

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

In the Matter of)	
)	
Western Slope Communications, LLC)	File Number: EB-07-DV-196
)	
Antenna Structure Registrant)	NAL/Acct. No.: 200832800001
Rifle, CO)	FRN: 0004259552
ASR # 1023390)	

FORFEITURE ORDER

Adopted: May 28, 2008

Released: May 30, 2008

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“*Order*”), we issue a monetary forfeiture in the amount of thirteen thousand dollars (\$13,000) to Western Slope Communications, LLC, (“Western Slope”) owner of antenna structure number 1023390, near Rifle, Colorado, for repeated violation of Section 303(q) of the Communications Act of 1934, as amended, (“Act”),¹ and Sections 17.51(a), 17.47(a), 17.48, and 17.57 of the Commission’s Rules (“Rules”).² On December 7, 2007, the Enforcement Bureau’s Denver Office issued a Notice of Apparent Liability for Forfeiture (“*NAL*”) to Western Slope in the amount of \$13,000 after determining that Western Slope apparently repeatedly failed to comply with the antenna structure registration (“ASR”) lighting, monitoring, record keeping, and notification requirements specified for antenna structure number 1023390. In this *Order*, we consider Western Slope’s arguments that the proposed forfeiture would pose an undue hardship, that it made a good faith effort to meet its regulatory obligations, that it corrected the violation once notified of it, and that it has a history of compliance with the Commission’s Rules.

II. BACKGROUND

2. Antenna structure number 1023390 is an antenna tower of 84.0 meters (275.6 feet) in height above ground. According to the antenna structure registration (“ASR”) for antenna structure number 1023390, the structure is required to be painted and lit in accordance with specific Chapters of the FAA Advisory Circular for Obstruction Marking and Lighting.³ Specifically, the structure is required to be painted,⁴ and have, at its top, a flashing beacon equipped with two lamps and red filters, along with at least two lamps enclosed in red obstruction light globes⁵ located on a level at approximately one-half the

¹ 47 U.S.C. § 303(q).

² 47 C.F.R. §§ 17.47(a), 17.48, 17.51(a), 17.57.

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

⁴ FAA Circular Number 70/7460-1J, Chapters 3 and 13.

⁵ FAA Circular Number 70/7460-1J, Chapters 4, 5 and 13.

overall height of the tower.⁶ The lights on antenna structure number 1023390 are required to burn continuously or be controlled by a light sensitive device.⁷

3. On April 23, 2007, at 6:39 p.m., an email was received by the Enforcement Bureau's Denver office from a police officer with the city of Rifle, Colorado. The email stated that there was a concerned citizen in Rifle, Colorado, who had observed a 400 foot tower near the citizen's home with the top beacon "out for the last two weeks." A Denver agent determined the antenna structure to have registration number 1023390, registered to David L. Johnson ("Johnson").

4. On April 24, 2007, the Denver agent contacted the Federal Aviation Administration ("FAA") Flight Service Station to determine if the tower light outage had been reported. The FAA reported that they had not received any information concerning a tower light outage and advised that a Notice to Airmen ("NOTAM") would be issued concerning the reported tower light outage for antenna structure number 1023390. The FAA Flight Service Station then issued NOTAM number RIL 04/011.

5. On May 9, 2007 the FCC agent contacted the Rifle Police Department about their observations of the tower lights associated with antenna registration number 1023390. An officer contacted the Denver agent and reported that he had received information indicating that the "top beacon was still out." The Denver agent later confirmed that the outage was observed, by a Rifle officer, during the night of May 5, 2007.

6. On May 9, 2007, at approximately 8:25 a.m., MDT, the Denver agent again reported the tower outage to the FAA. The FAA promptly issued a NOTAM for antenna structure number 1023390, assigning it reference number RIL 05/004. No other NOTAM had been issued since the Denver agent first called to report the tower light outage on April 24, 2007.

7. On May 15, 2007, Denver agents made several observations of the tower structure with registration number 1023390. At approximately 9:00 p.m., MDT, they observed that all of the tower's obstruction lighting, top beacon and side lights, had failed.⁸

8. On May 16, 2007, Denver agents went to the main studio of KRGS, an AM station broadcasting from antenna structure number 1023390, at 751 Horizon Court, Suite 200, Grand Junction, Colorado, to examine any records concerning tower light outages.⁹ Agents conducted a review of KRGS(AM)'s station records with the general manager and contract engineer. The general manager provided the KRGS(AM) tower light logs for inspection. The last entry was from November 20, 2006. The agents found no entries in the logs concerning any tower outages for the month of April 2007 up to the day of their visit on May 16, 2007. The general manager said that he was not aware of any lighting problems at the tower site prior to the agents' inspection.

9. Still on the afternoon of May 16, 2007, Denver agents drove to the tower site in Rifle, Colorado, and met with the KRGS(AM) general manager and contract engineer. When the remote automatic tower light indicator system was checked, it reported no current for the tower light system while at the transmitter site. Apparently, this remote system, designed to register any tower lighting

⁶ FAA Circular Number 70/7460-1J, Appendix 1, Figure 11.

⁷ FAA Circular Number 70/7460-1J, Chapters 5 and 13.

⁸ According to the U.S. Naval Observatory, sunset in Rifle, Colorado, occurred at 8:18 p.m., MDT, on May 15, 2007.

⁹ Western Slope is the licensee of KRGS(AM), Rifle, Colorado.

failures, had not been notifying Western Slope. The contract engineer determined the comprehensive lighting outage to be a result of a faulty A/C neutral wire. While agents were on-site, the contract engineer repaired the damaged wire. When the contract engineer covered the photocell, all of the lights, top beacon and mid-level side lights, were observed by the agents to be working properly. Finally, the contract engineer's maintenance logs, found at the transmitter site, showed the last entry reflecting an on-scene tower light inspection by him as being conducted on August 1, 2006.

10. On November 14, 2007, further investigation by the Denver Office revealed that Johnson was not the current owner of antenna structure number 1023390, despite the fact that Johnson was listed as the owner in the Commission's ASR database. Johnson was the former general manager for KRGS(AM) and was no longer associated with the station. A Denver agent contacted the KRGS(AM) general manager to determine the current tower owner. The general manager was uncertain of the formal name for the structure's ownership.

11. On November 16, 2007, the regional manager for Western Slope contacted the Denver agent and informed him that Western Slope Communications had purchased the land and antenna structure number 1023390 from Johnson in 1996.

12. On November 20, 2007, the Denver agent queried the FCC's ASR database, finding that a change in ownership had been completed. The data found for antenna structure registration number 1023390 reflected the owner to be Western Slope Communications, LLC. The reference copy of the "FCC Application for Antenna Structure Registration" (FCC 854 Main Form), file number A0569481, showed that an application was made on November 19, 2007, to change the ownership.

13. On December 7, 2007, the Denver Office issued a *NAL* in the amount of \$13,000 to Western Slope.¹⁰ In the *NAL*, the Denver Office found that Western Slope apparently repeatedly violated Section 303(q) of the Communications Act of 1934, as amended, ("Act"),¹¹ and Section 17.51(a) of the Rules¹² by failing to exhibit the structure's red obstruction lighting from sunset to sunrise; and by failing to make observations 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, a violation of Section 17.47(a) of the Rules.¹³ The Denver Office found that Western Slope's failure to make the required observations of the lighting on the antenna structure resulted in its failure to notify the nearest Flight Service Station of the Federal Aviation Administration ("FAA") of the outage of the flashing obstruction lights, a violation of Section 17.48 of the Rules.¹⁴ The Denver Office also found that Western Slope apparently repeatedly failed to immediately notify the Commission of a change in ownership information for antenna structure number 1023390, a violation of section 17.57.¹⁵ Western Slope filed a response ("*Response*") on January 7, 2008, arguing that the proposed forfeiture would pose an undue hardship, that it made a good faith effort to meet its regulatory obligations, that it corrected the violation once notified of it, and that it has a history of compliance with the Commission's Rules. As to its failure

¹⁰ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832800001 (Enf. Bur., Western Region, Denver Office, released December 7, 2007).

¹¹ 47 U.S.C. § 303(q).

¹² 47 C.F.R. § 17.51(a).

¹³ 47 C.F.R. § 17.47(a).

¹⁴ 47 C.F.R. § 17.48.

¹⁵ 47 C.F.R. § 17.57.

to immediately notify the Commission of a change in ownership if antenna structure number 1023390, Western Slope argues that its violation resulted in no harm and that the forfeiture should be cancelled in favor of an admonishment.

III. DISCUSSION

14. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,¹⁶ Section 1.80 of the Rules,¹⁷ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.¹⁸ In examining the *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.¹⁹

15. 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.²⁰ Section 17.51 of the Rules states that all red obstruction lighting shall be exhibited from sunset to sunrise unless otherwise specified.²¹ According to its ASR record, antenna structure number 1023390 is required to have, at its top, a flashing beacon equipped with two lamps and red filters, along with at least two lamps enclosed in red obstruction light globes located on a level at approximately one-half the overall height of the tower.²² Section 17.47(a) requires that the owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications shall 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.²³ Section 17.48 of the Rules requires the owner of an antenna structure 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 or any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes.²⁴ Section 17.57 of the Rules requires the owner of an antenna structure to immediately notify the Commission, using FCC Form 854, upon any change in structure height or change in ownership information.²⁵

16. On April 24, 2007, and May 9, 2007, Denver agents, in response to lighting outages on antenna structure number 1023390 reported by Rifle, Colorado police officers, contacted the FAA Flight

¹⁶ 47 U.S.C. § 503(b).

¹⁷ 47 C.F.R. § 1.80.

¹⁸ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁹ 47 U.S.C. § 503(b)(2)(E).

²⁰ 47 U.S.C. § 303(q).

²¹ 47 C.F.R. § 17.51(a).

²² FAA Circular Number 70/7460-1J, Chapters 4 and 5.

²³ 47 C.F.R. § 17.47(a).

²⁴ 47 C.F.R. § 17.48.

²⁵ 47 C.F.R. § 17.57.

Service Station and found that Western Slope had not reported the outages, thus requiring the Denver agents to request the issuance of NOTAMs.²⁶ On May 15, 2007, Denver agents made several observations of antenna structure number 1023390 and found, at approximately 9:00 p.m., MDT, that all of the tower's obstruction lighting, top beacon and side lights, had failed. A review of the tower light observation logs for antenna structure number 1023390 revealed that the last tower observation documented in writing occurred on November 20, 2006. No entries were found in the logs indicating any tower light outages from April 2007 up to the day of the agents' May 16, 2007, inspection. The general manager acknowledged to the Denver agents that he was unaware of any lighting problems at the tower site prior to the agents' inspection. An inspection of the tower site revealed that the tower's remote automatic tower light indicator system failed to report any current for the tower's lighting while at the transmitter site and that the remote system, designed to register lighting failures, had failed to notify Western Slope.

17. On November 14, 2007, further investigation by the Denver Office revealed that Johnson was not the current tower owner despite the fact that Johnson was listed as the owner in the Commission's ASR database. On November 16, 2007, the Regional Manager for Western Slope confirmed to the Denver agent that Western Slope had purchased the land and antenna structure number 1023390 from Johnson in 1996.

18. In its *Response*, Western Slope does not dispute the facts, as detailed above. Western Slope first argues that the proposed forfeiture should be reduced or eliminated because it would pose an undue hardship on its station KRGS(AM), Rifle, Colorado, which broadcasts from antenna structure number 1023390, as the forfeiture amount is approximately equal to KRGS(AM)'s projected annual gross revenue. To support this assertion, Western Slope included in its *Response* the "balance sheet" for KRGS(AM), for the first ten months of 2007. We note that in the *NAL*, the Denver Office instructed Western Slope, if it sought cancellation or reduction of the forfeiture based on inability to pay, to supply:

(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. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.²⁷

Western Slope provided data related only to KRGS(AM) and did not provide sufficient information related to Western Slope Communications, LLC, the owner of the antenna structure that is the subject of the *NAL*. Moreover, Western Slope provided data that covers only ten months in duration, not the required three years of data. Consequently, we find Western Slope provided insufficient documentation, to support its request for cancellation or reduction of the forfeiture based on its inability to pay.²⁸

19. Western Slope also argues that it made good faith efforts to comply with the Rules, by fitting antenna structure number 1023390 with "modern remote sensing equipment to notify of lighting outages." As detailed above, the remote sensing equipment was apparently installed by Western Slope to

²⁶ The Denver agents' requests to issue NOTAMs were done to protect the public safety, given that the FAA-mandated lighting on the structure was not functioning and the antenna structure was therefore a potential hazard to air navigation. We caution antenna structure owners, however, that it is incumbent upon them, and not a third party, to notify the FAA of any extinguishments or malfunctioning lights.

²⁷ *NAL* at para 23.

²⁸ See *SM Radio, Inc.*, 23 FCC Rcd 2429 (2008) (if a licensee argues an inability to pay, it must provide evidence that it cannot pay the forfeiture as assessed, despite all of the financial resources available to it).

comply with its obligations under Section 17.47(a) of the Rules, which requires that 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 each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure. Unfortunately, the equipment failed, and Western Slope failed repeatedly over the course of nearly one month to notice the lighting failure. Thus, while the installation of the equipment shows an effort to comply with Section 17.47(a), as required, the equipment's inoperability, and Western Slope's failure to notice the equipment's inoperability, resulted in Western Slope's failure to exhibit the obstruction lighting on structure number 1023390 for over three weeks. Had Western Slope known of the failure of its monitoring equipment prior to the inspection by the Denver agents, and had it taken steps to correct equipment malfunctions prior to that inspection, we would be willing to consider its good faith argument.²⁹ Because Western Slope made no efforts to repair the equipment prior to being notified of its failure by the Denver Office, it does not qualify for a good faith reduction.

20. Western Slope also argues that the proposed forfeiture should be reduced or cancelled because it corrected the violations as soon as it was notified, and that it cooperated fully with Commission staff. Reduction is not warranted as the Commission expects antenna structure registrants to correct errors when they are brought to their attention.³⁰ Western Slope further argues that its station KRGS(AM), has a history of compliance with the Commission's Rules "under the current licensee." The *NAL*, in this case was issued to Western Slope, not KRGS(AM).³¹ Western Slope is commonly owned with WS Communications, LLC, which was assessed a \$4,000 forfeiture by the Enforcement Bureau in 2000, for willful and repeated violation of the Commission's public inspection file requirements found in Section 73.3526 of the Rules.³² Because of the relationship between and the common control of Western Slope and WS Communications, LLC, we find that reduction of the forfeiture based on a history of compliance is not warranted.³³

21. Western Slope also asserts that its failure to notify the Commission of the change in ownership of antenna structure number was an "inadvertent error" that had "no substantive effect" because although the person listed as the structure's owner was the former general manager of KRGS(AM), the agents contacted the current general manager of station, without delay. We find no merit in this argument. The agents contacted current KRGS(AM) personnel because they had already investigated Western Slope's other violations of the Commission's antenna structure rules, and were aware that KRGS(AM) broadcasts from antenna structure number 1023390. The Commission has emphasized in the past the importance of correct tower registrations in order to be able to contact the tower owner in case a problem arises.³⁴ Although Western Slope states that the former owner was still the correct contact person, he was no longer affiliated with Western Slope. Additionally, we are troubled by the fact that this violation continued for over 11 years, and was not corrected by Western Slope after the inspection by the Denver agents in May 2007. Six more months passed until the Denver agents contacted

²⁹ See *Radio One Licenses, Inc.*, 18 FCC Rcd 15964, 15965 (2003), *recon. denied*, 18 FCC Rcd 25481 (2003).

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

³¹ We note that our records show that KRGS(AM) received several oral warnings from FCC Denver Office agents during an inspection in 2004.

³² 47 C.F.R. § 73.3526. See *WS Communications*, 15 FCC Rcd 10384 (EB 2000).

³³ See *Hill Country Real Estate Development*, 18 FCC Rcd 21079 (EB 2003).

³⁴ See *American Tower Corporation*, 16, FCC Rcd 1282 (2001).

Western Slope to determine the correct owner of the structure, and only after that inquiry did Western Slope take action to comply with Section 17.57 of the Rules. Contrary to Western Slope's assertion, inadvertence for failure to notify the Commission of the ownership change of the structure does not excuse or mitigate its violation of the Rules.³⁵ Additionally, Western Slope's assertion that its violation of Section 17.57 resulted in no actual or potential harm is also unavailing, as it is well established that the absence of public harm is not considered a mitigating factor of a rule violation."³⁶

22. We have examined the *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 Western Slope repeatedly violated Section 303(q) of the Act, and Sections 17.51(a), 17.47(a), 17.48, and 17.57 of the Rules. Considering the entire record and the factors listed above, we find that no reduction of the proposed \$13,000 forfeiture is warranted.

IV. ORDERING CLAUSES

23. **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, Western Slope Communications, LLC, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$13,000 for repeatedly violating Section 303(q) of the Act, and Sections 17.51(a), 17.47(a), 17.48, and 17.57 of the Rules.³⁷

24. 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.³⁸ 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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Western Slope Communications, LLC, shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

³⁵ *Mercury Broadcasting Company*, 19 FCC Rcd 18909, 18911 (EB 2004). As the Commission has stated, "inadvertence . . . is at best ignorance of the law," and is not considered a basis for reduction of a forfeiture. *Southern California Broadcasting*, 6 FCC Rcd 4387, 4388 (1991).

³⁶ *Pacific Western Broadcasters, Inc.*, 50 FCC 2d 819 (1975). See also, *Auburn Broadcasters, Inc.*, 41 FCC 2d 462 (1973); *The McLendon Corp.*, 18 FCC 2d 224 (1969).

³⁷ 47 U.S.C. §§ 303(q), 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 17.47(a), 17.48, 17.51.

³⁸ 47 U.S.C. § 504(a).

25. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Western Slope Communications, LLC, at its address of record, and Frank R. Jazzo, its counsel of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau