

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

In the Matter of)	
)	
William Saunders owner of Gresham Communications, Inc.)	File No. EB-02-AT-326
)	
Owner of Antenna Structure located at 32° 52' 52" North Latitude by 80° 41' 24" West Longitude in Walterboro, South Carolina)	NAL/Acct. No. 200332480005
)	FRN 0007-7826-38

FORFEITURE ORDER

Adopted: December 2, 2004

Released: December 6, 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 William Saunders (“Mr. Saunders”) owner of Gresham Communications, Inc. (“Gresham”) ¹ for willful violation of Section 17.51 of the Rules, ² and cancel the proposed monetary forfeiture in the amount of three thousand dollars (\$3,000) for willful and repeated violation of Section 17.4(a) of the Rules. ³ The noted violations involve Mr. Saunders’s failure to continuously exhibit all red obstruction lighting on his tower from sunset to sunrise and his failure to register his antenna structure with the Commission.

2. On October 30, 2002, the Commission’s Atlanta, Georgia Field Office (“Atlanta Office”) issued a *Notice of Apparent Liability* (“*NAL*”) to Gresham for a forfeiture in the amount of thirteen thousand dollars (\$13,000). ⁴ Mr. Saunders filed a response to the *NAL* on December 20, 2002. ⁵

II. BACKGROUND

3. On April 26, 2000, during a routine inspection of an antenna structure believed to be located at 32° 52' 52" latitude, 80° 41' 24" longitude (Walterboro, South Carolina) owned by Mr.

¹ Gresham is the licensee of Station WPAL-FM, Ridgeville, South Carolina.

² 47 C.F.R. § 17.51.

³ 47 C.F.R. § 17.4(a).

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332480005 (Enf. Bur., Atlanta Office, released October 30, 2002).

⁵ The *NAL* was issued under the name Gresham Communications, Inc. Mr. Saunders’s December 20, 2002, response contained both his declaration of ownership of Gresham and of the instant antenna structure. Mr. Saunders responded as the antenna structure owner to the *NAL*.

Saunders, a Commission field agent from the Atlanta Office discovered that this antenna structure had no Antenna Structure Registration (“ASR”) number posted and was not lighted by a red beacon during evening hours. A subsequent search of the Commission’s ASR database revealed that the antenna structure was not registered with the Commission as required by the Rules. On May 5, 2000, the Atlanta Office issued a *Notice of Violation* (“NOV”) to Mr. Saunders, Gresham’s owner, for violating Sections 17.51 and 17.4(a) of the Rules. Mr. Saunders replied to the May 5, 2000, NOV by stating that the light outage had been repaired and by providing a copy of an application for registration of the antenna structure which he stated had been filed on June 19, 2000.⁶

4. In response to a complaint that the instant antenna structure had not been lighted in the evening for a period of two years, on September 18 and 19, 2002, the agent from the Atlanta Office re-inspected Mr. Saunders’s antenna structure. The red beacon light required for the structure was out on both September 18 and 19, 2002. During the agent’s inspection, she found no ASR number on the structure as required by the Rules. As a result of her observations, the agent checked the ASR database and discovered that the structure was not registered in Mr. Saunders’s name with the Commission as required by the Rules.⁷

5. On October 30, 2002, the Atlanta Office issued the subject *NAL* to Gresham citing apparent willful and repeated violations of Sections 17.51 and 17.4(a) of the Rules. In response to the *NAL*, Mr. Saunders does not dispute the violations, but includes copies of multiple applications for an ASR number for his antenna structure, and a copy of a July 25, 2000, Federal Aviation Administration (“FAA”) notification of receipt of Mr. Saunders’s Notice of Proposed Construction. Mr. Saunders states further that the lighting violation was corrected upon being informed of the outage, and that the lighting failure resulted from vandalism. Lastly, Mr. Saunders requests cancellation of the forfeiture asserting an inability to pay the forfeiture.

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”),⁸ Section 1.80 of the Rules,⁹ 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 Mr. Saunders’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.¹⁰

7. Section 17.51 of the Rules requires that all red obstruction lighting be exhibited from sunset to sunrise unless otherwise specified. On the basis of the FCC agent’s observations on September

⁶ Mr. Saunders’s antenna structure application of June 19, 2000 revealed that he did business under the name of Gresham Communications, Inc. and was ambiguous as to the owner of the instant structure.

⁷ The prior Commission data base for such antenna structures revealed that the instant antenna structure has been in place since 1975 and therefore required registration with the Commission by 1998.

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ 47 U.S.C. § 503(b)(2)(D).

18 and 19, 2002, and the admission in Mr. Saunders's response, we find that Mr. Saunders willfully violated Section 17.51 of the Rules. His remedial efforts to repair the tower lighting are insufficient to support a reduction of the forfeiture.¹¹ Moreover, Mr. Saunders's undocumented assertion that the lights were out due to vandalism, absent evidence of an inspection schedule, would not by itself mitigate the violation.¹² Accordingly, we find that Mr. Saunders's violation of Section 17.51 of the Rules was willful.¹³

8. Section 17.4(a) of the Rules provides that the owner of any proposed or existing antenna structure that requires notice of proposed construction to the FAA must register the structure with the Commission.¹⁴ Mr. Saunders, as the owner of the antenna structure, is ultimately responsible for its registration.¹⁵ However, after reviewing the record in this case, and Mr. Saunders's response, we conclude that the record does not support a conclusion that Mr. Saunders violated Section 17.4(a) of the Rules. Accordingly, we find that the monetary forfeiture for violation of Section 17.4(a) of the Rules should be cancelled.

9. Mr. Saunders's request for reduction of the forfeiture based on an inability to pay is not accompanied by his tax returns or other documentation. As stated in the *NAL*, the Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status.¹⁶ Any claim of inability to

¹¹ See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 7891 (2002), *forfeiture ordered*, 17 FCC Rcd 21866, 21875-76 (2002) (finding that a downward adjustment of an aggregate forfeiture was not warranted, where the carrier lacked an effective antenna compliance program at the time of the violations and only corrected such violations *after* the Commission brought them to its attention); and *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994) ("[C]orrective 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 In addition to his claim of vandalism, Mr. Saunders has offered no evidence indicating how frequently he checked the tower for deficiencies, or whether he made routine maintenance checks of the lighting at all. Thus, this situation is distinguishable from *Vernon Broadcasting, Inc.*, 60 RR 2d 1275 (1986) (violation arising from vandalism occurring between time of licensee's inspection and FCC's inspection found not willful where licensee provided evidence of regular inspection and site found to be compliant just prior to FCC inspection) and *Tidewater Communications, Inc.*, 18 FCC Rcd 5524 (Enf. Bur. 2003) (forfeiture cancelled when licensee established a routine inspection schedule and inspected shortly before the FCC inspection with no malfunctions observed), but in keeping with *Eure Family Ltd. Partnership*, 17 FCC Rcd 7042, 7045 (Enf. Bur. 2002); *review denied*, 17 FCC Rcd 21861 (2002) and *Culpepper Broadcasting Corp.*, 15 FCC Rcd 12594 (Enf. Bur. 2000).

¹³ 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).

¹⁴ Section 17.4 came into effect on July 1, 1996. Subsection 17.4(a)(2), the section applicable to the instant pre-existing structure, gave owners a grace period for registration until July 1, 1998.

¹⁵ See *L.T. Simes II and Raymond Simes*, 18 FCC Rcd 8977, 8980 (Enf. Bur. 2003) ("licensees are expected to become familiar with and comply with the Commission's rules") citing *Sitka Broadcasting Company, Inc.*, 70 FCC 2d 2375, 2378 (1979) ("Licensees are expected to know and comply with the Commission's rules, and will not be excused for violations thereof ...").

¹⁶ *NAL* at para. 13.

pay must specifically identify the basis for the claim by reference to the financial documentation submitted.¹⁷ Accordingly, we find that there is no basis to reduce the assessed forfeiture amount due to inability to pay, and thus, we are not persuaded by Mr. Saunders's financial hardship claim.¹⁸

10. We have examined Mr. Saunders'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 that a reduction of the forfeiture amount is warranted from thirteen thousand dollars (\$13,000) to ten thousand dollars (\$10,000).

IV. ORDERING CLAUSES

11. 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,¹⁹ Mr. Saunders **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willful violation of Section 17.51 of the Rules, and the \$3,000 forfeiture for violation of Section 17.4 of the Rules **IS CANCELLED**.

12. 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.²⁰ Payment may be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. 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 Milroom, 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. 20554.²¹

¹⁷ See *Policy Statement* at 17106; *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 ¶ 8 (1992) (finding that gross receipts are a "very useful yardstick" in analyzing a company's financial condition for forfeiture purposes).

¹⁸ See *Webnet Communications, Inc.*, 18 FCC Rcd 6870, 6878 (2003) (finding that the Rules require that any request to reduce or cancel a forfeiture based on an inability to pay claim include detailed and relevant financial documentation, that the carrier did not provide such documentation, and that therefore there was no basis to reduce the total forfeiture on such grounds); see also *Commonwealth License Subsidiary, LLC*, 18 FCC Rcd 20483, 20486 (Enf. Bur. 2003); *Andre Dominique Hunter*, 14 FCC Rcd 3958, 3959-60 ¶ 6 (CIB 1999).

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

²⁰ 47 U.S.C. § 504(a).

²¹ See 47 C.F.R. § 1.1914.

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to William Saunders, P.O. Drawer 11649, Columbia, SC 29211, and its Counsel, M. Scott Johnson, Esq. Gardner, Carton & Douglas, 1301 K Street, N.W., Suite 900, East Tower, Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau