

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

In the Matter of)	
)	File No. EB-02-SJ-019
Concilio Mision Cristiana Fuente de Agua Viva)	
San Juan, Puerto Rico)	NAL/Acct. No. 200232680004
)	
)	FRN 0000-0131-85
)	

MEMORANDUM OPINION AND ORDER

Adopted: March 27, 2003

Released: March 31, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“Order”), we deny the petition for reconsideration filed on November 1, 2002, by Concilio Mision Cristiana Fuente de Agua Viva (“Concilio”). Cocilio seeks reconsideration of the *Forfeiture Order*,¹ in which the Chief, Enforcement Bureau (“Bureau”), found it liable for a monetary forfeiture in the amount of \$15,000 for willful and repeated violation of Section 17.4(g) of the Commission’s Rules (“Rules”),² and willful violation of Sections 17.51 and 17.57 of the Rules.³ The noted violations involve Concilio’s failure to have its antenna structure registration (“ASR”) number posted, failure to exhibit the prescribed obstruction lighting, and failure to notify the Commission of a change in the ownership of the antenna structure. For the reasons discussed below, we affirm the monetary forfeiture in the amount of \$15,000.

II. BACKGROUND

2. Concilio is the licensee of radio station WRSJ(AM) and the owner of that station’s antenna structure, ASR number 1010646, in Guaynabo, Puerto Rico. On March 26, 2002, an agent from the Commission’s San Juan Resident Agent Office (“San Juan Office”) inspected antenna structure 1010646. The agent observed that the antenna structure did not have its ASR number posted on or near the base of the structure or anywhere else on the property. The agent also observed that, although it was after local sunset, the lights on the structure were not functioning. The ASR database listed the owner of antenna structure 1010646 as Andres Gomez DBA ABG Realty Investment (“Gomez”).⁴

¹ 17 FCC Rcd 19132 (Enf. Bur. 2002)

² 47 C.F.R. § 17.4(g).

³ 47 C.F.R. §§ 17.51 and 17.57.

⁴ Gomez is the former licensee of WRSJ(AM). The license was assigned to Concilio on December 4, 1996.

3. When the agent inspected station WRSJ(AM) on March 27, 2002, he informed WRSJ's general manager and engineer that the antenna structure's lighting was not functioning. The general manager and the engineer both told the agent that the antenna structure did not require registration or lighting because its overall height above ground was 153 feet.⁵ The station license, however, indicated that the antenna structure's overall height was 222.5 feet. On March 28, 2002, the agent determined by triangulation that the overall height of antenna structure 1010646 was approximately 230 feet. On April 2, 2002, the agent returned to antenna structure 1010646 and observed Concilio measure the antenna structure's overall height and determine it to be 222.5 feet above the ground. On April 2, 2002, the agent also observed that Concilio still had not posted the ASR number on or near the base of the antenna structure or anywhere else on the property.

4. On May 14, 2002, the San Juan Office issued a \$15,000 *NAL* to Concilio for willful and repeated violation of Section 17.4(g) of the Rules, and willful violation of Sections 17.51 and 17.57. Concilio responded to the *NAL* seeking cancellation of the proposed forfeiture. On October 3, 2002, the Enforcement Bureau released a *Forfeiture Order* affirming the forfeiture proposed by the *NAL*. On November 1, 2002, Concilio filed a petition for reconsideration of the *Forfeiture Order*. Concilio does not dispute the violations but requests cancellation or reduction of the forfeiture.

III. DISCUSSION

5. Section 17.57 of the Rules requires that antenna structure owners immediately notify the Commission using FCC Form 854 of any change in ownership. Concilio argues that the Commission cannot impose a forfeiture for failure to notify it of the ownership change because the Commission had approved Concilio's acquisition of station WRSJ(AM) and, therefore, "was fully aware that the ownership of the station and tower had changed to the Concilio."⁶ Filing an application to assign a station license does not notify the Commission of a change in the ownership of the station's antenna structure because acquisition of a station does not necessarily include acquisition of the station's antenna structure. Concilio was required to file FCC Form 854 and did not do so. Accordingly, we affirm the imposition of a forfeiture for this violation.

6. Concilio argues that its lighting and posting violations are the product of its reliance on incorrect antenna height information provided by Gomez and that the *Forfeiture Order* should have found that this circumstance mitigates Concilio's violations. Concilio made a similar argument in its response to the *NAL* and provides nothing new to support this argument. As pointed out in the *Forfeiture Order*, it was Concilio's duty to know the height of WRSJ's antenna structure and WRSJ's station license put Concilio on notice as to the actual height of the antenna structure. Therefore, Concilio's failure to meet the lighting and posting requirements for its tower resulted from its failure to have accurate knowledge of its operations and to apply the rules correctly.

7. Concilio contends that the \$15,000 forfeiture amount imposed in this case is excessive. Concilio cites *Charter Communications*, 17 FCC Rcd 7310 (Enf. Bur. 2002), in which the Enforcement Bureau imposed forfeitures totaling \$10,000 on three subsidiaries of Charter Communications for

⁵ Antenna structures whose overall height above the ground is less than 200 feet are not subject to the Commission's registration, lighting and marking requirements. See 47 C.F.R. §§ 17.4, 17.7 and 17.21.

⁶ *Petition for Reconsideration*, p. 2.

violations of Sections 17.4(g) and 17.57 of the Rules. That case is inapposite because, unlike this case, it did not include a tower lighting violation (Section 17.51 of the Rules). As indicated in the *NAL*, the San Juan Office calculated the \$15,000 forfeiture amount by combining the following base forfeiture amounts: \$10,000 for the lighting violation,⁷ \$3,000 for failure to file a required form⁸ and \$2,000 for failure to post the ASR number.⁹ We conclude that \$15,000 is the proper forfeiture amount.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended (“Act”),¹⁰ and Section 1.106 of the Rules,¹¹ Concilio’s petition for reconsideration of the October 3, 2002, *Forfeiture Order* **IS DENIED** and the issuance of the \$15,000 forfeiture **IS AFFIRMED**.

9. 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.¹² Payment shall 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 NAL/Acct. No. 200232680004, and FRN 0000-0131-85. 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. 20554.¹³

10. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by regular mail and Certified Mail Return Receipt Requested to Concilio Mision Cristiana Fuente de Agua Viva at P.O. Box 4039, Carolina, Puerto Rico 00984, and to its attorney, John A. Borsari, Esq., at Borsari & Associates, PLC, P.O. Box 29, Arlington, Virginia 22210.

FEDERAL COMMUNICATIONS COMMISSION

⁷ 47 C.F.R. § 1.80(b)(4), Note to Paragraph 4(b), Section I.

⁸ *Id.*

⁹ *American Tower Corporation*, 16 FCC Rcd 1282 (2001).

¹⁰ 47 U.S.C. § 405.

¹¹ 47 C.F.R. § 1.106.

¹² 47 U.S.C. § 504(a).

¹³ *See* 47 C.F.R. § 1.1914.

David H. Solomon
Chief, Enforcement Bureau