

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

In the Matter of)	
)	
AAT Communications Corporation)	File No.: EB-02-KC-770
)	NAL/Acct. No. 200332560005
Owner of Antenna Structure)	FRN 0003-4776-76
Registration No. 1064351 Located)	
One Mile North of Ellis, Nebraska)	

MEMORANDUM OPINION AND ORDER

Adopted: February 9, 2004

Released: February 11, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* ("Order") we deny the Petition for Reconsideration filed by AAT Communications Corporation ("AAT"). AAT seeks reconsideration of the *Forfeiture Order*¹ in which the Chief, Enforcement Bureau ("Bureau"), found it liable for a monetary forfeiture in the amount of \$10,000 for willful and repeated violation of Section 17.51(a) of the Commission's Rules ("Rules").² The noted violation involves AAT's failure to exhibit the prescribed obstruction lighting on its antenna structure.

II. BACKGROUND

2. AAT is the owner of antenna structure number 1064351, which is located one mile north of Ellis, Nebraska. As indicated in the Commission's antenna structure registration ("ASR") data base, AAT's antenna structure is required to exhibit red obstruction lighting at night.

3. On October 3, 2002, the Commission's Kansas City, Missouri, Field Office ("Kansas City Office") received a telephone message from the Federal Aviation Administration ("FAA") indicating that an antenna structure's red obstruction lighting was extinguished. On October 4, an agent from the Kansas City Office determined that AAT was the owner of that antenna structure, number 1064351. On the same day an agent from the Kansas City Office interviewed the pilot who reported the lighting outage to the FAA and the owner of the tower site. The pilot stated that, except for one light, the red obstruction lighting had been extinguished for well over a month. The tower site owner stated that overgrown brush and weeds around the tower led him to believe that it had been abandoned and that all the lights, except for one, had burned out over the last several months.

4. On October 7, 2002, an AAT representative told an FCC agent from the Kansas City Office that a local resident visually monitors the tower lights and that he would check his records to determine that person's identity. On October 11, 2002, the AAT representative told the FCC agent that, after searching AAT's records, he could not provide the name of "a current reliable monitoring contact"; he had no information about when the tower was last inspected; and he had no record of any tower light

¹ *AAT Communications Corporation*, 18 FCC Rcd 1490 (Enf. Bur. 2002).

² 47 C.F.R. § 17.51(a).

maintenance during the past quarter. The AAT representative also stated that AAT had scheduled the installation of an automated monitoring system on October 14, 2002.

5. On November 5, 2002, the District Director of the Kansas City Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of \$10,000 to AAT.³ AAT filed a response⁴ seeking cancellation or reduction of the forfeiture. Although AAT admits violating Section 17.51(a) of the Rules, it contends that it did not do so willfully or repeatedly. In particular, AAT argues that the allegation that the violation was repeated “is based on hearsay and cannot be substantiated.” AAT also asserts that it has corrected the violation of Section 17.51(a) and installed an automated light monitoring system to avoid future violations.

III. DISCUSSION

6. Section 17.51(a) of the Rules requires that AAT’s red obstruction lighting be exhibited between sunset and sunrise. AAT admits violating Section 17.51(a) but not that the violation was repeated. AAT’s repetition of its violation of Section 17.51(a) is well documented. Our finding is based on our interview of the pilot, who had personally observed the violation for well over a month, and the tower site owner, who had observed the violation for the last several months. We believe, in this instance, the use of eyewitness interviews is an acceptable evidentiary method for establishing the repetition of this violation. Both the complainant, who is a pilot, and the property owner have first hand knowledge of the lighting outage; both observed the outage for a lengthy period; and neither has any apparent reason to be untruthful. The complainant’s and the property owner’s statements are credible and corroborate each other. Accordingly, we reject AAT’s argument that the alleged repetition of the violation “is based on hearsay and cannot be substantiated”⁵ and find that AAT repeatedly violated Section 17.51(a).⁶

7. Section 503(b) of the Act gives the Commission authority to assess a forfeiture penalty against any person if the Commission determines that the person has “willfully or repeatedly” failed to comply with the provisions of the Act or with any rule, regulation or order issued by the Commission. In view of our determination that the violations are repeated, it is unnecessary to determine whether they are also willful.⁷

8. No mitigation is warranted on the basis of AAT’s correction of the violation and its installation of an automated monitoring system to avoid future violations. As the Commission stated in

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332560005 (Enf. Bur., Kansas City Office, released November 5, 2002).

⁴ AAT’s response to the *NAL* was received at the Commission’s mail facility on December 9, 2002, but was not received by the Bureau until February 8, 2003 (apparently because of misrouting). On February 4, 2003, the Bureau released a *Forfeiture Order* indicating that AAT had not responded to the *NAL* and affirming the monetary forfeiture proposed by the *NAL*. On February 28, 2003, AAT filed a response stating that AAT did respond to the *NAL* and attaching a copy of that response. We are construing AAT’s response as a petition for reconsideration of the *Forfeiture Order*.

⁵ See *Andrew R. Yoder*, 9 FCC Rcd 6927, 6927 (1994) (argument that finding is based on unacceptable hearsay evidence rejected where liability based on documented uncontroverted evidence).

⁶ 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).

⁷ *Koke, Inc.*, 23 FCC 2d 191 (1970).

Seawest Yacht Brokers, 9 FCC Rcd 6099, 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.”⁸

9. 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 repeatedly violated Section 17.51(a) of the Rules and find no basis for cancellation or reduction of the \$10,000 monetary forfeiture.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act⁹ and Section 1.106 of the Rules,¹⁰ AAT’s petition for reconsideration of the February 4, 2003, *Forfeiture Order* **IS DENIED**.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules¹¹ 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 shall 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 note NAL/Acct. No. 200332560005 and FRN 0003-4776-76. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

12. **IT IS FURTHER ORDERED THAT** a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to AAT Communications Corporation, Woodbridge Place, 517 Route 1 South, Suite 5000, Iselin, New Jersey 08830.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁸ See also *Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22629 (2002); *Radio Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966).

⁹ 47 U.S.C. § 405.

¹⁰ 47 C.F.R. § 1.106.

¹¹ 47 C.F.R. § 1.80.

¹² 47 U.S.C. § 504(a).

¹³ See 47 C.F.R. § 1.1914.