

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

In the Matter of)	
)	
Titan Towers, LP)	File No. EB-02-OR-194
)	NAL/Acct. No. 200232620009
Owner of Antenna Structure)	FRN 0004-5429-99
Registration No. 1233271 near)	
Pine Bluff, Arkansas)	
)	
Abilene, Texas)	

FORFEITURE ORDER

Adopted: May 15, 2003

Released: May 19, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of two thousand dollars (\$2,000) to Titan Towers, LP (“Titan”), owner of an antenna structure with Antenna Structure Registration (“ASR”) number 1233271 near Pine Bluff, Arkansas, for willful violation of Section 17.4(g) of the Commission’s Rules (“Rules”).¹ The noted violation involves Titan’s failure to post its ASR number so that it is readily visible in a conspicuous place near the base of the antenna structure.

2. On July 22, 2002, the Commission’s New Orleans, Louisiana Field Office (“New Orleans Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Titan for a forfeiture in the amount of three thousand dollars (\$3,000).² Titan filed a response to the *NAL* on August 21, 2002.

II. BACKGROUND

3. On May 22, 2002, an agent from the New Orleans Office inspected an antenna structure near Pine Bluff, Arkansas. The agent observed that the ASR number was not posted anywhere near the base of the structure. A subsequent search of the Commission’s ASR database revealed that this structure was registered to and owned by Titan. The database further showed that construction of this structure was completed on April 16, 2002.

4. On July 22, 2002, the New Orleans Office issued an *NAL* for a \$3,000 forfeiture to Titan for failing to post its ASR number near the base of the antenna structure in willful violation of Section

¹ 47 C.F.R. § 17.4(g).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232620009 (Enf. Bur., New Orleans Office, released July 22, 2002).

17.4(g) of the Rules. The *NAL* noted that the base forfeiture amount established by the Commission for failure to post an ASR number is \$2,000.³ However, the *NAL* found that a 50% upward adjustment of the base forfeiture amount to \$3,000 was appropriate in this case because Titan has a history of non-compliance with the ASR posting requirement.⁴ In its response to the *NAL*, Titan admits that the ASR number was not posted near the base of its Pine Bluff antenna structure at the time of the inspection, but requests cancellation or reduction of the proposed \$3,000 forfeiture. Titan states that its standard practice is to erect the tower structure itself, construct any ground structures needed to house ancillary equipment at the base of the tower structure, and then install a fence surrounding the tower and ancillary equipment and affix the ASR sign to the fence. In this instance, Titan states that inclement weather caused an unanticipated delay between the time it completed construction of the tower on April 16, 2002 and the time it installed the fence with the appropriate ASR sign. Titan asserts that the unfortunate delay in its construction schedule was not expected and should not be construed by the Commission as an indication that Titan is less than diligent in its efforts to satisfy all Commission requirements, including the requirements of Section 17.4(g). Titan also asserts that should a similar situation arise in the future, its policy will be to display the ASR sign on the tower itself temporarily and then move the sign to the fence upon installation. Finally, Titan objects to the 50% upward adjustment of the base forfeiture amount for this violation based on the three NOV's previously issued to Titan for ASR number posting violations. With respect to the three prior NOV's, Titan asserts that the first involved a case where the ASR number was affixed to the tower base, but FCC personnel could not see it from outside the fence, the second involved a case where the tower was voluntarily registered, and Titan has no record of receiving the third NOV.

III. DISCUSSION

5. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, ("Act"),⁵ Section 1.80 of the Rules,⁶ 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 Titan'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.⁷

6. Section 17.4(g) of the Rules requires the owner of an antenna structure to post the ASR number so that it is readily visible in a conspicuous place near the base of the antenna structure. Titan admits that the ASR number for its Pine Bluff antenna structure was not posted at the time of the

³ See *American Tower Corporation*, 16 FCC Rcd 1282 (2001).

⁴ In support of the decision to adjust the base forfeiture amount upward in this case, the *NAL* cited three Notices of Violation issued to Titan for failure to post its ASR on or near the base of an antenna structure: one issued on April 25, 2002 by the Detroit, Michigan Field Office (File No. EB-02-DT-392); one issued on August 18, 2000 by the Denver, Colorado Field Office (File No. EB-00-DV-418); and one issued on June 28, 1999 by the Dallas, Texas Field Office (File No. 99DL237).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

inspection on May 22, 2002, more than one month after Titan completed construction of the tower on April 16, 2002. Moreover, Titan clearly knew that it was required to post the ASR number near the base of the Pine Bluff tower. We accordingly conclude that Titan willfully⁸ violated Section 17.4(g) of the Rules.

7. Titan asserts that the violation occurred because inclement weather caused an unanticipated delay in the construction of the fence surrounding the tower, on which the ASR sign was to be affixed. We do not believe that this circumstance warrants cancellation or reduction of the forfeiture amount. We expect tower owners to post their ASR numbers promptly upon completion of construction of the antenna structure. Here, more than a month lapsed between the time Titan completed construction of its antenna structure and the time it posted the ASR sign. The unanticipated delay in the construction of the fence surrounding the tower does not excuse Titan's failure to post its ASR sign as required by Section 17.4(g). To the extent that Titan was unable to construct the fence on which it intended to affix its ASR sign, it could have posted a temporary ASR sign on or near the antenna structure. Furthermore, the fact that Titan has changed its policy to provide for such a temporary ASR sign if a similar situation arises in the future does not mitigate this violation.

8. However, we agree with Titan that the 50% upward adjustment of the \$2,000 base forfeiture amount for this violation based on its past history of non-compliance was not warranted. Review of the three prior cases cited in the *NAL* as a basis for the upward adjustment reveals that in one case the ASR number was in fact posted on the base of the tower and in one case the ASR number was not required to be posted because the tower was registered voluntarily. Thus, it appears that Titan was not in violation of the ASR posting requirement in two of the three prior cases cited in the *NAL*.⁹ Under the circumstances presented here, we do not believe that Titan's one previous ASR posting violation warrants a 50% increase in the base forfeiture amount for its violation of Section 17.4(g) in the instant case. Accordingly, we will reduce the forfeiture for Titan's violation of Section 17.4(g) from \$3,000 to \$2,000.

9. We have examined Titan'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 Titan willfully violated Section 17.4(g) of the Rules, but we reduce the forfeiture for this violation from \$3,000 to \$2,000.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503 of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁰ Titan Towers, LP **IS LIABLE FOR A MONETARY**

⁸ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and 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 authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Red 4387 (1991).

⁹ Titan asserts that it never received the NOV issued by the Detroit Field Office on April 25, 2002. However, on April 30, 2002, Titan submitted a response to the NOV in which it stated that the ASR number had been posted on the fence surrounding the tower, but the fence had been taken down in order to be replaced. Titan further stated that it posted the ASR number again after it completed construction of a new fence.

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

FORFEITURE in the amount of two thousand dollars (\$2,000) for willful violation of Section 17.4(g) of the Rules.

11. 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.¹¹ 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 reference NAL/Acct. No. 200232620009 and FRN 0004-5429-99. 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. 20554.¹²

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail return receipt requested to Titan Towers, LP, 1500 Industrial Blvd., Abilene, Texas 79602, and to its counsel, Elizabeth R. Sachs, Esq., Lukas, Nace, Gutierrez & Sachs, Chartered, 1111 19th Street, N.W., 12th Floor, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹¹ 47 U.S.C. § 504(a).

¹² See 47 C.F.R. § 1.1914.