

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

In the Matter of)	
)	
Lycom Communications, Inc.)	File No. EB-03-CF-484
Owner of Antenna Structure number 1242391)	
Near Louisa, Kentucky)	NAL/Acct. No. 200432340003
)	
)	FRN 0008-0624-14

FORFEITURE ORDER

Adopted: December 22, 2004

Released: December 28, 2004

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of three thousand dollars (\$3,000) to Lycom Communications, Inc. (“Lycom”), owner of Antenna Structure number 1242391, for willful and repeated violation of Section 17.4(a) of the Commission’s Rules (“Rules”).¹ The noted violation involves Lycom’s failure to register its antenna structure.

2. On February 27, 2004, the Commission’s Columbia, Maryland, Field Office (“Columbia Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Lycom for a forfeiture in the amount of \$3,000 to Lycom for willful and repeated violation of Section 17.4(a) of the Rules.² Lycom filed its response to the *NAL* on March 23, 2004.

II. BACKGROUND

3. On July 16, 2003, an agent from the Columbia Office inspected an antenna structure located near Louisa, Kentucky (“the Louisa tower”), at 38° 05’ 18” North Latitude, 82° 36’ 44” West Longitude. The Commission’s Antenna Structure Registration (“ASR”) data base showed that there was no registered antenna structure at that location. The agent determined through his investigation that Lycom owns the Louisa tower. The Commission’s “towpub” data base³ indicates that the Federal Aviation

¹ 47 C.F.R. § 17.4 (a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200432340003 (Enf. Bur., Columbia Office, released February 27, 2004).

³ The “towpub” data base contains information about antenna structures that were assigned painting and lighting requirements before the ASR requirement went into effect on July 1, 1996.

Administration (“FAA”) assigned painting and lighting requirements to the Louisa tower on June 10, 1966.⁴

4. On February 27, 2004, the Columbia Office issued a *NAL* for a forfeiture in the amount of \$3,000 to Lycom for willful and repeated violation of Section 17.4(a) of the Rules. In its response, Lycom admits that it did not register the Louisa tower but seeks cancellation of the proposed monetary forfeiture on the basis of the efforts of its contractor, Francis Technical Services (“Francis”), to register the antenna structure. Lycom also argues that it never intended to make use of the Louisa tower and would have dismantled it but for Francis’s request to use it.

5. The ASR data base indicates that Lycom registered the Louisa tower on March 8, 2004.

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”),⁵ Section 1.80 of the Rules,⁶ 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*”). Section 503(b) of the Act requires that the Commission, in examining Lycom’s response, 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.⁷

7. Section 17.4(a) of the Rules requires the owners of existing antenna structures that were assigned painting or lighting requirements before July 1, 1996, to register those antenna structures with the Commission no later than July 1, 1998.⁸ Lycom concedes that the Louisa tower was unregistered until March 8, 2004. We find that Lycom willfully⁹ and repeatedly¹⁰ violated Section 17.4(a) of the Rules by failing to register its antenna structure.

⁴ FAA Study CLE-OE-66-158.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ Lycom’s tower was assigned painting and lighting requirements before July 1, 1996, by FAA Study CLE-OE-66-158.

⁹ 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).

¹⁰ 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

8. Lycom argues that Francis's efforts to register the Louisa tower warrant cancellation of the proposed monetary forfeiture. No mitigation is warranted on that basis. Lycom did not engage Francis as its agent until after the FCC agent inspected the Louisa tower and informed Lycom that the tower was unregistered. As the Commission stated in *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."¹¹

9. Lycom's argument that it never intended to make use of the Louisa tower and, but for Francis's request to use the tower, would have dismantled it is not material. As owner of the Louisa tower, Lycom is responsible for it.

10. We have examined Lycom'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 Lycom willfully and repeatedly violated Section 17.4(a) of the Rules and that neither cancellation nor reduction of the proposed \$3,000 monetary forfeiture is warranted.

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,¹² Lycom **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand dollars (\$3,000) for failure to register its antenna structure, in willful and repeated violation of Section 17.4(a) of the Rules.

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.¹³ 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. 20554.¹⁴

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).

¹¹ 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).

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

¹³ 47 U.S.C. § 504(a).

¹⁴ 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 Lycom Communications, Inc., P.O. Box 1114, Louisa, Kentucky, and to its counsel, Ernest M. Pitt, Jr., Esq., Holbrook & Pitt, 200 Federal Building, 1500 Carter Avenue, Ashland, Kentucky 41101.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau