

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

In the Matter of)	
)	
Forever of PA, Inc.)	File Number EB-06-BF-024
Antenna Structure Registrant)	
ASR # 1027115)	NAL/Acct. No. 200732280002
Hollidaysburg, PA)	
)	FRN 0006161855

FORFEITURE ORDER

Adopted: February 20, 2008

Released: February 21, 2008

By the Acting Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Forever of PA, Inc. (“Forever”) for willfully violating Sections 17.47, 17.48, and 17.51(a) of the Commission’s Rules (“Rules”)¹ by failing to comply with the antenna structure lighting, monitoring, and reporting requirements specified for antenna structure # 1027115.

II. BACKGROUND

2. On February 22, 2007, the Commission’s Buffalo Field Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of \$10,000 to Forever for failure to properly maintain the top red beacon on antenna structure # 1027115, for failure to report to the Federal Aviation Administration (“FAA”) the outage of the top red beacon, and for failure to ensure that a proper antenna structure monitoring system was installed.² The findings in the *NAL* were based, in part, on the chief operator’s statement to the agent during the inspection that he was aware that Forever’s monitoring system was not capable of detecting single light outages. Forever submitted a response to the *NAL* on March 13, 2007.

3. Forever does not dispute that the top beacon light on its tower was out or that it failed to report the outage to the FAA, but requests a cancellation or reduction of the forfeiture on several grounds. First, Forever points to the corrective actions it took within days after the FCC agent’s inspection. Second, Forever claims that its actions cannot be deemed willful because, contrary to the findings in the *NAL*, Forever was not aware of the monitoring system’s deficiencies until advised of them by the FCC agent

¹ 47 C.F.R. §§ 17.47, 17.48, and 17.51(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732280002 (Enf. Bur., Buffalo Office, released February 22, 2007) (“*NAL*”).

during the inspection and Forever acquired the antenna structure monitoring system from the prior tower owner.³

III. DISCUSSION

4. We decline to cancel or reduce the proposed forfeiture based on the actions Forever took after the agent's inspection. The Commission consistently has held that corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.⁴

5. We likewise decline to reduce or cancel the proposed forfeiture based on Forever's claim that the violation was not "willful" because Forever was not aware of the monitoring system's deficiencies until advised by the FCC agent at the time of inspection. In support of its claim, Forever submits a declaration from its chief operator, who now alleges that he never told the agent that he knew the antenna structure's monitoring system was unable to detect single light outages. According to the FCC agent's contemporaneous handwritten notes, however, the chief operator stated, prior to the inspection of the monitoring system's circuitry, that the system needed a modification in order to detect single light outages. We find no reason to rely here on the chief operator's declaration rather than the contemporaneous handwritten notes of our agent, who had no motive to misrepresent what the chief operator stated during the inspection.⁵ Because we conclude that it is appropriate to rely on the statement made by the chief operator at the time of the inspection, we find that Forever was aware of the monitoring system's deficiencies and therefore the violation was willful.

6. We note that, even if we were to accept Forever's claim that it was not previously aware of the monitoring system's deficiencies, we still would find that Forever's violation was willful. Section 312(f)(1) of the Act,⁶ which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of

³ Forever notes in its response to the *NAL* that when it purchased the tower from Mac Beth Communications, Inc. ("Mac Beth") in 2000, the purchase agreement stated that the tower was in full compliance with the Commission's Rules. Any representations made to Forever by Mac Beth are irrelevant here. Forever had an obligation as the new tower owner to independently ensure that the monitoring system functioned properly. For similar reasons, we note that, although the *NAL* assumes that Forever installed the monitoring system, the findings in the *NAL* are not dependent on whether Mac Beth or Forever initially installed the monitoring system. As the current owner, Forever is responsible for the proper functioning of the monitoring system.

⁴ See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994); see also *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21871-76 (2002).

⁵ We note that the chief operator erroneously states in his declaration that "it was determined that the Tower's lighting monitor interface cable was incorrectly wired to the Station's remote control." The problem with the monitoring system was not that it was improperly wired, but rather that it needed an interface device so that it could detect single light outages. Indeed, this is confirmed in Forever's response to the *NAL*, in which it states that "[o]n February 24, 2006, an interface panel for the Burk remote was ordered. This panel will expand the Burk Technology remote control so it can individually break out the tower light beacon indicators." We also are not persuaded by the chief operator's statement in the declaration that "it [the tower] was not showing a failure as it has in the past." The tower's monitoring system was capable of showing an overall tower light outage, so it is reasonable to assume that the monitoring system would have worked in the past to signal a complete light outage on the tower. Forever did not submit any evidence that the monitoring system had ever signaled a single light outage.

⁶ 47 U.S.C. § 312(f)(1).

any act, 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....”⁷ “Willful” does not require a finding that there was an intent to engage in a violation.⁸ Here, Forever knowingly operated the monitoring system. Moreover, if Forever had adequately complied with Section 17.47(b), which requires tower owners 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. . . ,” Forever would have discovered that its monitoring system was not capable of detecting single light outages. In this regard, it was Forever’s “omission” that resulted in its willful operation of a monitoring system that could not detect single light outages, in violation of Section 17.47 of the Commission’s Rules.

IV. ORDERING CLAUSES

7. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁹ and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules,¹⁰ Forever of PA, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$10,000 for willfully violating Sections 17.47, 17.48, and 17.51(a) of the Rules.

8. 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[s] 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.

⁷ See Southern California Broadcasting Co., 6 FCC Rcd 4387 (1991).

⁸ *Id.*, citing *MCI Telecommunications Group*, 3 FCC Rcd 509, 514 n.22 (1988); *Hale Broadcasting Corporation*, 79 FCC Rcd 169, 171 (1980).

⁹ 47 U.S.C. § 503(b).

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

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

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Acting Regional Director, Northeast Region
Enforcement Bureau