

**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

MEMORANDUM OPINION AND ORDER

Adopted: January 30, 2006

Released: February 2, 2006

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we grant in part and deny in part the petition for reconsideration filed by William Saunders, owner of Gresham Communications, Inc. (“Gresham”). Mr. Saunders seeks reconsideration of the *Forfeiture Order*¹ in which the Assistant Chief, Enforcement Bureau, found him liable for a monetary forfeiture in the amount of \$10,000 for willful violation of Section 17.51 of the Commission’s Rules.² The noted violation involves Mr. Saunders’ failure to continuously exhibit all red obstruction lighting on his antenna structure from sunset to sunrise.

II. BACKGROUND

2. 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. Saunders, a Commission field agent from the Atlanta, Georgia Field Office (“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, 2000.³

3. 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, an agent from the Atlanta Office re-inspected Mr. Saunders’ antenna structure. The red beacon light required for the structure was out on

¹ *William Saunders, Owner of Gresham Communications, Inc.*, 19 FCC Rcd 23566 (Enf. Bur. 2004).

² 47 C.F.R. § 17.51.

³ Mr. Saunders’ 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.

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' name with the Commission as required by the Rules.⁴

4. On October 30, 2002, the Commission's Atlanta Office issued a *Notice of Apparent Liability* ("NAL") to Gresham for a forfeiture in the amount of thirteen thousand dollars (\$13,000) for Gresham's willful and repeated violations of Sections 17.51 and 17.4(a) of the Rules by failing to continuously exhibit all red obstruction lighting on his tower from sunset to sunrise and failing to register his antenna structure with the Commission.⁵ Mr. Saunders filed a response to the NAL on December 23, 2002.⁶ After considering Mr. Saunders' response to the NAL, the Assistant Chief, Enforcement Bureau issued the subject *Forfeiture Order* on December 6, 2004, in which he cancelled the portion of the forfeiture attributable to the registration violation and imposed a \$10,000 forfeiture for Mr. Saunders' violation of Section 17.51 of the Rules. On January 5, 2005, Mr. Saunders filed a petition for reconsideration of the *Forfeiture Order*, which he supplemented on February 15, 2005.

III. DISCUSSION

5. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁷ Section 1.80 of the Rules,⁸ 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' petition for reconsideration, 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.⁹

A. Tower Lighting

6. Section 17.51 of the Rules requires that all red obstruction lighting be exhibited from sunset to sunrise unless otherwise specified. In his petition, Mr. Saunders acknowledges that the top beacon on his tower was not operating; he also opines, however, that he was not given consideration for the fact that the other two lights on the tower were operating. Mr. Saunders contends that the fact that the other beacons were operating reflects that there was adequate electricity and effort to comply with the Commission's rules.

⁴ 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.

⁵ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332480005 (Enf. Bur., Atlanta Office, released October 30, 2002).

⁶ The NAL was issued under the name Gresham Communications, Inc. Mr. Saunders' 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.

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

⁹ 47 U.S.C. § 503(b)(2)(D).

7. Section 17.51 of the Rules requires that *all* required lighting be exhibited on the tower from sunset to sunrise (emphasis added). The fact that one beacon was out establishes a violation of the rule. The fact that the two remaining beacons were lighted is not indicative of Mr. Saunders' efforts to comply with the rules, especially in light of the fact that the complaint that the Commission received alleged that the outage had spanned a period of two years. Mr. Saunders has not disproved this allegation.

8. Mr. Saunders also asserts that the *Forfeiture Order* does not grant any favorable consideration to his statement, made in response to the *NAL*, that the light outage was not due to a failure of maintenance but was a result of vandalism. Mr. Saunders provides a sworn declaration in support of this contention with his petition and urges that we take this into account as the reason for the light outage.

9. We do not find the reason given by Mr. Saunders to explain the light outage sufficient to warrant reconsideration of the *Forfeiture Order* in light of the complaint that the tower light was out for two years, and that our agent observed the outage on two consecutive days. Moreover, Section 17.47 of the Rules provides that the owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part:

(a)(1) [s]hall make an observation of the antenna structure's lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights, to insure that all such lights are functioning properly as required; or alternatively, (2) shall provide and properly maintain an automatic alarm system designed to detect any failure of such lights and to provide indication of such failure to the owner.¹⁰

Although Mr. Saunders has not been cited for a violation of Section 17.47 of the Rules, our investigation of Mr. Saunders' compliance efforts regarding the tower includes an analysis and discussion of which type of system Mr. Saunders had in place to make him aware of light outages and why that system did not make him aware of the subject light outage before he was informed by the Commission. With either system in place, the longest a light outage would go unnoticed would be 24 hours. As already noted, a Commission agent observed that the top beacon was out for two consecutive days. Accordingly, we do not believe that Mr. Saunders' compliance efforts warrant a reduction of the forfeiture.

B. Inability to Pay

10. Finally, Mr. Saunders claims an inability to pay the forfeiture and submits financial documentation including three years of joint federal income tax returns in support of his claim. Mr. Saunders also asserts that, because he alone owns the tower, his wife's income should not be included when determining his ability to pay. We do not agree. Because Mrs. Saunders' income is a contribution towards the household and sustenance of both Mr. and Mrs. Saunders, her income impacts Mr. Saunders' ability to pay the forfeiture; thus, it should be considered in an analysis of his ability to pay.

11. When considering an inability to pay claim, the Commission has determined that, in general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.¹¹ Because Mr. Saunders operates the tower as a sole proprietor, we have considered his personal tax returns in determining his ability to pay. After reviewing Mr. Saunders' claim and the supporting documentation,

¹⁰ 47 C.F.R. §§ 17.47(a)(1) and (2).

¹¹ *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992).

we believe that payment of the \$10,000 forfeiture would pose a financial hardship and conclude that a reduction of the proposed forfeiture amount to \$5,000 is appropriate, as it would represent an amount more consistent with Commission precedent.¹²

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act¹³ and Section 1.106 of the Rules, Mr. Saunders' petition for reconsideration is **GRANTED TO THE EXTENT DISCUSSED ABOVE** and **DENIED IN ALL OTHER RESPECTS**.

13. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁴ Mr. Saunders **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five thousand dollars (\$5,000) for willful violation of Section 17.51 of the Rules.

14. 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.¹⁵ 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 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, SW, Room 1A625, Washington, D.C. 20554.¹⁶

15. **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 his counsel, M. Scott Johnson, Esq., Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

¹² *Id.* at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Afton Communications Corp.*, 7 FCC Rcd 6741 (Com. Car. Bur. 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).

¹³ 47 U.S.C. § 405.

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

¹⁵ 47 U.S.C. § 504(a).

¹⁶ *See* 47 C.F.R. § 1.1914.

