

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 overall height of the tower.⁶ The lights on antenna structure #1015782 are required to burn continuously or be controlled by a light sensitive device.⁷

3. On May 29, 2007, at approximately 8:00 p.m. PDT, an agent from the Enforcement Bureau's San Francisco Office observed the three-tower array used by KVIN and noted that a top tower light on antenna structure #1015782 was extinguished.⁸ The next day, on May 30, 2007, at approximately 9:00 p.m. PDT, the San Francisco agent again observed the three-tower array used by KVIN and noted that a top tower light on antenna structure #1015782 was extinguished.

4. On May 31, 2007, the San Francisco 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 published concerning the reported tower light outage for antenna structure #1015782. The FAA Flight Service Station then issued NOTAM number 05103.

5. On June 11, 2007, San Francisco agents conducted an inspection of the KVIN main studio located at 961 North Emerald Avenue, Modesto, California. The agents reviewed the KVIN station records and found no entries prior to June 11, 2007, concerning light outages on the KVIN three-tower array, including antenna structure #1015782.⁹ The agents also interviewed the KVIN general manager, who acknowledged that he was not aware of any lighting problems on the KVIN three-tower array until the morning of the inspection by the San Francisco agents. Later that day, the general manager accompanied the San Francisco agents to the site of the three-tower array. The general manager was unable to illuminate the top light on antenna structure #1015782, and determined that there was some damage to the electronic system which controlled the flashing mechanism for antenna structure #1015782.¹⁰

6. On September 28, 2007, the San Francisco Office issued a *NAL* in the amount of \$10,000 to Threshold.¹¹ In the *NAL*, the San Francisco Office found that Threshold apparently repeatedly violated Section 303(q) of the Act, and Sections 17.51(a), 17.47(a) and 17.48 of the Rules, by failing to maintain the required red obstruction lighting on antenna structure #1015782; by failing to monitor, either visually or

⁴ FAA Circular Number 70/7460-1F, Chapter 3.

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

⁶ FAA Circular Number 70/7460-1F, Appendix 2, Figure 1.

⁷ FAA Circular Number 70/7460-1F, Chapter 5.

⁸ According to the U.S. Naval Observatory, sunset in Waterford, California, occurred at 8:17 p.m., PDT, on May 29, 2007.

⁹ The agents found one entry, dated June 11, 2007, which noted the light outage. The entry was made prior to the agents' arrival at the main studio.

¹⁰ The general manager also produced for the agents a receipt showing that the light bulbs for all the lights on the three-tower array had been replaced on January 29, 2007.

¹¹ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732960005 (Enf. Bur., Western Region, San Francisco Office, released September 28, 2007).

through an automatic monitoring system, the antenna structure's lights; and by failing to report the extinguishment of the flashing obstruction lighting on antenna structure #1015782. Threshold filed a response ("*Response*") to the *NAL* on October 25, 2007. In its *Response*, Threshold argues that the proposed forfeiture should be cancelled or reduced because Threshold took immediate steps to rectify the problem; the tower involved was one of a three tower array; the violation was not willful; Threshold knew about the problem prior to involvement by the Commission; and Threshold has a history of compliance with the Commission's Rules.

III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,¹² Section 1.80 of the Rules,¹³ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.¹⁴ 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.¹⁵

8. 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.¹⁶ Section 17.51 of the Rules states that all red obstruction lighting shall be exhibited from sunset to sunrise unless otherwise specified.¹⁷ According to its ASR, antenna structure #1015782 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.¹⁸ 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.¹⁹ 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.²⁰

9. In its *Response*, Threshold does not dispute the facts recited in the *NAL*. Instead, it states that it has made changes to its monitoring procedure to insure that these events do not occur again. While we applaud Threshold's efforts, the Commission has consistently held that an antenna structure registrant is

¹² 47 U.S.C. § 503(b).

¹³ 47 C.F.R. § 1.80.

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

¹⁵ 47 U.S.C. § 503(b)(2)(E).

¹⁶ 47 U.S.C. § 303(q).

¹⁷ 47 C.F.R. § 17.51(a).

¹⁸ FAA Circular Number 70/7460-1F, Chapters 4 and 5.

¹⁹ 47 C.F.R. § 17.47(a).

²⁰ 47 C.F.R. § 17.48.

expected to correct errors when they are brought to the licensee's attention and that such correction is not grounds for a downward adjustment in the forfeiture.²¹ Consequently, we find that Threshold's efforts to ameliorate its violation, after the June 11, 2007, inspection by the San Francisco agents, are not a basis for reduction of the forfeiture. Threshold also argues that, as indicated in the *NAL*, it was made aware of the violation by one of its employees the same morning that the San Francisco agents conducted the inspection. Threshold concludes that it would have rectified the problem on its own, regardless of the inspection by the San Francisco agents. That conclusion, however, is not a basis for a reduction in the proposed forfeiture. Reductions based on good faith efforts to comply generally involve situations where violators demonstrate that they initiated measures to correct or remedy violations prior to a Commission inspection or investigation.²² While Threshold apparently knew of the violation the morning of June 11, 2007, prior to the San Francisco agents' inspection, it has produced no evidence that it initiated repairs prior to that inspection.²³ Therefore, we cannot conclude that Threshold made any efforts to comply prior to a Commission inspection and, consequently, we decline to reduce the forfeiture amount on that basis.

10. Threshold further states that the "tower light which was not operating, is one of 3 towers, all in close proximity." While Threshold acknowledges that a NOTAM should have been issued by the FAA, as it eventually was, when it was requested by the San Francisco agent, Threshold argues that with the other two towers illuminated, "the actual danger to Airmen was greatly reduced." We disagree. We find that the fact that antenna structure #1015782 is part of a three-tower array does not alleviate Threshold's responsibility to keep the structure properly lighted, nor does it justify a reduction in the proposed forfeiture.²⁴ The FAA requires antenna structure #1015782 to be lighted, and Threshold has produced no evidence to dispute that requirement, consequently, Threshold must abide by the FAA lighting requirements, as detailed on its antenna structure registration, as well as the Commission's antenna structure rules.²⁵

11. Threshold also argues that its violations were not willful. We note that the San Francisco Office did not find any apparent willful violation of the Communications Act and the Commission's Rules. Rather, it found that Threshold apparently repeatedly violated the Communications Act and the Commission's Rules. Because we find the violations to be repeated, we need not address Threshold argument that the violation was not willful.²⁶ Finally, Threshold contends that it has a history of overall compliance with the Commission's Rules. We have reviewed our records and we concur. Consequently, we reduce Threshold's forfeiture amount to \$8,000.

12. 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

²¹See *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

²² See *Radio One Licenses, Inc.*, 18 FCC Rcd 15964, 15965 (2003), *recon. denied*, 18 FCC Rcd 25481 (2003).

²³ See *Multicultural Radio Broadcasting, Inc.*, 22 FCC Rcd 10768 (EB 2007).

²⁴ See *Hoffman Communications, Incorporated*, Forfeiture Order, DA 03-4064, 2003 WL 22998837 (rel. December 23, 2003); *Gold Coast Broadcasting Company*, 18 FCC Rcd 8576 (EB 2003).

²⁵ We note that antenna structure #1015782 is tower one in the three tower array at issue, and that the other two towers, antenna structure #1015784 (the third tower in the array) and antenna structure #1015783 (the middle tower in the array), both have painting and light requirements as well, according to their antenna structure registrations.

²⁶See Section 503(b)(1) of the Act, 47 U.S.C. § 503(b)(1) (violator liable for forfeiture if violation is willful or repeated).

Threshold repeatedly violated Section 303(q) of the Act, and Sections 17.51(a), 17.47(a) and 17.48 of the Rules. Considering the entire record and the factors listed above, we find that reduction of the proposed forfeiture to \$8,000 is warranted.

13. We also note that, on March 12, 2008, at approximately 11:30 p.m. PDT, a San Francisco agent drove past Threshold's three-tower array in Waterford, California, described above, and observed that one of three towers in the array had no lights illuminated.²⁷ Consequently, we require Threshold to report to the San Francisco Office, Western Region, no more than thirty (30) days following the release of this *Order*, how it achieves compliance with Section 303(q) of the Act, and Sections 17.51(a), 17.47(a), and 17.48 of the Rules, for all three of the towers in its array in Waterford, California. Threshold's report must be submitted in the form of an affidavit signed by an officer or director of Threshold.

IV. ORDERING CLAUSES

14. **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, Threshold Communications, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$8,000 for willfully and repeatedly violating Section 303(q) of the Act, and Sections 17.51(a), 17.47(a) and 17.48 of the Rules.²⁸

15. **IT IS FURTHER ORDERED**, pursuant to Section 403 of the Act, that Threshold Communications, must submit the report described in paragraph 13, above, within no more than thirty (30) days following the release of this *Order*, to the Federal Communications Commission, Enforcement Bureau, Western Region, San Francisco Office, 5653 Stoneridge Drive, Ste. 105, Pleasanton, California, 94588-8543 and must include the NAL/Acct. No. referenced in the caption.

16. 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.²⁹ 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.

²⁷ On March 13, 2008, a San Francisco agent contacted the 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 the tower light outage and issued a NOTAM.

²⁸ 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 17.47(a), 17.48, 17.51(a).

²⁹ 47 U.S.C. § 504(a).

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

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau