

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

In the Matter of	)	
	)	File No. EB-03-KC-012
AAT Communications Corporation	)	
Owner of Antenna Structure #1005728 near	)	NAL/Acct. No. 200332560011
Harrisonville, Missouri	)	
Iselin, New Jersey	)	FRN: 0003-477676

**FORFEITURE ORDER**

**Adopted: October 19, 2004**

**Released: October 22, 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 AAT Communications Corporation (“AAT”) for willful violation of Section 17.50 of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violation involves AAT’s failure to repaint its antenna structure to maintain good visibility.

2. On February 27, 2003, the Commission’s Kansas City, Missouri District Office (“Kansas City Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to AAT for a forfeiture in the amount of ten thousand dollars (\$10,000).<sup>2</sup> AAT’s response to the *NAL* was received on April 7, 2003.

**II. BACKGROUND**

3. AAT is the registered owner of a tower with antenna structure registration (“ASR”) number 1005728 that is 319.88 feet (97.5 meters) above ground level and 1274.93 feet (388.6 meters) above mean sea level. The structure’s registration includes a requirement that it be painted in alternating bands of aviation orange and white.

4. On January 13, 2003, a Kansas City Office agent inspected the tower in question, ASR No. 1005728. The structure had chipped and faded paint and was partially obscured with black cabling, resulting in poor visibility when observed from a distance of one-quarter mile.

5. After checking the Commission’s records, the Kansas City Office agent spoke with representatives of AAT, the registered owners. The representatives confirmed that AAT owned structure ASR No. 1005728, and stated to the agent that AAT planned on repainting the structure in the spring upon a recommendation of a tower company that inspected it on December 19, 2002.

6. On February 27, 2003, the District Director of the Kansas City Office issued an *NAL* to AAT in the amount of ten thousand dollars (\$10,000) for willful violation of Section 17.50 of the

<sup>1</sup> 47 C.F.R. § 17.50.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, File No. NAL/Acct. No. 200332560011 (Enf. Bur., Kansas City Office, released February 27, 2003).

Commission's Rules. In its response, AAT argues that the "Rules do not provide a standard as to how faded the paint would have to be before a violation occurred." AAT argues that there would be no way to know they were in violation of Section 17.50 without a determination by an FCC inspector. AAT states that it is therefore unfair for the Commission to issue a forfeiture for a violation without giving AAT an opportunity to correct it.

7. AAT adds that it has a policy to regularly repaint towers and that the tower had already been scheduled for painting. Finally, AAT argues that no painting could be done at the time of inspection because of winter weather, even if it had been aware that the paint had faded to the point of violation.

### III. DISCUSSION

8. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, ("Act"),<sup>3</sup> Section 1.80 of the Rules,<sup>4</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 AAT'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>5</sup>

9. Section 17.50 of the Rules provides that antenna structures whose registration requires painting for visibility shall be cleaned or repainted as often as necessary to maintain good visibility. AAT's structure, ASR No. 1005728, has specified lighting and painting requirements that include painting the structure with alternating bands of aviation orange and white. Based on the Kansas City agent's observations, that the tower's painted bands could not be distinguished at approximately one fourth of a mile because the tower's paint was faded and chipped and partially obscured by black cabling, we find that AAT was in violation of Section 17.50 of the Rules.

10. During the inspection, an AAT representative stated to the Kansas City agent that AAT had received a recommendation by a contractor that it was necessary to repaint the tower. However, notwithstanding that AAT should have known its tower needed repainting, and that it had been advised by a contractor to repaint the tower, AAT states that it had decided to delay repainting the tower until after the winter season. Accordingly, we conclude that AAT made a conscious and deliberate decision not to repaint the tower until after its paint had faded to the point that the tower was no longer in compliance with Section 17.50 of the Rules.<sup>6</sup> AAT's decision to wait until the following spring to repaint the tower clearly precluded compliance with Section 17.50. Moreover, to the extent that AAT suggests that reliance on the contractor mitigates its responsibility, we disagree. Our Rules clearly hold AAT responsible to ensure that the tower complies with the Rules.<sup>7</sup> We find, accordingly, that AAT's violation of Section 17.50 was willful.<sup>8</sup>

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<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> 47 C.F.R. § 1.80.

<sup>5</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>6</sup> See *William L. Needham and Lucille Needham*, 18 FCC Rcd 5521, 5522 (Enf. Bur. 2003).

<sup>7</sup> See *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863-64 ¶¶ 6-7 (2002) (finding that it is the antenna structure owner's primary responsibility to comply with tower lighting requirements).

<sup>8</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

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11. AAT argues that the Commission should have warned it that the tower's paint had faded to the point of violation and that it should have been given a chance to correct the violation, and thus, the forfeiture should be cancelled or at least reduced. This argument is without merit. Neither the Commission nor its agents are obligated to notify a licensee when an inspection occurs or to provide a licensee an opportunity to cure a violation prior to issuing a Notice of Apparent Liability.<sup>9</sup>

12. In additional support of its argument for a cancellation or reduction of the proposed forfeiture, AAT argues that its tower had already been scheduled for painting at the time of inspection. If the tower had been scheduled for repainting prior to the Commission's inspection, AAT would merit a reduction in the proposed forfeiture amount based on good faith efforts to correct the violation.<sup>10</sup> However, we are unable to find that AAT merits any reduction in the forfeiture amount because it has not provided evidence of corrective efforts, such as a supporting affidavit, service order, or similar documents.<sup>11</sup> Accordingly, we find no grounds for a reduction.

13. We have examined AAT'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 AAT willfully violated Section 17.50 of the Rules by failing to clean or repaint its antenna structure as often as necessary to maintain good visibility. We find that AAT is liable for the proposed forfeiture amount of ten thousand dollars (\$10,000).

#### IV. ORDERING CLAUSES

14. 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>12</sup> AAT Communications Corporation, Owner of Antenna Structure #1005728 near Harrisonville, Missouri **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for its willful violation of Section 17.50 of the Rules.

15. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, 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.<sup>13</sup>

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and

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regulation of the Commission authorized by this Act ...." *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>9</sup> See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 n. 20 (2002) (enforcing a forfeiture issued without a Notice of Violation). See also *Missouri RSA*, 18 FCC Rcd 12653, 12654 (Enf. Bur. 2003) ("Nothing in the Communications Act or the Commission's Rules entitles a licensee to an opportunity to correct a violation prior to the issuance of a NAL. Licenses cannot expect simply to sit back and await Commission findings of violations before taking appropriate steps to ensure compliance with Commission rules.")

<sup>10</sup> See *Radio One Licenses, Inc.*, 18 FCC Rcd 15964 (2003).

<sup>11</sup> 47 C.F.R. § 1.80(f)(3).

<sup>12</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>13</sup> See 47 C.F.R. § 1.1914.

Certified Mail Return Receipt Requested to John C. Shinnars, Counsel, AAT Communications Corporation, Woodbridge Place, 517 Route One South, Iselin, New Jersey 08830.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon  
Assistant Chief, Enforcement Bureau