

the light outage. On January 25, 2005, a Los Angeles agent conducted a follow-up inspection of the structure and confirmed that no lights were functioning on the structure.

3. On January 26, 2005, a Los Angeles agent contacted KSCI, Inc., and was advised that the structure had been sold to CRC in September, 2004. The agent contacted a CRC service representative and advised him that the lights were not functioning on antenna structure #1019247. Later on January 26, 2005, James Kay (“Kay”), the president of CRC, advised the agent that CRC would make any repairs that would be required.

4. On January 27, 2005, Kay informed the Los Angeles Office that a relay had burned out on the lighting system on antenna structure #1019247 but that the lighting system was now operational. Subsequent to Kay’s report that the lights were operational, however, the Los Angeles Office received a report that no tower lights were visible on the structure.

5. On February 10, 2005, a Los Angeles agent again contacted CRC and relayed the reports that the lights on antenna structure #1019247 were not operational and reminded CRC that lighting was required on the structure. Kay and the CRC service representative responded that CRC was purchasing all new lights to install on the structure.⁴ On February 17, 2005, a Los Angeles agent spoke to the CRC service representative who reported that the tower light’s electrical problem had been repaired, but that an alarm system for reporting light failures was not yet installed. The representative also told the agent that he was responsible for daily observations of the tower lights. On February 25, 2005, a Los Angeles agent made an observation of antenna structure #1019247 and found that the lighting on the structure was operational.

6. On May 3, 2005, a Los Angeles agent reviewed the Commission’s ASR database and found it continued to show that antenna structure #1019247 was registered to KSCI, Inc. On August 25, 2005, the Los Angeles Office sent a Letter of Inquiry (“LOI”) to CRC, which requested confirmation of CRC’s continued ownership of antenna structure #1019247. The LOI also requested information concerning whether CRC was aware of the requirements of Sections 17.47, 17.48, 17.49 and 17.57 of the Rules; when CRC became aware of these requirements; and what efforts CRC had taken to maintain compliance with these requirements.

7. On September 14, 2005, CRC replied to the LOI. In its reply, CRC confirmed that it acquired antenna structure #1019247 in August of 2004, and that it was still the owner of the structure. CRC also acknowledged that it had not yet notified the Commission of the change in ownership of the structure. CRC stated that it had “purchased the tower with the understanding from the previous owner that it was in full compliance with all applicable regulatory requirements.” CRC also stated that it was generally aware of the Commission’s tower regulations. CRC acknowledged that it was not aware of the light outages on antenna structure #1019247 until notified by the Los Angeles Office in January, 2005. CRC explained the lighting problem as being caused by a power line surge, one that is a recurring problem at the site. CRC also stated that it had ordered a new beacon lighting system with automated monitoring capabilities, but provided no response regarding any other efforts to comply with Section 17.47, which requires either daily observations of the lighting system by the antenna structure owner or an automatic alarm system designed to detect and indicate any failure of the lighting system. CRC also failed to explain its efforts to comply with Section 17.48, which requires notification to the FAA of failures and repairs; or Section 17.49, which requires detailed records be kept of lighting failures, adjustments, repairs and all FAA notifications.

8. On September 26, 2005, CRC filed an application to notify the Commission of the ownership transfer of the antenna structure from KSCI, Inc. to CRC.⁵ On September 29, 2005, CRC sent

⁴ The agent also contacted the FAA’s Hawthorne Automated Flight Service Station and reported the outage.

⁵ See Application No. A0467617, filed September 26, 2005. The Commission granted the application and updated the ownership information on December 30, 2005.

a supplemental reply to the LOI stating that a new lighting system and alarm system had been purchased and would soon be installed on antenna structure #1019247.

9. On January 19, 2006, the Los Angeles Office issued a *NAL* in the amount of \$13,000 to CRC.⁶ CRC filed a response to the *NAL* on February 21, 2006 (“*Response*”). In the *NAL*, the Los Angeles Office found that CRC apparently willfully and repeatedly violated Section 303(q) of the Act⁷ and Sections 17.23, 17.47, 17.48, 17.49, and 17.57 of the Rules⁸ by failing to comply with the antenna structure registration (“ASR”) lighting, monitoring, record keeping, and notification requirements specified for antenna structure #1019247. In its *Response*, CRC argues that antenna structure #1019247 is not more than 200 feet in height, and that, therefore, no rule violations took place, that CRC’s failure to immediately update the ASR for antenna structure #1019247 did not delay the Los Angeles Office in contacting CRC, that CRC fully cooperated with the Los Angeles Office in determining the reasons for the failures of the lighting on antenna structure #1019247, and that CRC has a history of compliance with the Commission’s Rules.

III. DISCUSSION

10. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁹ Section 1.80 of the Rules,¹⁰ 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 CRC’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.¹¹

11. Section 303(q) of the Act states that antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission.¹² Section 17.21(a) of the Rules states antenna structures shall be painted and lighted when they exceed 60.96 meters (200 feet) in height above the ground or they require special aeronautical study.¹³ According to its ASR, antenna structure #1019247 is 62.1 meters in height and is assigned painting and lighting specifications.

12. Section 17.23 of the rules requires that registered antenna structures conform to the mandatory FAA painting and lighting recommendations set forth on the FAA Notice issued to the structure owner.¹⁴ The FAA Notice for antenna structure #1019247 requires that the structure be painted and have

⁶ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200632900007 (Enf. Bur., Western Region, Los Angeles Office, released January 19, 2006).

⁷ 47 U.S.C. § 303(q).

⁸ 47 C.F.R. §§ 17.23, 17.47, 17.48, 17.49 and 17.57.

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. § 1.80.

¹¹ 47 U.S.C. § 503(b)(2)(D).

¹² Section 303(q) of the Act gives the Commission authority to regulate certain antenna structures if and when such structures constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation. 47 U.S.C. § 303(q).

¹³ 47 C.F.R. § 17.21(a). See *Max Media of Montana, LLC*, 18 FCC Rcd 21375 (2003).

¹⁴ 47 C.F.R. § 17.23.

obstruction lighting consisting of at least one flashing red beacon on top and two steady-burning side lights at the midpoint.¹⁵ On December 2, 2004, Los Angeles agent observed that the lighting on antenna structure #1019247 was not functioning.¹⁶ On January 25, 2005, a Los Angeles agent again observed that the lighting on the antenna structure was not functioning. Initial repairs were made by CRC after being notified by the Los Angeles Office on January 26, 2005. Shortly thereafter, the Los Angeles Office received reports that the lights had again failed. These reports were confirmed by CRC's field service representative on February 10, 2005, and by CRC, in its response to the Los Angeles LOI, when it explained the lighting problem as being caused by a recurring power line problem at the site. In its *Response*, CRC does not deny that lights on antenna structure #1019247 were not functioning on the dates listed above.

13. Section 17.47(a)(1) of the Rules requires the owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications to make an observation of the antenna structure's lights at least once every 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights.¹⁷ Alternatively, Section 17.47(a)(2) of the Rules requires antenna structure owners to 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.¹⁸ CRC acknowledged that it first became aware of the lighting failures on antenna structure #1019247 when it was contacted by a Los Angeles agent in January, 2005. On February 17, 2005, CRC's service company representative reported to a Los Angeles agent that an alarm system for reporting light failures was not yet installed and that he was responsible for daily observations of the tower lights. On September 29, 2005, CRC reported to the Los Angeles Office that it had finally purchased a lighting system and an alarm system and that they would both soon be installed. In its *Response*, however, CRC does not deny that it failed to install a properly functioning alarm system or make daily observations of the lights on antenna structure #1019247 on the dates listed above.

14. Section 17.48 of the Rules requires the owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications to report immediately by telephone or telegraph to the nearest Flight Service Station or office of the FAA any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes.¹⁹ After observing that the lighting on antenna structure #1019247 was not functioning on December 2, 2004, a Los Angeles agent informed the FAA. After the subsequent light outages on the antenna structure, the Los Angeles agent, on February 10, 2005, again had to notify the FAA of the light outages. In the LOI, the Los Angeles Office specifically requested statements and supporting documentation regarding CRC's efforts to comply with Section 17.48. In response to the LOI, CRC provided no statements or other evidence that it ever notified the FAA of completed repairs, or of the additional extinguishment; only that it is generally aware of the Commission's tower regulations. In its *Response*, CRC does not deny that it failed to notify the FAA within 30 minutes of the failure of the obstruction lighting on CRC's antenna structure.

15. Section 17.49 of the Commission's Rules requires the owner of each antenna structure

¹⁵ Per FAA Circular Number 70/7460-1J, Chapters 3, 4, 5, 13.

¹⁶ Under Section 503(b)(6) of the Act, 47 U.S.C. §503(b)(6), we may only propose forfeitures to non-licensees for apparent violations that occurred within one year of the date of the *NAL*. However, Section 503(b) does not bar us from assessing whether CRC's conduct prior to that time period apparently violated the Act in determining the appropriate forfeiture amount for those violations that occurred within the one-year statute of limitations. *Inphonic, Inc.*, 2005 WL 1750418 (FCC 05-145, released July 25, 2005) at ¶ 24.

¹⁷ 47 C.F.R. § 17.47(a)(1).

¹⁸ 47 C.F.R. § 17.47(a)(2).

¹⁹ 47 C.F.R. § 17.48.

which is registered with the Commission and has been assigned lighting specifications to maintain a record of any observed or otherwise known extinguishment or improper functioning of a structure light and include information concerning the date, time and nature of the extinguishment or improper functioning; the date and time of FAA notification; and the date, time and nature of adjustments, repairs, or replacements made.²⁰ The Los Angeles Office's LOI specifically requested statements and supporting documentation regarding the CRC's efforts to comply with Section 17.49, but no such evidence was included in CRC's reply only CRC's statement that it is generally aware of the Commission's tower regulations. In its *Response*, CRC does not deny that it failed maintain the records required by Section 17.49 of the Rules.

16. Section 17.57 of the Commission's Rules requires that the owner of an antenna structure for which an Antenna Structure Registration Number has been obtained must immediately notify the Commission upon any change in structure height or change in ownership information.²¹ CRC acknowledged that it purchased the tower in approximately August of 2004, but, despite two notifications from the Los Angeles Office, CRC did not file an application to notify the Commission of the ownership transfer until September 26, 2005.²² Although CRC eventually filed an application, as required by Section 17.57 of the Rules, it did so only after repeated notifications from the Los Angeles Office. In its *Response*, CRC does not deny failing to immediately notify the Commission upon any change in ownership information in the ASR for antenna structure #1019247.

17. CRC argues in its *Response* that none of the rules listed above apply to antenna structure #1019247 because the antenna structure is not more than 200 feet in height.²³ CRC alleges that Section 17.4(a) of the Rules "requires the registration only for a "structure that requires notice of proposed construction to the Federal Aviation Administration, . . . which generally means a tower more than 200 feet above ground level."²⁴ We disagree. Section 17.21(a) of the Rules states that "[a]ntenna structures shall be painted and lighted when . . . [t]hey exceed 60.96 meters (200 feet) in height above the ground **or** they require special aeronautical study (emphasis added)."²⁵ Section 17.23 of the rules requires that "each new or altered antenna structure to be registered on or after January 1, 1996 must conform to the FAA's painting and lighting recommendations set forth on the FAA determination of 'no hazard' as referenced in the following FAA Advisory Circulars: AC 70/7460-1J, 'Obstruction Marking and Lighting,' effective January 1, 1996, and AC 150/5345-43E, 'Specification for Obstruction Lighting Equipment,' dated October 19, 1995."²⁶ The original registrant for antenna structure #1019247, KSCI, Inc., filed an application to register the structure on April 22, 1997. In this application, KSCI, Inc., stated that the structure had an overall height above ground level, including appurtenances, of 62.1 meters. As part of the registration application, KSCI, Inc., included the FAA's determination of "no hazard" for the antenna structure, FAA Study Number 97-AWP-0713-OE, which was issued on March 25, 1997. As detailed on the ASR for structure #1019247, FAA Study Number 97-AWP-0713-OE requires that antenna structure #1019247 have painting and lighting in accordance with Chapters 3, 4, 5 and 13 of FAA Circular 70/7460-1J.²⁷

²⁰ 47 C.F.R. § 17.49.

²¹ 47 C.F.R. § 17.57.

²² See Application No. A0467617, filed September 26, 2005. The Commission granted the application and updated the ownership information on December 30, 2005.

²³ CRC attaches an engineering drawing for the structure to demonstrate its argument. *Response* at Exhibit A.

²⁴ *Response* at 3.

²⁵ 47 C.F.R. § 17.21(a). We note that in its *Response*, CRC neglected to include the phrase "or when they require special aeronautical study" when quoting Section 17.21(a). *Response* at 3.

²⁶ 47 C.F.R. § 17.23.

Specifically, the structure is required to be painted and have obstruction lighting consisting of at least one flashing red beacon on top and two steady-burning sidelights on opposite sides at the midpoint.²⁸ We find that CRC violated Section 17.23 by failing to ensure that antenna structure #1019247 conform to the FAA's painting and lighting recommendations set forth on the FAA determination of "no hazard" for the structure, FAA Study Number 97-AWP-0713-OE.

18. Even if CRC believes the ASR for antenna structure #1019247 should be modified, it must first engage in the process of pursuing such a modification.²⁹ We have no evidence that CRC has even attempted to file a request with the FAA to modify the painting and lighting requirements for antenna structure #1019247. Consequently, CRC must comply with the current ASR requirements imposed on the antenna structure.

19. Because we find that antenna structure #1019247 is required to be painted and lighted in accordance with the relevant FAA Notice, we find that CRC's argument that none of the Rules listed above apply to antenna structure #1019247 is moot. Contrary to its assertions, CRC's compliance with these Rules is not voluntary. We are particularly troubled by CRC's assertion that "CRC was not the owner of a registered structure until it voluntarily submitted a notification of change of ownership in September of 2005, well after the alleged violations." CRC stated in its response to the Los Angeles Office LOI that it acquired antenna structure #1019247 in August 2004. CRC's failure to timely update the ownership information in the ASR for antenna structure #1019247 does not shield it from liability for its violations of the Rules beginning in August 2004, when it acquired the antenna structure.

20. CRC also argues that even if it did violate any of the Rules listed above, the proposed forfeiture amount should be cancelled or reduced. Specifically, CRC states that its failure to timely update the ownership information for antenna structure #1019247 did not delay the Los Angeles Office in contacting CRC about the light outage on the structure. We disagree. In fact, CRC's failure to update the ownership information required the Los Angeles Office to first contact the former owner of the structure in order to determine who was responsible for the structure. Even after the Los Angeles Office contacted CRC, eight months passed before CRC finally updated the ownership information for the structure, despite repeated inquiries from the Los Angeles Office.

21. Additionally, CRC argues that its cooperation with the Commission during the investigation warrants a reduction or cancellation of the proposed forfeiture. We disagree. The Commission has stated in the past that an entity is expected to correct errors when they are brought to the entity's attention and that such correction is not grounds for a downward adjustment in a forfeiture.³⁰

22. Finally, CRC argues that the proposed forfeiture should be reduced because "CRC has no prior history of noncompliance with applicable FCC regulations." The president of CRC, James Kay, however, does have a history of noncompliance. In a prior proceeding, the Commission found that Kay deliberately withheld material information from the Commission, in violation of Section 1.17 of the Rules,³¹ and issued a forfeiture of \$10,000 to Kay.³² Because of Kay's previous noncompliance, we are

²⁷ The ASR for antenna structure #1019247 also states that the structure is 62.1 meters in height.

²⁸ See FAA Circular Number 70/7460-1J, Chapters 3, 4, 5, 13.

²⁹ See <http://wireless.fcc.gov/antenna/index.htm>.

³⁰ *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871-76 (2002).

³¹ 47 C.F.R. § 1.17.

³² *James Kay*, 17 FCC Rcd 1834 (2002) *aff'd sub nom. Kay v. Federal Communications Commission*, 396 F.3d 1184 (D.C. Cir. 2005) *cert. denied*, 126 S.Ct. 176 (2005).

unable to find that CRC has a history of compliance with the Rules.

23. We have examined CRC'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 conclude that CRC willfully and repeatedly violated Section 303(q) of the Act,³³ and Sections 17.23, 17.47, 17.48, 17.49, and 17.57 of the Rules.³⁴ Considering the entire record and the factors listed above, we find that neither reduction nor cancellation of the proposed \$13,000 forfeiture is warranted.

IV. ORDERING CLAUSES

24. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Communications Relay Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$13,000 for willfully and repeatedly violating Section 303(q) of the Act Sections 17.23, 17.47, 17.48, 17.49, and 17.57 of the Rules.³⁵

25. 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.³⁶ 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, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.³⁷

26. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Communications Relay Corporation at its address of record, and Robert J. Keller, Esquire, its counsel of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

³³ 47 U.S.C. § 303(q).

³⁴ 47 C.F.R. §§ 17.23, 17.47, 17.48, 17.49 and 17.57.

³⁵ 47 U.S.C. §§ 303(q), 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 17.23, 17.47, 17.48, 17.49, 17.57.

³⁶ 47 U.S.C. § 504(a).

³⁷ See 47 C.F.R. § 1.1914.