

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

In the Matter of	)	
	)	
Crown Communication, Inc.	)	File Number EB-02-DV-281
	)	
Owner of Antenna Structure Number 1035006	)	NAL/Acct No. 200332800010
Hobbs, New Mexico	)	FRN 0003-2470-87
	)	
	)	
	)	

**FORFEITURE ORDER**

**Adopted: October 14, 2004**

**Released: October 18, 2004**

By: The Assistant 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 Crown Communication, Inc. (“Crown”), owner of antenna structure number 1035006 located at 103° 05’ 30” longitude / 032° 42’ 48” latitude in Hobbs, New Mexico for willful and repeated violation of Section 17.50 of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violation involves Crown’s failure to maintain good visibility of the antenna structure.

2. On February 28, 2003, the Acting District Director of the Commission’s Denver, Colorado Field Office (“Denver Office”) released a *Notice of Apparent Liability for Forfeiture* (“*NAL*”)<sup>2</sup> proposing a forfeiture in the amount of ten thousand dollars (\$10,000) to Crown for the noted violation. Crown filed a response to the *NAL* on March 28, 2003.

**II. BACKGROUND**

3. On August 13, 2002, an agent from the Denver Office inspected antenna structure registration number 1035006 and observed that unpainted cables attached to the structure precluded good visibility of the antenna structure in violation of Section 17.50 of the Commission’s Rules.

4. On February 28, 2003, the District Director of the Denver Office issued an *NAL* proposing a \$10,000 forfeiture to Crown for failure to maintain good visibility of the antenna structure in willful and repeated violation of Section 17.50 of the Rules. Crown filed a response to the *NAL* on March 28, 2003. Crown does not contest the underlying facts alleged in the *NAL*. However, Crown states that

<sup>1</sup> 47 C.F.R. § 17.50.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332800010 (Enf. Bur., Denver Office, released February 28, 2003).

Section 17.50 does not apply to the instant situation and that the forfeiture must be withdrawn or cancelled. Crown argues that the Commission's express intent when promulgating the Rules was to grandfather the marking and lighting requirements for existing towers, which precludes the issuance of the instant forfeiture. According to Crown, its tower is grandfathered pursuant to the Commission's *Report and Order*<sup>3</sup> holding "we will not require owners to comply with new Advisory Circulars unless such action is specifically recommended by the FAA. For existing structures, Form 854R ... will, in most cases, denote the specific painting and lighting requirements originally assigned to the structure."<sup>4</sup>

5. Crown also states that even if the latter FAA Advisory Circular<sup>5</sup> requiring cable painting applies, the assessment of a forfeiture herein is inconsistent with the policy and purpose of the Commission's enforcement program, namely, to maintain airspace safety. Crown asserts that Commission enforcement ensures airspace safety, and that where six months has expired between discovery of a violation and imposition of a fine, the fundamental purpose of enforcement is not met. Lastly, Crown states that during the period between the antenna structure inspection and issuance of the *NAL*, Crown painted the antenna structure, including the cables, prior to receiving notice of the violation from the Commission.

### III. DISCUSSION

6. The forfeiture amount in this case was proposed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>6</sup> Section 1.80 of the Rules,<sup>7</sup> 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 Crown'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.<sup>8</sup>

7. Section 17.50 of the Rules provides that antenna structures requiring painting under the rules shall be cleaned or repainted as often as necessary to maintain good visibility. According to Crown's Antenna Structure Registration ("ASR") number 1035006 has specified lighting and painting requirements that include painting the structure with alternating bands of aviation orange and white. On August 13, 2002, an agent from the Denver Office found that the antenna structure had black cabling mounted on the antenna structure. The agent observed that the 19 unpainted cables masked the underlying orange and white paint and precluded good visibility of the antenna structure.

8. Crown acknowledges that the registration for its antenna structure number 1035006 requires the structure to meet the painting and lighting specifications in Section 17.50 and FAA Advisory Circular, AC 70/7460-1H. Further, Crown does not dispute that the black cabling obscured the underlying structure, thus obscuring its visibility. However, Crown argues that the antenna structure painting requirements contained in AC 70/7460 – 1H do not apply to "any appurtenances mounted thereon." Accordingly, Crown contends that the *NAL* erred in assessing a forfeiture for its failure to paint

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<sup>3</sup> See *Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking and Lighting of Antenna Structures*, 11 FCC Rcd 4272, 4293 (1995).

<sup>4</sup> Id at 4293, ¶ 49.

<sup>5</sup> FAA Advisory Circular, 70/7460-1J.

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. § 1.80.

<sup>8</sup> 47 U.S.C. § 503(b)(2)(D).

the cables on its antenna structure with alternating bands of orange and white paint.

9. Pursuant to Section 303(q) of the Act, the Commission has authority to require the painting and/or illumination of radio towers when in its judgment such towers constitute or there is a reasonable possibility that they may constitute a menace to air navigations.<sup>9</sup> The Commission grandfathered antenna structures such as the structure at issue in the *Report and Order* and stated that it would not require tower owners to *update* painting and lighting requirements in accordance with new Advisory Circulars. The Commission stated that such a requirement would place significant burdens on owners.<sup>10</sup> We do not agree, however, with Crown's assertion that because its tower was grandfathered and the painting and lighting requirements contained in FAA Advisory Circular AC 70/7460 – 1 H do not specifically require that the cables mounted on the antenna structure must be painted that Crown was grandfathered and not obligated to paint such cables. The Commission noted in reaching this decision to grandfather existing structures that the FAA's Advisory Circulars contain specific chapters and diagrams describing in detail the FAA painting and lighting recommendations.<sup>11</sup>

10. The Commission did not, however, change the fundamental requirement contained in Section 17.50 that a structure must be cleaned and painted to maintain good visibility. Further, in the *Report and Order* the Commission, in discussing who had primary responsibility for maintaining proscribed structure painting and/or lighting in accordance with Part 17, stated that one of the Commission's primary responsibilities is to ensure that antenna structures do not pose a threat to air safety. Crown's contention, *arguendo*, is that, as a result of the Commission's grandfathering existing antenna structures, an owner could completely cover the tower face with coaxial cable without painting it. This argument flies in the face of the plain meaning of Section 17.50, which is to maintain good visibility. Thus, consistent with Section 17.2(a) of the Rules, it is apparent that any cables appurtenant to the tower, must also be painted in a manner which ensures the visibility of the underlying tower.<sup>12</sup> In sum, the agent's direct observations establish that the unpainted cables precluded good visibility of the antenna structure<sup>13</sup> thereby resulting in a violation of Section 17.50.

11. Additionally, Crown asserts that it should not be assessed a forfeiture because the *NAL* was not released within six months of the violation. This argument is without merit. Section 503(b) of the Act<sup>14</sup> authorizes the Commission to impose forfeitures for violations and Section 1.80(c)(3) of the Commission Rules<sup>15</sup> authorizes imposition of a forfeiture if the violation occurred within one year of the issuance of notice. In the instant case, the violation was first observed on August 13, 2002 and the *NAL* was issued on February 28, 2003. Crown argues that the delay in issuance of the *NAL* diminishes the gravity of the public safety violation. Contrary to Crown's argument, the Commission has consistently stressed that it expects full compliance with the antenna structure rules because of the potential danger to air navigation.<sup>16</sup> The lapse of time from inspection to issuance of the *NAL* does not undermine the

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<sup>9</sup> 47 U.S.C. § 303(q).

<sup>10</sup> *In the Matter of Streamlining the Commission's Antenna Structure Clearance Procedure*, 11 FCC Rcd 4272, 4292-6 (1995).

<sup>11</sup> *Id.* at 4293.

<sup>12</sup> 47 C.F.R. § 17.2(a).

<sup>13</sup> Failure to maintain good visibility is deemed a serious violation warranting a forfeiture assessment. *See Access.1 Communications Corp.-NY*, 18 FCC Rcd 22289 (Enf. Bur. 2003); *Gold Coast Broadcasting Company*, 18 FCC Rcd 8576 (Enf. Bur. 2003); and *Pinnacle Towers, Inc.* 18 FCC Rcd 6419 (Enf. Bur. 2003).

<sup>14</sup> 47 U.S.C. § 503.

<sup>15</sup> 47 C.F.R. § 1.80(c)(3).

gravity of Crown's violation.

12. After reviewing the record in this case, including the agent's contemporaneous observations of Crown's structure, we conclude that the above cited evidence supports a finding that the cables attached to Crown's tower obstructed good visibility of the tower in violation of Section 17.50 of the Rules. The violation was willful and repeated because Crown Communication, Inc. permitted the use of unpainted cables as attachments to its tower for an extended period which obscured the underlying paint. Accordingly, we find that Crown Communication, Inc. willfully<sup>17</sup> and repeatedly<sup>18</sup> violated Section 17.50 of the Rules.

13. Lastly, Crown sets forth the fact that it had painted the tower, including the cables, prior to a notification of violation from the Commission as a basis to substantially reduce the forfeiture. Considering the good faith effort of Crown in painting the tower and the cables prior to being notified of the violation, we agree that the forfeiture amount should be reduced. Accordingly, we reduce the \$10,000 forfeiture proposed in the *NAL* to \$8,000.

14. We have examined Crown'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 Crown Communication, Inc. failed to maintain good visibility of the antenna structure in willful and repeated violation of Section 17.50 of the Rules. We also acknowledge Crown's good faith efforts to address the violation. Thus, we reduce the forfeiture to \$8,000.

#### IV. ORDERING CLAUSES

15. 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,<sup>19</sup> Crown Communication, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for failure to clean and repaint its antenna structure to maintain good visibility, in willful and repeated violation of Section 17.50 of the Rules.

16. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules<sup>20</sup> 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.<sup>21</sup> Payment may be made by credit card through the Commission's Credit and Debt

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<sup>16</sup> See *SpectraSite Communications, Inc.*, 17 FCC Rcd 7884, 7888 (2002) ("...[t]he Commission considers violations of the antenna construction, marking, and lighting rules to be serious safety-related infractions").

<sup>17</sup> 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).

<sup>18</sup> 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. 97<sup>th</sup> Cong. 2d Sess. 51 (1982); see also *Western Wireless Corporation*, 18 FCC Rcd 10319, 10326 n. 56 (2003); *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991).

<sup>19</sup> 47 C.F.R. §§ 0.111, 0.311, 0.180(f)(4).

<sup>20</sup> 47 C.F.R. § 1.80.

<sup>21</sup> 47 U.S.C. § 504(a).

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, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption. Payment by overnight mail may be sent to BankOne/LB73482, 525 West Monroe, 8<sup>th</sup> 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, Credit and Debt Management Center, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.<sup>22</sup>

17. **IT IS FURTHER ORDERED** that copies of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Crown Castle USA, Inc. 2000 Corporate Drive, Canonsburg, PA 15317 and its Counsel, Monica Gambino, Associate General Counsel, Regulatory Affairs, 2000 Corporate Drive, Canonsburg, PA 15317

**FEDERAL COMMUNICATIONS COMMISSION**

George R. Dillon  
Assistant Chief, Enforcement Bureau

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<sup>22</sup>47 U.S.C. § 1.1914.