

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

In the Matter of)	File No. EB-03-AT-064
)	
MCC Georgia LLC)	NAL/Acct. No. 200332480022
Owner of Antenna Structure Registration)	
Number 1022429 in McIntyre, Georgia)	FRN No. 0004-3413-68
Middletown, New York)	

FORFEITURE ORDER

Adopted: September 28, 2004

Released: September 30, 2004

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to MCC Georgia LLC (“*Mediacom*”) for willful and repeated violation of Section 17.51 of the Commission’s Rules (“*Rules*”).¹ The noted violation involves *Mediacom*’s failure to exhibit obstruction lighting from sunset to sunrise on its antenna structure # 1022429 on March 4 and 5, 2003.

2. On April 15, 2003, the Commission’s Atlanta, Georgia District Office (“*Atlanta Office*”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to *Mediacom* for a forfeiture in the amount of ten thousand dollars (\$10,000) citing willful and repeated violations of Section 17.51 of the Commission’s Rules.² *Mediacom* filed a response to the *NAL* on May 15, 2003.

II. BACKGROUND

3. On March 4 and 5, 2003 a Commission field agent from the Atlanta Office observed that *Mediacom*’s antenna structure was not illuminated between sunset and sunrise on either day. The Federal Aviation Administration (“*FAA*”) was not notified of the light extinguishment. The agent determined that *Mediacom* was the owner of the antenna structure, ASR # 1022429. In response to this violation, the Atlanta Office issued an *NAL* to *Mediacom* on April 15, 2003.

4. *Mediacom* replied to the *NAL* on May 15, 2003, requesting a reduction in the forfeiture amount. In its response, *Mediacom* stated that before the inspections on March 4 and 5, 2003, *Mediacom* ordered an automatic alarm system to provide more reliable notice of lighting outages. *Mediacom* did not receive the equipment for the system until March 12, 2003. *Mediacom* stated that the equipment was installed by March 17, 2003, and *Mediacom* promptly repaired the outage after learning about it from the field inspector.

¹ 47 C.F.R. § 17.51

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332480022 (Enf. Bur., Atlanta Office, released April 15, 2003).

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”),³ Section 1.80 of the Rules,⁴ 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 Mediacom’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 such other matters as justice may require.⁵

6. Section 17.51 of the Rules mandates that “All red obstruction lighting shall be exhibited from sunset to sunrise unless otherwise specified.”⁶ During the Atlanta Office agent’s inspections on March 4 and 5, 2003, Mediacom failed to exhibit any of the required obstruction lighting on its antenna structure. Mediacom does not dispute that the red obstruction lighting was extinguished from sunset to sunrise on March 4 and 5, 2003. Therefore, we conclude that Mediacom willfully⁷ and repeatedly⁸ violated Section 17.51 of the Rules.

7. Mediacom requests that the proposed monetary forfeiture be reduced on the basis of a good faith effort to prevent lighting outages prior to the detection of the violation. According to the sworn declaration of Al Kai, Senior Manager, Technical Operations for Mediacom in the Southern Division, Mid Atlantic Region, Mediacom ordered an automated alarm system to provide more reliable notice of lighting outages. Mediacom ordered the system on November 14, 2002 and did not receive it until March 12, 2003. Ordering the automated alarm system prior to the noted violation of Section 17.51 does not warrant a “good faith” reduction. Mediacom knew there was a delay in the delivery of the automated alarm system, yet no evidence is offered that Mediacom made any effort to monitor the lighting structure by any other means during the time when the alarm system was on order. Section 17.47 of the Rules requires that an owner of an antenna structure either observe the antenna structure’s lights visually every 24 hours, or observe the lights through an automatic indicator every 24 hours; or alternatively, maintain an automated alarm system designed to detect any lighting outages and report that outage to the owner.⁹ Mediacom offered no evidence that Section 17.47 of the Rules was complied with during the four month period when the automatic alarm system was on order either by visually observing the antenna or by observing it through an automatic indicator. Mediacom was not cited with a violation of Section 17.47 of

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 C.F.R. § 17.51

⁷ 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).

⁸ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is “repeated” if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

⁹ 47 C.F.R. § 17.47(a)(1)

the Rules in the *NAL*. However, by failing to show compliance with this Section of the rules, Mediacom's claim of good faith as a basis for downward adjustment is diminished.¹⁰ Because the alarm system was not installed at the time of the violations and no other monitoring system was in place and Mediacom failed to visually observe the obstruction lighting, Mediacom had no means to discover the lighting violations and failed to comply with Section 17.47 of the Rules. This overall lack of ability to monitor caused the lighting violations to go undetected, resulting in the repeated violation of Section 17.51(a). Accordingly, since Mediacom failed to make a good faith effort to monitor the lighting on the antenna structure, no reduction for good faith is warranted.¹¹

8. Further, Mediacom requests reduction of the proposed forfeiture order because of expeditious corrective action taken to come into compliance after being notified of the violation. Mediacom claimed that it promptly made repairs upon learning of the lighting outage. The Commission has been clear that "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."¹² Therefore, Mediacom's effort to correct the violation after it was discovered by the field officer is not a mitigating factor and the forfeiture order will not be reduced on this basis.

9. We have examined Mediacom'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 Mediacom willfully and repeatedly violated Section 17.51 of the Commission Rules. We find no basis for rescinding or canceling the forfeiture.

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,¹³ MCC Georgia LLC. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for its willful and repeated violation of Section 17.51 of the Commission's 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.¹⁴ Payment may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or 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,

¹⁰ *In Re Telecorp. Communications, Inc.* 16 FCC Rcd 5270, 5272 (Enf. 2001) (finding that the lack of evidence showing compliance with Section 17.47 of the Rules undercuts a claim of good faith as a basis for downwardly adjusting a forfeiture amount for a violation of Section 17.51 of the Rules).

¹¹ *Cf.*, *In Re Calvary Communications, Inc.* 18 FCC Rcd. 18172, 18174 (Enf. 2003) (denying a good faith reduction for the violation of Section 17.51 of the Rules when an owner of an antenna structure knew its automatic alarm system was malfunctioning, and made weekly checks of the antenna structure instead of daily checks, as required by Section 17.47(a)(1) of the Rules); *In Re AT&T Wireless Services, Inc.* 17 FCC Rcd. 21866, 21869 (2002) (denying cancellation or reduction of proposed forfeiture for violation of Section 17.51 of the Rules, even though the lighting outage was caused by a malfunction of an automatic alarm system that was in place and the owner of the antenna structure claimed that the tower and alarm system were inspected regularly); *In Re USA Tower, Inc.* 16 FCC Rcd. 13182, 13184 (Enf. 2001) (denying a reduction for the violation of Section 17.51 of the Rules when the owner did not offer evidence that it made daily inspections of the tower or that it properly inspected or maintained its alarm system, which failed to detect the lighting outage).

¹² *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994)

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

¹⁴ 47 U.S.C. § 504(a).

Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, Illinois 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. The payment must include the FCC Registration Number (FRN) and the *NAL*/Acct. No. referenced in the caption. 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. 20554.¹⁵

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent via First Class Mail and Certified Mail, Return Receipt Requested, to Mediacom Communications Corporation., 100 Crystal Run Rd., Middletown, New York, 10941.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau

¹⁵ See 47 C.F.R. § 1.1914.