

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

In the Matter of)	
)	
Rio Grande Transmission, Inc.)	File No. EB-00-DV-426
)	
Owner of Antenna Structure # 1003282)	NAL/Acct. No. 200132800001
Apache Springs, New Mexico)	

FORFEITURE ORDER

Adopted: September 24, 2001

Released: September 26, 2001

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of thirteen thousand dollars (\$13,000) to Rio Grande Transmission, Inc. (“Rio Grande”) for willful violation of Section 303(q) of the Communications Act of 1934, as amended (“Act”),¹ and Sections 17.23 and 17.57 of the Commission’s Rules (“Rules”).² The noted violations involve Rio Grande’s failure to comply with painting and lighting specifications on its Apache Springs, New Mexico antenna structure and its failure to notify the Commission immediately of a change in the height of the Apache Springs antenna structure.

2. On April 26, 2001, the Commission’s Denver, Colorado Field Office (“Denver Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Rio Grande for a forfeiture in the amount of thirteen thousand dollars (\$13,000).³ Broadwing Communications Services, Inc. (“Broadwing”), Rio Grande’s parent company, filed a response to the *NAL* on June 4, 2001.

II. BACKGROUND

3. On July 19, 2000, at approximately 9:10 a.m., an FCC agent from the Denver Office inspected an antenna structure located in Apache Springs, New Mexico with antenna structure registration (“ASR”) number 1003282, which at that time was owned by Rio Grande.⁴ At the time of the inspection, the tower exceeded 200 feet in height and therefore was required to be painted and illuminated in accordance with Section 17.23 of the Rules. Specifically, the ASR for this tower indicated that the painting

¹ 47 U.S.C. § 303(q).

² 47 C.F.R. §§ 17.23 and 17.57.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200132800001 (Enf. Bur., Denver Office, released April 26, 2001).

⁴ Subsequent to the dates of the violations at issue in this proceeding, Broadwing Communications Services, Inc., the parent company of Rio Grande Transmission, Inc., sold the Apache Springs antenna structure to LB Tower Company, LLC.

and lighting were to comply with Chapters 3, 4, 5 and 9 of FAA Advisory Circular 70/7460-1G. During the inspection, the agent observed that the tower was neither painted nor lighted. In addition, the agent observed that the ASR number was not posted on or near the base of the antenna structure.

4. On September 6, 2000, the Denver Office issued a Notice of Violation (“NOV”) to Rio Grande for failure to comply with the painting and lighting specifications indicated on the ASR and failure to post the ASR number on or near the base of the antenna structure. On September 13, 2000, the U.S. Postal Service returned the NOV to the Denver Office with the notation “Not Deliverable as Addressed – Return to Sender.” On September 14, 2000, an agent from the Denver Office contacted Rio Grande by telephone and learned that the address of record for Rio Grande on file with the Commission was no longer current and that Rio Grande had not updated its ownership information to reflect the new address. On September 21, 2000, the Denver Office issued a second NOV to Rio Grande for failure to notify the Commission of its new address using FCC Form 854, and resent the September 6, 2000 NOV.

5. On October 27, 2000, the Denver Office received a response to the NOVs from Broadwing. The response stated that the ASR number had been posted at the base of the antenna structure. In addition, the response stated that painting and lighting of the tower were no longer required because Rio Grande had removed the uppermost antenna from the top of the tower in October 2000, bringing the height of the structure to less than 200 feet. On October 30, 2000, Broadwing sent to the Denver Office a follow-up response providing pictures of the tower before and after removal of the top antenna and again stating that no painting or lighting of the structure was required because the structure was now 195 feet in height.

6. On April 26, 2001, the Denver Office issued an *NAL* for a forfeiture in the amount of \$13,000 to Rio Grande for failure to paint and light the antenna structure in willful violation of Section 303(q) of the Act and Section 17.23 of the Rules and failure to notify the Commission immediately using FCC Form 854 of a change in the height of the antenna structure in willful violation of Section 17.57 of the Rules. Having received a satisfactory response, the Denver Office did not include the other violations cited in the NOVs in the *NAL*. The Commission received a response to the *NAL* from Broadwing on June 4, 2001.⁵ Although Broadwing states that it “does not take issue with nor disagree with the facts relied on by the Commission as a basis for assessing the forfeiture,” it requests rescission of the \$13,000 forfeiture. Broadwing states that it recently sold the majority of the assets of six microwave companies that it owned at the time the *NAL* was issued, including all 197 of the microwave towers owned by these companies.⁶ Therefore, Broadwing asserts that the forfeiture will not serve the purpose of ensuring that such violations do not reoccur in the future. Broadwing also asks that the Commission take into account its past record of compliance with respect to the 197 towers it owned, asserting that the Commission has never assessed a forfeiture against Broadwing in connection with its operation of these towers.

⁵ Broadwing’s response to the *NAL* was untimely. See 47 C.F.R. § 1.80(f)(3). Nevertheless, we address herein the arguments raised in the response.

⁶ In addition to Rio Grande, Broadwing was the parent company of West Texas Microwave Company, Tower Transmission Systems Corporation, Atlantic States Microwave Transmission Company, Central States Microwave Transmission Company, and Western States Microwave Transmission Company.

III. DISCUSSION

7. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁷ Section 1.80 of the Rules,⁸ 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 Broadwing'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.⁹

8. Section 303(q) of the Act requires antenna structure owners to maintain painting and lighting of antenna structures as prescribed by the Commission. Section 17.23 of the Rules requires antenna structures to conform with the FAA's painting and lighting specifications. The ASR for the Apache Springs tower indicated that the painting and lighting were to comply with Chapters 3, 4, 5 and 9 of FAA Advisory Circular 70/7460-1G. Section 17.57 of the Rules requires the owner of an antenna structure to notify the Commission immediately using FCC Form 854 upon any change in structure height. Broadwing does not dispute the facts of this case as set forth in the *NAL*. Accordingly, we find that Rio Grande willfully violated Sections 303(q) of the Act and Sections 17.23 and 17.57 of the Rules.¹⁰

9. We disagree with Broadwing's assertion that the forfeiture should be rescinded because Broadwing has sold all of its towers and the forfeiture therefore will not serve the purpose of ensuring that such violations do not reoccur in the future. In the *Policy Statement*, we noted that the legislative history of Section 503 of the Act demonstrates that Congress intended that forfeitures serve as both a meaningful sanction to wrongdoers and a deterrent to other potential violators.¹¹ We believe that imposition of the forfeiture in this case serves both of these important purposes.

10. Broadwing also asks that we take into account its past record of compliance with respect to the 197 towers it owned, asserting that we have never assessed a forfeiture against Broadwing in connection with its operation of these towers. A search of our records indicates that the Enforcement Bureau issued at least six other NOV's to Broadwing and its subsidiary companies for tower-related violations between June 21, 2000 and March 21, 2001.¹² These violations by Broadwing and its

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

⁹ 47 U.S.C. § 503(b)(2)(D).

¹⁰ 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" 47 U.S.C. § 312(f)(1). 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).

¹¹ 12 FCC Rcd at 17096-97 (*citing* Sen. Rep. No. 95-580 at 3 (1977), *reprinted in* 1978 U.S.C.C.A.N. at 109, and H.R. Conf. Rep. 101-386 at 435 (1989), *reprinted in* 1989 U.S.C.C.A.N. at 3018).

¹² The Kansas City Field Office issued NOV's to Central States Microwave Transmission Company on June 21, 2000 (for violation of Section 17.4 of the Rules); on January 19, 2001 (for violation of Section 17.48 of the Rules); and on January 23, 2001 (for violation of Section 17.48 of the Rules). The Kansas City Field Office issued two

subsidiaries are part of Broadwing's violation record. *See, e.g., Mega Communications of St. Petersburg, Licensee, Inc.*, DA 01-2036 (Enf. Bur., released August 31, 2001); *KGNT, Inc.*, 16 FCC Rcd 4656 (Enf. Bur., 2001); *Capstar Limited Partnership*, 16 FCC Rcd 901(Enf. Bur., 2001). Broadwing's past violation record precludes a determination that it has a history of overall compliance with the Commission's Rules. *See, e.g., Crown Communications, Inc.*, 15 FCC Rcd 21937 (Enf. Bur., 2000).

11. We have examined Broadwing'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 Broadwing has failed to provide sufficient justification for canceling or mitigating the proposed forfeiture amount. Therefore, we affirm the forfeiture of thirteen thousand dollars (\$13,000).

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹³ Rio Grande Transmission, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of thirteen thousand dollars (\$13,000) for willful violations of Section 303(q) of the Act and Sections 17.23 and 17.57 of the Rules.

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules 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.¹⁴ 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, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁵

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to Broadwing Communications Services, Inc., 1122 Capital of Texas Highway South, Austin, Texas 78746-6426, Attn: Larry D. Barnes.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

separate NOV's to Broadwing on September 27, 2000 (both for violations of Sections 17.4 and 17.57 of the Rules). The Denver Field Office issued an NOV to Rio Grande on March 21, 2001 (for violation of Section 17.57 of the Rules).

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

¹⁴ 47 U.S.C. § 504(a).

¹⁵ *See* 47 C.F.R. § 1.1914.