

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

In the Matter of)	
)	
Arcom Communications)	File Number: EB-05-SJ-005
Owner of Antenna Structure # 1249670)	NAL/Acct. No.: 200532680005
St. Croix, United States Virgin Islands)	FRN: 0010760965
)	

FORFEITURE ORDER

Adopted: December 19, 2005

Released: December 21, 2005

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of two thousand four hundred dollars (\$2,400) to Arcom Communications (“Arcom”), owner of antenna structure #1249670 located at or near geographical coordinates 17° 45' 17.88" N, 064° 47' 58.67" W at Blue Mountain, St. Croix, USVI, for willful and repeated violation of Section 17.4(a) of the Commission’s Rules (“Rules”).¹ The noted violation involves Arcom’s failure to register its antenna structure.

II. BACKGROUND

2. On May 5, 2004, in response to a complaint of interference on an unrelated case, an agent from the Commission’s San Juan Office of the Enforcement Bureau (“San Juan Office”) conducted an inspection at the Blue Mountain transmitter site. While there, the agent observed the digging of the foundation for an antenna structure. Although the agent was unaware of the future antenna structure’s ownership at that time, it was later determined that this foundation was being dug for Arcom.

3. On February 8, 2005, in response to a complaint that Arcom had constructed an antenna structure at the Blue Mountain site that was not registered or marked, the agent searched the Commission’s TOWAIR database, the database used to determine if registration of an antenna structure is required. The agent found that Arcom’s antenna structure at the Blue Mountain site required registration because of its proximity to the Henry E. Rohlsen International Airport² on the island of St. Croix, USVI. The agent also searched the Commission’s antenna structure registration (“ASR”) database and found that the antenna structure was not registered.

4. In a series of conversations and emails during the month of February 2005, the agent advised Arcom that the antenna structure should have been registered prior to construction because of its proximity to an airport and that it should contact the local Federal Aviation Administration (“FAA”) office. In response to a request by the agent for a valid FAA determination of no hazard, Arcom provided an FAA study that expired August 11, 2003. On July 13, 2005, Arcom notified the agent that it had received a valid FAA determination of no hazard that day and that the tower would be registered. Arcom did not register its antenna structure until August 10, 2005.

¹ 47 C.F.R. § 17.4(a).

² This airport was previously known as Alexander Hamilton International Airport.

5. On August 17, 2005, the San Juan Office issued a *Notice of Apparent Liability for Forfeiture* to Arcom in the amount of three thousand dollars (\$3,000) for the apparent willful and repeated violation of Section 17.4(a) of the Rules.³ On September 15, 2005, Arcom submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ 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) ("*Forfeiture Policy Statement*"). In examining Arcom'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 other such matters as justice may require.⁶

7. 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.⁷ Section 17.4(a)(1) of the Rules specifies that for a proposed antenna structure, the owner must register the structure prior to construction.⁸ Arcom's antenna structure requires registration with the Commission because of its proximity to an airport. Arcom began construction of the antenna structure sometime in May of 2004. Arcom did not register its antenna structure until August 10, 2005.

8. In its response, Arcom argues that the proposed forfeiture is barred by the one-year statute of limitations set forth in Section 503(b)(6) of the Act. Arcom admits that the initial violation occurred sometime around May 5, 2004, when Arcom failed to register its antenna structure prior to construction. It further claims that this was a one-time violation that can not be repeated. Thus, it asserts the *NAL* was released more than one year after May 5, 2004 on August 17, 2005, in violation of the one-year statute of limitations. Although Arcom is correct that the initial violation occurred when it failed to register its antenna structure prior to construction, it is incorrect that this violation ended on the day it began construction. Section 17.4(a) requires owners to register certain antenna structures. If an owner of a proposed structure fails to register its structure prior to construction, it has committed a violation of the Rules. However, initiating construction does not cancel the requirement that the structure be registered. Thus, each day that an owner fails to register its structure constitutes another day of violation.⁹

9. Arcom also argues that the forfeiture should be cancelled, because the Commission's registration requirements are confusing. Arcom claims that a sentence in a Public Notice issued by the Wireless Telecommunications Bureau, "The Antenna Structure Registration program allows the FCC to fulfill its statutory duty to require painting and lighting of antenna structures that may pose a hazard to air

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532680005 (Enf. Bur., San Juan Office, August 17, 2005) ("*NAL*").

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 C.F.R. § 17.4(a).

⁸ 47 C.F.R. § 17.4(a)(1).

⁹ We agree with Arcom that late registration of an antenna structure does not "cure" the violation. However, eventually registering an antenna structure does end a continuing violation.

navigation,”¹⁰ led it to believe that only towers that pose a hazard to air traffic are required to be registered. Arcom states that, because it obtained a no hazard determination from the FAA,¹¹ it thought it was not required to register its tower. Arcom failed to note that the *Public Notice* also clearly stated that it created a database at wireless.fcc.gov/antenna, which would allow owners to determine whether registration is required. If Arcom had searched the TOWAIR database on that webpage, it would have found that registration was required because the structure is located near an airport and fails the glide slope calculation. Moreover, Section 17.4 of the Rules states that all antenna structures that require notice of proposed construction to the FAA must be registered. Section 17.7 of the Rules states when notification to the FAA is required.¹² These Rules make no exceptions for owners that have been issued no hazard determination letters. Indeed, the *Public Notice* stated that an antenna structure cannot be registered unless it has been issued a determination of no hazard. Therefore, we do not find Arcom’s arguments persuasive.

10. In addition, Arcom argues that the Commission is equitably estopped from proceeding with the proposed forfeiture because an agent was aware of the tower on May 5, 2004 and only consulted the ASR database in February 2005. We disagree with Arcom’s interpretation of the facts and its assertion. An agent observed the digging of the foundation for the antenna structure on May 5, 2004 when he was investigating an unrelated matter. At that time, the agent had no reason to believe that a violation regarding the structure had occurred and had no information regarding ownership of the structure. Therefore, the agent did not research the antenna structure foundation. After receiving a complaint in February 2005, however, the agent inquired into the status of the antenna structure and eventually discovered a registration violation. Such action does not bar the Commission from enforcing its Rules.

11. Finally, if the Commission does not cancel the *NAL*, Arcom requests a full evidentiary hearing before an Administrative Law Judge, pursuant to Section 503(b)(3)(A) of the Act and Section 1.80(g) of the Rules. Section 503(b)(3)(A) of the Act¹³ states that “[a]t the discretion of the Commission, a forfeiture penalty may be determined against a person .. after notice and an opportunity for a hearing before the Commission or an administrative law judge...” Section 1.80(g) of the Rules¹⁴ states that procedures for hearings “will ordinarily be followed only when a hearing is being held for some reason other than the assessment of a forfeiture...” The Rule also states that “these procedures may be followed whenever the Commission, *in its discretion*, determines that they will better serve the ends of justice.” Accordingly, the “reference to a notice of opportunity for hearing mentioned in Section 1.80(g) of the Commission’s Rules is a discretionary provision available to the Commission that is not normally utilized when only monetary forfeiture matters are involved.”¹⁵ We conclude that an evidentiary hearing is not required in this case, which involves solely a monetary forfeiture. Arcom received notice regarding the legal and factual bases for the violation and proposed forfeiture in accord with the forfeiture provisions of the Act, and has been afforded an opportunity to respond and present exculpatory arguments and evidence.

¹⁰ *Wireless Telecommunications Bureau Announces 60-day Amnesty for Structures Identified in Initial Quarterly Audit of Antenna Structures*, 18 FCC Rcd 15340 (WTB, 2003) (“*Public Notice*”).

¹¹ It should be noted that this no hazard determination letter expired August 11, 2003, prior to when Arcom began construction. Thus, it is unreasonable for Arcom to conclude that its tower posed no hazard to aviation when it began construction.

¹² 47 C.F.R. § 17.7.

¹³ 47 U.S.C. § 503(b)(3)(A).

¹⁴ 47 C.F.R. § 1.80(g).

¹⁵ *Computer Data, Inc.*, Order, 9 FCC Rcd 263 (Field Operations Bur., 1994).

12. Based on the evidence before us, we find that Arcom willfully¹⁶ and repeatedly¹⁷ violated Section 17.4(a) of the Rules by failing to register its antenna structure.

13. Arcom requests a reduction of the forfeiture because it cooperated with the agent and its history of compliance with the Rules. Corrective action taken to come into compliance with the Rules and cooperation with agents is expected, and does not nullify or mitigate any prior forfeitures or violations.¹⁸ However, we have reviewed Arcom's record and conclude a reduction of the forfeiture to \$2,400 based on history of compliance is appropriate.

14. We have examined Arcom's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we reduce the forfeiture proposed for this violation to \$2,400, based on Arcom's history of compliance with the Rules.

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Arcom Communications **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two thousand four hundred dollars (\$2,400) for willfully and repeatedly violating Section 17.4(a) of the Rules.

16. 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.¹⁹ 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 Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.²⁰

¹⁶ 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).

¹⁷ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

¹⁸ See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

¹⁹ 47 U.S.C. § 504(a).

²⁰ See 47 C.F.R. § 1.1914.

17. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Arcom Communications at its record of address and to its attorney, Matthew J. Plache, Catalano & Plache, PLLC, 1054 31st Street, NW, Washington, DC 20007.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau