

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

In the Matter of)	
)	File Number: EB-08-KC-0326
Ozark Media, Inc.)	
)	NAL/Acct. No.: 200932560001
Owner of Antenna Structure # 1248505)	
)	FRN: 0007515901
Clementine, MO)	

FORFEITURE ORDER

Adopted: December 11, 2008

Released: December 15, 2008

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 dollars (\$2,000) to Ozark Media, Inc. (“OMI”), owner of antenna structure bearing registration number 1248505, Clementine, Missouri, for repeated violation of Sections 17.47(a) of the Commission's Rules (“Rules”).¹ The noted violation involves OMI’s failure to make observations of the antenna structure’s lights at least once each 24 hours to ensure the proper functioning of the structure lights.

II. BACKGROUND

2. On October 9, 2008, in response to a complaint of a tower light outage, an agent from the Commission’s Kansas City Office of the Enforcement Bureau (“Kansas City Office”) determined that the structure in question was antenna structure number 1248505, which, according to the Antenna Structure Registration database, is owned by OMI. An agent from the Kansas City Office contacted OMI about the complaint and a representative from OMI stated that they were unaware of the outage. The agent contacted the Federal Aviation Administration (“FAA”) through its contractor, Lockheed Martin, to determine if a Notice to Airmen (“NOTAM”) report had been filed concerning the light outage and, when no existing report was found, the agent filed a NOTAM report with the FAA.

3. In two faxed statements between October 15 and 16, 2008, OMI provided information regarding the light outages, its light monitoring practices, and information regarding lack of logs and records for the Tower. OMI stated that it utilizes remote monitoring to check the status of the Tower’s lights, but admitted that it had not conducted any inspections of that system since it was constructed in September 2006. OMI stated that its employee first observed light outages in late March 2008, at which time the FAA was notified and a NOTAM was filed. A purchase receipt indicates OMI purchased replacement lamps for the Tower on April 4, 2008. According to its statements, OMI management thought that the lights for the Tower had been fixed in early April. From April until October, OMI station operators checked the Tower lights using the remote monitoring equipment during the day when the lighting was not in operation and logged that the lighting was normal based on these daytime observations. However, despite OMI’s management’s belief and the operator logs, previous attempts to schedule installation of the replacement bulbs in April 2008 were unsuccessful, and the Tower’s lights had been dark since late March 2008. After

¹ 47 C.F.R. § 17.47(a).

talking with the agent from the Kansas City Office, OMI changed its monitoring practices to check the lighting status when the lights were scheduled to be on and found the lighting in an alarm condition on October 10 – 16, 2008. OMI further stated that prior to October 9, 2008, they have no documentation to show exactly when light outages occurred or when the FAA had been contacted.

4. On October 17, 2008, OMI notified the Kansas City Office that the Tower's lighting had been repaired and that the FAA had been notified.

5. On October 31, 2008, the Commission's Kansas City Office of the Enforcement Bureau ("Kansas City Office") issued a *Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of \$2,000 to OMI.² OMI submitted a response to the NAL requesting cancellation of the forfeiture due to its inability to pay.

III. DISCUSSION

6. The proposed forfeiture amounts in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),³ Section 1.80 of the Rules,⁴ 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 OMI'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.⁵

7. Section 17.47(a) of the Rules states 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 of such lights, to insure that all such lights are functioning properly as required; or alternatively, 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. The Tower is 152.1 meters above ground in height and is required to be painted and lit.⁶ An automatic light indicator is installed for the Tower. OMI, however, failed to inspect the automatic light indicator since it had been installed in 2006.⁷ After OMI's management thought that the Tower lights had been repaired sometime in April 2008, OMI claims that its personnel observed the Tower light indicator once every 24 hours during daytime hours when the Tower lighting was not energized. Accordingly, the light indicator did not register a failure in the lighting, and the personnel logged the lighting status as normal based on the daytime observations. Despite these loggings, lighting on the Tower was inoperable from late March 2008 until October 17, 2008. OMI does not have any records to support exactly when the lighting became

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200932560001 (Enf. Bur., Kansas City Office, released October 31, 2008).

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(E).

⁶ Antenna structures are required to be painted and lighted when they exceed 60.96 meters in height above ground. *See* 47 C.F.R. § 17.21.

⁷ Antenna structure owners are required to inspect at intervals not to exceed 3 months all automatic or mechanical control devices, indicators, and alarm systems associated with the antenna structure lighting to insure that such apparatus is functioning properly. *See* 47 C.F.R. § 17.47(b).

inoperable, how that observation was made, or when the FAA had been notified.⁸ Once the FCC notified OMI of the ongoing outages on October 9, 2008 and the station personnel began monitoring at a time when the lighting was energized, the automatic maintained light indicator indicated an alarm. Thus, while OMI personnel made an observation of the Tower light indicator once every 24 hours, they failed to do so in a manner designed to insure that all such lights were functioning properly as required, because they failed to detect the light outage from late March 2008 until October 9, 2008. In response to the *NAL*, OMI does not dispute any of the findings in the *NAL*. Therefore, based on the evidence before us, we find that OMI repeatedly⁹ violated Section 17.47(a) of the Rules by failing to observe the Tower lighting at least once each 24 hours, at a minimum, between May 1 and October 9, 2008 at a time that would insure the proper operation of the antenna structure lighting.

8. In its response to the *NAL*, OMI requests that the forfeiture be canceled based on its inability to pay. The Commission has determined that, in general, an entity's gross revenues are the best indicator of its ability to pay a forfeiture.¹⁰ After reviewing OMI's financial documentation, we conclude that a reduction or cancellation of the forfeiture is not warranted.

9. We have examined OMI'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 OMI repeatedly violated Section 17.47(a) of the Rules. We find no basis for cancellation or reduction of the \$2,000 forfeiture proposed for this violation.

IV. ORDERING CLAUSES

10. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,¹¹ and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,¹² Ozark Media, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$2,000 for violation of Section 17.47(a) of the Rules.

11. 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*/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications

⁸ Antenna structure owners are required to maintain a record of any observed or otherwise known extinguishment or improper functioning of a structure light and include the nature of such extinguishment, date and time the extinguishment was observed or otherwise noted, and the date and time of FAA notification. *See* 47 C.F.R. § 17.49.

⁹ 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 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) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

¹⁰ *See PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

¹¹ 47 U.S.C. § 503(b).

¹² 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 17.47(a).

¹³ 47 U.S.C. § 504(a).

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. FCC Form 159 may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>. 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. OMI will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

5. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Ozark Media, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

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