

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

In the Matter of	)	File Number EB-02-SJ-087
	)	
Jorge L. Estrada	)	Nal/Acct. No. 200332680002
Owner of Antenna Structure Number 1043939 in	)	
Cubuy, Puerto Rico	)	FRN 0008354300
Bayamon, Puerto Rico	)	
	)	
	)	
	)	

**FORFEITURE ORDER**

**Adopted: November 17, 2004**

**Released: November 19, 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 Jorge Estrada (“Mr. Estrada”) for willful violation of Section 17.51 of the Commission’s Rules.<sup>1</sup> The violation involves Mr. Estrada’s failure to exhibit all red obstruction lighting from sunset to sunrise on antenna structure number 1043939 in Cubuy, Puerto Rico.

2. On February 13, 2003, the Commission’s San Juan, Puerto Rico Resident Agents Office (“San Juan Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Mr. Estrada for a forfeiture in the amount of ten thousand dollars (\$10,000).<sup>2</sup> Mr. Estrada filed his response to the *NAL* on March 17, 2003.

**II. BACKGROUND**

3. On December 12, 2002, Commission agents from the San Juan Office inspected the antenna structure (“tower”) bearing antenna structure registration (“ASR”) number 1043939. The agents’ review of Commission records revealed that the tower was registered to Jorge L. Estrada. The tower is located 1.1 miles N.E. of road 186 Km 9.2, Bo. Cubuy, in Canovanas, Puerto Rico. The inspection resulted from a complaint on December 5, 2002, alleging that the red beacon lights required on the tower had been out for weeks. During the inspection, the agents observed that the tower was not lighted by a red beacon during evening hours. At the time of the inspection, the Federal Aviation Administration (“FAA”) had no record of a reported light outage for the tower. One of the agents called Mr. Estrada on December 13, 2002 and requested that he contact him at the San Juan Office.

4. On December 16, 2002, one of the investigating agents spoke with Mr. Estrada about the tower light outage. Mr. Estrada, upon being informed of the light outage by the agent, responded that he

<sup>1</sup> 47 C.F.R. § 17.51.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct No. 200332680002 (Enf. Bur., San Juan Office, released February 13, 2003).

was aware that the lights were out, but had not informed the FAA of the outage.<sup>3</sup>

5. On February 13, 2002, the San Juan Office issued the subject NAL to Mr. Estrada finding that he apparently willfully and repeatedly violated Section 17.51 of the Rules. In responding to the NAL, Mr. Estrada submits a signed declaration in which he states that he was aware that the tower lights were out prior to his notification to the FAA of the outage. He offers numerous reasons for cancellation of the forfeiture including: his lack of prior violations; his allegation that the outage was caused by a short circuit (a unique occurrence for which he had no control); his immediate response to repair the tower light; his allegation that the tower's location among other lighted towers caused no diminution in air traffic safety; and his inability to pay the forfeiture. Lastly, Mr. Estrada asserts that *Private Land Mobile Station WSM 534, Chesapeake Bay Contractors, Inc.*<sup>4</sup> supports elimination of the forfeiture amount as the violation should not be considered repeated.

### 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”),<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*,<sup>7</sup> (“Policy Statement”). In examining Mr. Estrada'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 17.51 of the Rules requires that all red obstruction lighting be exhibited from sunset to sunrise unless otherwise specified. Mr. Estrada asserts that the violation was not willful because it was unintended and was caused by a unique event for which he had no control (i.e., a short circuit at the tower). Whether a violation is willful rests on a finding that the licensee knew he was doing the act in question, regardless of whether there was an intent to violate the law.<sup>9</sup> Here, Mr. Estrada admits that he was aware that the lights were out at the time he was contacted by the agent from the San Juan Office. Further, his lack of intent does not negate a finding that the violation was willful.<sup>10</sup> Accordingly, we find

---

<sup>3</sup> Mr. Estrada was informed by the agent as to how to file an FAA report. As a result, Notice to Airmen #12028 was issued by the FAA on December 16, 2002, when Mr. Estrada informed the FAA of the outage.

<sup>4</sup> 9 FCC Rcd 1647 (Field Oper. Bur. 1994).

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

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

<sup>9</sup> See 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 ¶ 5 (1991).

<sup>10</sup> See *Alpha Ambulance, Inc.*, 19 FCC Rcd 2547, 2549 (2004) (finding that where an ambulance company “consciously and deliberately” operated transmission equipment without an authorization willfully violated the noted statutory and regulatory requirements irrespective of any intent to do so).

that Mr. Estrada willfully violated Section 17.51 of the Rules.<sup>11</sup>

8. Mr. Estrada asserts that he took immediate steps to remedy the outage, but states that the lights were not restored until December 16, 2002, subsequent to notification of the violation by the investigating agents. Remedial efforts taken after notification of the violation by the Commission, would not result in a cancellation or reduction of the forfeiture because such efforts are not considered a mitigating factor.<sup>12</sup> Further, Mr. Estrada, has not provided sufficient specificity or documentation (*e.g.* copies of receipts, work orders, *etc.*) to support a determination that corrective efforts were taken prior to being contacted by the agents.<sup>13</sup> We therefore find that Mr. Estrada's corrective efforts do not warrant a finding of good faith efforts on his part.

9. Mr. Estrada contends, as mitigation, that because there were other lighted towers in the near vicinity of his tower, no diminution of air traffic safety occurred. The Commission has previously rejected arguments of this nature as a basis for cancellation of forfeitures, and we do so again today.<sup>14</sup>

10. Mr. Estrada's request for cancellation of the forfeiture due to financial distress was not accompanied by his tax returns, or any other documentation as set forth in paragraph 11 of the *NAL*. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Accordingly, there is no basis to cancel the assessed forfeiture amount due to inability to pay.

11. Finally, we find that a reduction of the proposed forfeiture is warranted because of the Mr. Estrada's compliance record with the Commission's Rules. Accordingly, the forfeiture amount is reduced from ten thousand dollars (\$10,000) to eight thousand dollars (\$8,000).

#### IV. ORDERING CLAUSES

12. 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>15</sup> Jorge L. Estrada **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for willful violation of Section 1.903(a) of the Act.

13. 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,

---

<sup>11</sup> Because we find the violation to be willful, we need not address Mr. Estrada's argument that the violation was not repeated. *See* Section 503(b)(1) of the Act, 47 U.S.C. § 503(b)(1) (violator liable for forfeiture if violation is willful or repeated).

<sup>12</sup> *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 forfeiture or violations.") *See also AT&T Wireless Services, Inc.*, 17 FCC Rcd 7891 (2002), *forfeiture ordered*, 17 FCC Rcd 21866, 21875-76 (2002).

<sup>13</sup> We note that while the violation continued for several days, Mr. Estrada admittedly failed to properly respond to the known outage by taking the necessary steps to inform the FAA of the outage until after being notified of that responsibility by one of the investigating agents on December 16, 2002. *See* 47 C.F.R. § 17.48 (requiring a tower owner to notify FAA of any outage not repaired within thirty minutes of discovery). Further, at the time of our agents' inspection of the tower, they did not observe evidence that corrective measures were underway.

<sup>14</sup> *Id.* at 21870-71 (finding that a downward adjustment was not warranted on the grounds that there was no indication that the unpainted antenna structure actually compromised air safety); *Centel Cellular Company of North Carolina Limited Partnership*, 11 FCC Rcd 10800, 10808 (1996) ("The Commission has rejected similar [no harm] arguments raised by licensees in the past and we now reject in the strongest terms [the licensee's] assertion.").

<sup>15</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>16</sup> 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 Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>17</sup>

14. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by first class mail and certified mail return receipt to Mr. Estrada at his address of record and his Counsel Richard F. Swift, Esq., Irwin, Campbell & Tannenwald, P.C., 1730 Rhode Island Avenue, N.W., Suite 200, Washington, D.C. 20036-3101.

**FEDERAL COMMUNICATIONS COMMISSION**

George R. Dillon  
Assistant Chief, Enforcement Bureau

---

<sup>16</sup> 47 U.S.C. § 504(a).

<sup>17</sup> See 47 C.F.R. § 1.1914.