

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

In the Matter of)	
)	
TeleCorp Communications, Inc.)	File Number EB-00-SJ-108
1010 North Glebe Street)	
Suite 800)	
Arlington, Virginia 22201)	NAL/Acct. No. 200132680003

FORFEITURE ORDER

Adopted: March 5, 2001

Released: March 7, 2001

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of eighty thousand dollars (\$80,000) against TeleCorp Communications, Inc. (“TeleCorp”) for wilfully and repeatedly violating section 17.51 of the Commission’s Rules (“Rules”).¹ The noted violations involve TeleCorp’s failure to properly light four of its antenna structures. We also found that TeleCorp failed to notify the Federal Aviation Administration (“FAA”) of light outages on four occasions between February 6, 2000 and November 30, 2000.

2. On January 16, 2001, the Chief, Enforcement Bureau, issued a Notice of Apparent Liability (“NAL”) for Forfeiture in the amount of eighty thousand dollars (\$80,000).² TeleCorp PCS, Inc., TeleCorp’s holding company parent, filed a response on February 15, 2001, requesting that the proposed forfeiture be lowered to \$40,000.³

II. BACKGROUND

3. On February 6, 2000, at 7:30 p.m., a resident agent from the Enforcement Bureau’s San Juan Resident Agent Office observed a TeleCorp owned antenna structure in Candelaria Ward, Toa Baja, Puerto Rico.⁴ The resident agent noted that the antenna structure’s top red obstruction light was not operating. The local San Juan FAA/Flight Service Station

¹ 47 C.F.R. § 17.51.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200132680003 (Enf. Bur., rel. Jan. 16, 2001).

³ *See* TeleCorp Response to Notice of Apparent Liability for Forfeiture at 1 n.1. We will refer to both entities as TeleCorp.

⁴ Antenna Structure Registration Number 1064593.

("FSS") advised the resident agent that no Notice to Airmen ("NOTAM")⁵ was in effect for this structure.

4. On September 11, 2000, an agent from the Enforcement Bureau's New Orleans Field Office observed a TeleCorp owned antenna structure near Raceland, Louisiana.⁶ The agent noted that the antenna structure's medium intensity obstruction light was not operating. The local DeRidder FAA/FSS advised the agent that no NOTAM was in effect for this structure.

5. On October 21 and 22, 2000, a resident agent from the San Juan Resident Agent Office observed a TeleCorp owned antenna structure near Barceloneta, Puerto Rico.⁷ The agent noted that the antenna structure's medium intensity obstruction light was not operating. The local San Juan FAA/FSS advised the resident agent that no NOTAM was in effect for this structure. On October 31, 2000, the resident agent spoke with a TeleCorp technician who told him that TeleCorp had begun to repair the antenna structure's lighting on October 30, 2000, and that TeleCorp would notify the FAA of the outage for it to issue a NOTAM. For at least ten days the antenna structure's medium intensity obstruction light was not operating and no NOTAM was in effect.

6. On November 2, 3, 6, and 15, 2000, a resident agent from the San Juan Resident Agent Office observed a TeleCorp owned antenna structure near Juncos, Puerto Rico.⁸ The resident agent noted that the antenna structure's medium intensity obstruction lights were not operating. A local San Juan FAA/FSS agent and a TeleCorp representative advised the resident agent that a NOTAM for this structure had been issued on November 21, 2000.

III. DISCUSSION

7. TeleCorp does not contest the agents' observations that its four antenna structures did not comply with our lighting requirements set forth in section 17.51 of the Rules.

(a) All red obstruction lighting shall be exhibited from sunset to sunrise unless otherwise specified.

(b) All high intensity and medium intensity obstruction lighting shall be exhibited continuously unless otherwise specified.⁹

Consequently, we turn to TeleCorp's request for reduction of the proposed \$80,000 forfeiture to \$40,000.

⁵ The FCC requires owners of antenna structures registered with the FCC and subject to lighting specifications to notify the FAA of "any observed or otherwise improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes." 47 C.F.R. § 17.48(a). The FAA then issues a NOTAM for a period of 15 days advising pilots that there is an antenna structure at a specific location with a temporary light outage.

⁶ Antenna Structure Registration Number 1206008.

⁷ Antenna Structure Registration Number 1203643.

⁸ Antenna Structure Registration Number 1208552.

⁹ 47 C.F.R. § 17.51.

8. TeleCorp argues three points in asking us to reduce the proposed \$80,000 forfeiture, which we had increased from a \$40,000 base amount (\$10,000 for each lighting violation) to a cumulative total of \$80,000 because of the seriousness and repeated nature of the violations.¹⁰ First, TeleCorp contends that mechanical failures prevented its automatic alarm systems from notifying it of the light outages¹¹ and, as such, evidence no pattern or egregious misconduct or intentional conduct or lack of good faith. Section 17.47 of the Rule's requires owners of antenna structures registered with the FCC and subject to lighting specifications to inspect and properly maintain their automatic alarm systems. Specifically, the antenna structure owner

(a)(1) 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 of such lights, to insure that all such lights are functioning properly as required; or alternatively,

(2) Shall provide and properly maintain an automatic alarm system designed to detect any failure of such lights and to provide indication of such failure to the owner.

(b) Shall inspect at intervals not to exceed 3 months all automatic or mechanical control devices, indicators, and alarm systems associated with the antenna structure lighting to insure that such apparatus is functioning properly.¹²

TeleCorp presents no evidence that it had properly inspected or maintained its automatic alarm systems, which would have led it to discover the lighting violations. Although we did not cite TeleCorp for violation of section 17.47 of the Rules and do not make a finding of any such violation here, the lack of any evidence by TeleCorp regarding compliance with this prophylactic rule undercuts its suggestion of good faith or isolated misconduct as a basis for a downward adjustment. Moreover, even if the failures were wholly inadvertent, the fact that there were four of them does indicate a pattern. Accordingly, we decline to decrease the proposed \$80,000 forfeiture.

9. Next, TeleCorp cites our reference in the NAL to *American Tower Corp.*, an antenna structure case in which the Commission stressed the importance of complying with the antenna structure rules because of the potential danger to air traffic safety and doubled the base forfeiture amount to \$212,000.¹³ TeleCorp attempts to distinguish its conduct from that detailed in *American Tower Corp.* However, we cited *American Tower Corp.* to support our view that TeleCorp's violations were serious and repeated, and, as such, justified an upward adjustment from the \$40,000 base forfeiture amount. While fewer violations are at issue here than in

¹⁰ See 47 C.F.R. § 1.80(b)(4) n. Guidelines for Assessing Forfeitures, Section I.—Base Amounts for Section 503 Forfeitures.

¹¹ TeleCorp states that it has repaired all the faulty equipment and verified that it is operating.

¹² 47 C.F.R. § 17.47.

¹³ *American Tower Corp.*, FCC 01-9 (rel. Jan. 16, 2001).

American Tower Corp., the violations here are more serious. Specifically, on four occasions Commission agents found a lighting violation, three of which occurred well after TeleCorp had notice that it had a problem at one site. In contrast, *American Tower Corp.* involved only one violation for failure properly to light an antenna structure.

10. TeleCorp's last argument for reduction of the proposed \$80,000 forfeiture is that "given its good faith in complying with the Commission's lighting requirements and instituting procedures to safeguard against future problems," the forfeiture amount is "well above a forfeiture amount necessary to foster compliance or serve as a deterrent." Contrary to TeleCorp's assertion, it has not demonstrated any good faith compliance with the lighting rules. Additionally, although it has apparently rectified its outstanding violations, we note that its corrective action will not excuse its past violations.¹⁴ After reviewing Section 503(b)(2)(D) of the Communications Act of 1934 ("Act"),¹⁵ as amended, section 1.80 of the Rules,¹⁶ the facts, and TeleCorp's response to the NAL, we believe that the \$80,000 forfeiture is warranted.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act, as amended,¹⁷ and sections 0.111, 0.311, and 1.80(f)(4) of the Rules,¹⁸ TeleCorp **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$80,000 for willfully and repeatedly violating Section 17.51 of the Rules requiring it to have operating antenna structure lighting.¹⁹

12. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Rules,²⁰ 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.²¹ 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. 200132680003 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. 20554.²²

¹⁴ See *KGVL*, 42 FCC 2d 258, 259 (1973).

¹⁵ 47 U.S.C. § 503(b)(2)(D).

¹⁶ 47 C.F.R. § 1.80.

¹⁷ 47 U.S.C. § 503(b).

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

¹⁹ 47 C.F.R. § 17.51.

²⁰ 47 C.F.R. § 1.80.

²¹ 47 U.S.C. § 504(a).

²² See 47 C.F.R. § 1.1914.

13. **IT IS FURTHER ORDERED** that copies of this Order shall be sent by Certified Mail Return Receipt Requested to TeleCorp PCS, Inc., 1010 North Glebe Street, Suite 800, Arlington, Virginia 22201, and to its counsel, Nicole McGinnis, Esq., Wiley, Rein & Fielding, 1776 K Street, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau