

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

In the Matter of)	
Leon's Radio Inc.)	File No. EB-03-DL-080
Owner of Antenna support structure 1011122)	
Located in Moore, Oklahoma)	NAL/Acct. No. 200332500007
)	
Oklahoma City, Oklahoma)	RN: 0001-7075-95

FORFEITURE ORDER

Adopted: September 1, 2004

Released: September 3, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture of ten thousand dollars (\$10,000) to Leon’s Radio Inc. (“Leon’s Radio”) for willful violation of Section 17.50 of the Commission's Rules (“Rules”).¹ The noted violation involves Leon’s Radio’s failure to comply with the prescribed antenna structure painting requirements.

2. On May 2, 2003, the Commission’s Dallas, Texas, Field Office (“Dallas Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Leon’s Radio proposing a forfeiture in the amount of ten thousand dollars (\$10,000).² Leon’s Radio responded to the *NAL* on May 13, 2003.

II. BACKGROUND

3. Leon’s Radio owns and operates the antenna structure registered with the Commission under antenna structure registration number 1011122. It is located at Moore, Oklahoma, and its height is listed in the Commission’s Antenna Structure Registration (“ASR”) database as 105.4 meters (343.7 feet) above ground level. The registration requires appropriate marking and lighting.

4. On February 20, 2003, an agent from the Dallas Office inspected Leon Radio’s antenna structure site. The agent observed that the antenna structure’s paint was badly faded and that there was unpainted coaxial cable on the tower, resulting in poor visibility of the structure. The agent contacted Leon’s Radio on February 21, 2003, and spoke to it about the tower’s condition. Leon’s Radio stated that it was aware that the structure needed repainting, and it was in the process of securing a painting company.

¹ 47 C.F.R. § 17.50.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332500007 (Enf. Bur., Dallas Office, released May 2, 2003).

5. On May 2, 2003, the Dallas Office issued an *NAL* for a forfeiture in the amount of \$10,000 for willful violation of Section 17.50 of the Commission's Rules. In its response, on May 13, 2003, Leon's Radio opposed imposition of a forfeiture based on several factors: specifically, that it made good faith attempts before the inspection to find a painting company for the antenna structure, that it repainted the tower promptly after the Commission notice and before the *NAL* was issued, and that its failure to repaint the tower before Commission notice was not willful.³

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁴ Section 1.80 of the Rules,⁵ 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*"). Section 503(b) of the Act requires that the Commission, in examining Leon's Radio's response, 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.⁶ As discussed below, we have considered Leon's Radio's response to the *NAL* in light of these statutory factors and have found that reduction of the proposed forfeiture is not warranted.

7. Section 17.50 of the Rules provides that antenna structures requiring painting shall be cleaned or repainted as often as necessary to maintain good visibility. Leon's Radio admitted to the agent that its antenna structure needed repainting. In support of its claims of good faith and cooperation with the Commission's Rules, Leon's Radio described the steps it took to secure a painting contractor several months before the FCC inspection took place, but offered no evidence of any such efforts. After reviewing this information, we conclude that without any substantiation of the alleged pre-inspection efforts, a reduction of the proposed forfeiture amount is not warranted. Further, Leon's Radio's remedial action of painting the tower⁷ after the Commission discovered the violation is not a mitigating factor.⁸

8. Leon's Radio also maintains that its failure to keep the antenna structure properly painted was not willful. Section 312(f)(1) of the Communications Act⁹ which applies to violations for which

³ Leon's Radio also requested treatment as a small entity, referring to Attachment A of the *NAL*. Paragraph 9 of the *NAL*, however, states clearly that the listing of small entities at Attachment A is for tracking purposes only, and as such is not a basis for reconsideration of the *NAL* or reduction of the forfeiture amount.

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ With its response to the *NAL*, Leon's Radio submitted a copy of an invoice signifying a quote for painting the antenna structure, dated after the Commission inspection.

⁸ See *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994), "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."

⁹ 47 U.S.C. § 312(f)(1).

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”¹⁰ We find that Leon’s Radio’s failure to keep its antenna structure painted to maintain good visibility was willful.

9. We also conclude that, based on the gross revenue figure it submitted, Leon’s Radio can afford to pay a forfeiture of \$10,000.

10. We have examined the Leon’s Radio’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 Leon’s Radio willfully violated Section 17.50 of the Rules and find no basis for a reduction of the proposed forfeiture amount.

IV. ORDERING CLAUSES

11. 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,¹¹ Leon’s Radio Broadcasting Company, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willful violation of Section 17.50 of the Rules.

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 Act.¹² Payment must be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the FCC Registration Number (FRN) and the *NAL*/Acct. No. referenced in the caption. Payment by check or money order may be mailed to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. 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. 20554.¹³

¹⁰ See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

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

¹² 47 U.S.C. § 504(a).

¹³ See 47 C.F.R. § 1.1914.

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Leon's Radio Broadcasting Company, Inc., Mr. Leon Matula, President, P.O. Box 94748, Oklahoma City, Oklahoma 73143.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau