

Federal Communications Commission
Washington, D.C. 20554

In the Matter of
C. Elton Crews, Inc.
Owner of Antenna Structure # 1204823 in Avon Park, Florida
File No. EB-02-TP-382
NAL/Acct. No. 200332700004
FRN 0006-6405-10

FORFEITURE ORDER

Adopted: May 3, 2004

Released: May 6, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to C. Elton Crews, Inc. ("Crews") for willful violation of Section 17.51(b) of the Commission's Rules ("Rules").

2. On October 29, 2002, the Commission's Tampa, Florida Field Office ("Tampa Office") issued a Notice of Apparent Liability for Forfeiture ("NAL") to Crews for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

3. Antenna structure #1204823 is located at 27° 33' 38" latitude, 081° 29' 36" longitude (Avon Park, Florida) and is registered to Crews. The antenna structure registration ("ASR") includes a requirement to maintain a dual lighting system that includes medium intensity obstruction lighting during daylight operation.

4. On October 29, 2002, the Tampa Office issued a NAL to Crews for the violation observed on July 26, 2002. Crews replied to the NAL on November 26, 2002, and did not dispute the facts set forth in

1 47 C.F.R. § 17.51(b).

2 Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200332700004 (Enf. Bur., Atlanta Office, released October 29, 2002).

3 We note that the agents further observed that the cables on the southwest side of the tower obstructed the tower's visibility, but, the NAL did not include a violation of Section 17.23, of the Rules, 47 C.F.R. § 17.23.

the *NAL*. Crews stated that it was unaware of the full array of lighting requirements to which it is subject. Crews further asserted that the Commission failed to consider its inability to pay and past record of compliance in issuing the *NAL* and asked that the *NAL* be cancelled or substantially reduced.⁴ In support thereof, Crews submitted its tax returns from the years 2001, 2000 and 1999 and stated that it had never been cited for any violation of Commission rules.

III. DISCUSSION

5. The proposed 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 Crews 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 such other matters as justice may require.⁷

6. Section 17.51(b) of the Rules requires that all medium intensity obstruction lighting be exhibited continuously unless otherwise specified. The Federal Aviation Administration (“FAA”) Study (99-ASO-0326-OE) which Crews referenced when registering its antenna structure, specified lighting requirements for Crews’ tower which includes medium intensity lighting.⁸ On July 26, 2002, the agents observed that medium intensity lighting was neither installed nor operative. The agents’ observations of the tower were made during the daylight hours and only the evening hours red beacon was observed. Crews does not dispute these facts. Accordingly, we find that Crews willfully violated Section 17.51(b) of the Rules by failing to exhibit medium intensity obstruction lighting on its tower.⁹

7. Crews’ request for reduction of the forfeiture based on an inability to pay claim is accompanied by its tax returns from 1999 through 2001. In analyzing economic hardship claims, as the *Policy Statement* explains, the Commission generally looks to a company’s gross revenues as reasonable and appropriate yardsticks to determine its ability to pay the assessed forfeiture.¹⁰ Indeed, the Commission stated that if a company’s gross revenues are sufficiently large, the fact that net losses are

⁴ Crews states that it is taking measures to ensure compliance with the Commission’s painting requirements, but fails to comment on its remedial efforts with respect to its violation of the Commission’s lighting requirements.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ Based on the medium intensity obstruction lighting required by both Crews’ FAA Study and ASR, we find Crews’ claim that it was unaware of the lighting requirements to be without merit.

⁹ 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 Rcd 4387 (1991).

¹⁰ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17106-07, ¶ 43. See also *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089, ¶ 8 (1992).

reported, alone, does not necessarily signify inability to pay.¹¹ In the instant case, we have carefully and independently reviewed Crews' submissions. We find that Crews' tax returns for 1999, 2000 and 2001 reveal that its gross revenues effectively negate the financial hardship claim. Specifically, we find that the \$10,000 forfeiture is not excessive under Commission precedent.¹² Accordingly, we are not persuaded by Crews' financial hardship claim, and we find that there is no basis to reduce the assessed forfeiture amount due to inability to pay. However, Crews' assertion is correct that it has no previous citations, and as a result we reduce the forfeiture amount to \$8,000 based on its history of overall compliance.

8. We have examined Crews' 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 Crews willfully violated Section 17.51(b) of the Rules. However, we find a sufficient basis to reduce the \$10,000 forfeiture to \$8,000.

9. Because Crews fails to provide information detailing its efforts to correct the noted lighting violation, we will require, pursuant to Section 308(b) of the Act,¹³ that Crews report to the Enforcement Bureau within thirty (30) days of the release of this *Order* whether it has achieved compliance with Section 17.51(b) of the Rules. Crews' report must be submitted in the form of an affidavit signed by an officer or director of the licensee. If Crews fails to submit such a report or we find that Crews has not come into compliance with Section 17.51(b), we will consider further appropriate enforcement action.

IV. ORDERING CLAUSES

10. 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,¹⁴ Crews **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for failure to light the captioned antenna structure, in willful violation of Section 17.51(b) of the Rules.

11. **IT IS ALSO ORDERED** that, pursuant Section 308(b) of the Act, Crews must submit the report described in Paragraph 9, above, within 30 days from the release of this *Order*, to: Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Room 7-A 820, Washington, D.C. 20554, Attention: Peter Waltonen, Esquire.

12. 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

¹¹ See, e.g., *Local Long Distance, Inc.*, 15 FCC Rcd 24385 (2000), *recon. denied*, 16 FCC Rcd 10023, 10025, ¶ 6 (2001); *Independent Communications, Inc.*, 14 FCC Rcd 9605 (1999), *recon. denied*, 15 FCC Rcd 16060, ¶ 2 (2000); *Hoosier Broadcasting Corp.*, 14 FCC Rcd 3356 (CIB 1999), *recon. denied*, 15 FCC Rcd 8640, 8641, ¶ 7 (Enf. Bur. 2000). See also, *Alpha Ambulance, Inc.*, 19 FCC Rcd 2547 (2004).

¹² See *PJB Communications*, at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd at 10025 (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

¹³ 47 U.S.C. § 308(b)

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

Act.¹⁵ 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. 200332700004 and FRN 0006-6405-10. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁶

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to C. Elton Crews, Inc., P.O. Box 1117, Avon Park, FL 33826-1117 and its Counsel, Russell H. Fox, Esq., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., 701 Pennsylvania Avenue, N.W., Suite 900, Washington, D.C., 20004..

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁵ 47 U.S.C. § 504(a).

¹⁶ See 47 C.F.R. § 1.1914.