstruction lighting must be exhibited from sunset to sunrise unless otherwise specified in the ASR, while 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. PRTC admits that at the time of the inspections, the red obstruction lighting and medium intensity obstruction lighting on the Playa de Ponce tower was not operating. PRTC, however, claims that the tower lighting violations were not “willful” because prior to July 3, 2000, it believed that the tower was less than 200 feet in height without the lightning rod and therefore did not need lighting. We disagree. Section 312(f)(1) of the Act provides that “the term ‘willful,’ when used with reference to the commission or omission of any act, means the conscious or 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 ....”<sup>7</sup> This definition applies to the term “willful” as used in Section 503(b) of the Act. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Moreover, a violation resulting from an inadvertent mistake or a failure to become familiar with the FCC’s requirements is considered a willful violation. *See PBJ Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992); *Standard Communications Corp.*, 1 FCC Rcd 358 (1986); *Triad Broadcasting Co., Inc.*, 96 FCC 2d 1235, 1242 (1984). Thus, PRTC’s tower lighting violations were willful under Section 503(b) of the Act. In any event, Section 503(b) of the Act authorizes the Commission to impose forfeitures for either willful *or* repeated violations of the Commission’s rules.<sup>8</sup> PRTC’s tower lighting violations were repeated because they occurred on more than one occasion. *See Hale Broadcasting Corp.*, 79 FCC 2d 169, 171 (1980). Finally, we note that PRTC’s remedial actions to correct the violations, while commendable, are not a mitigating factor. *See Station KGVN, Inc.*, 42 FCC 2d 258, 259 (1973).

10. We have examined PRTC’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 PRTC 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,<sup>9</sup> and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>10</sup> Puerto Rico Tower Co., Inc., **IS LIABLE FOR A**

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<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> 47 U.S.C. § 312(f)(1).

<sup>8</sup> *See* 47 U.S.C. § 503(b)(1).

<sup>9</sup> 47 U.S.C. § 503(b).

<sup>10</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

**MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for failure to exhibit red obstruction lighting and medium intensity obstruction lighting on its antenna structure in willful and repeated violation of Section 17.51(a) and (b) of the Rules.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to Puerto Rico Tower Co., Inc., #364 Fernandez Juncos Ave., Puerta de Tierra, Puerto Rico 00901.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>11</sup> 47 C.F.R. § 1.80.

<sup>12</sup> 47 U.S.C. § 504(a).

<sup>13</sup> See 47 C.F.R. § 1.1914.