

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

In the Matter of)
ERF Wireless, Inc.) File No. EB-08-HU-0128
Owner of Antenna Structure) NAL/Acct. No. 200932540001
Number 1052967) FRN 0017732520
Monaville, Texas)

FORFEITURE ORDER

Adopted: May 27, 2009

Released: May 29, 2009

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 ten thousand four hundred dollars (\$10,400) to ERF Wireless, Inc. (“ERF Wireless”), owner of antenna structure number 1052967, near Monaville, Texas, for willful and repeated violations of Sections 17.51(b) and 17.57 of the Commission’s Rules (“Rules”).¹ The noted violations involve ERF Wireless’ failure to continuously exhibit the medium intensity lighting on its antenna structure and failure to update the ownership information for its antenna structure.

II. BACKGROUND

2. On December 22, 2008, in response to a complaint of an unlit and improperly registered antenna structure, an agent from the Commission’s Houston Office of the Enforcement Bureau (“Houston Office”) reviewed the Commission’s Antenna Structure Registration (“ASR”) database. The database listed Bishop Tower Company as the owner of antenna structure number 1052967, near Monaville, Texas. The complaint alleged that ERF Wireless acquired the antenna structure over two years ago. The Commission’s ASR database listed this structure as requiring a medium intensity obstruction light that is to be exhibited continuously. Later that same day, the agent drove out to the antenna structure site and observed that the medium intensity obstruction light on the top of the structure was not functioning.

3. On December 29, 2008, an agent from the Houston Office observed antenna structure number 1052967 in Monaville, Texas, both prior to and after local sunset. The medium intensity obstruction light was not functioning. The agent then called the Federal Aviation Administration (“FAA”) to determine if the structure owner had notified the FAA of the outage and whether a Notice to Airmen (“NOTAM”) had been issued. The FAA reported that there was no current NOTAM for this structure, so the agent informed the FAA of the lighting outage.

4. On March 2, 2009, an agent from the Houston Office observed antenna structure number 1052967 near Monaville, Texas, both prior to and after local sunset. The medium intensity obstruction light on the structure was not functioning. The agent then called the FAA to determine if the owner had notified the FAA about the outage and whether a NOTAM had been issued. The FAA reported that there was no

¹ 47 C.F.R. §§ 17.51(b), 17.57.

current NOTAM for this structure, so the agent informed the FAA of the outage.

5. On March 5, 2009, an agent from the Houston Office interviewed an employee of ERF Wireless about antenna structure number 1052967. The employee stated that ERF Wireless had purchased this antenna structure from Bishop Tower Company at least one year ago and he had no knowledge as to why it would not have been properly registered with the Commission. He also stated that ERF Wireless does not visually check the lights once every 24 hours and had not observed the structure lights for about 6 months. He said that ERF Wireless was not using an automatic alarm system to monitor the lights and that they were in the process of looking for a monitoring system. Later that same day, the agent accompanied by two employees of ERF Wireless inspected antenna structure number 1052967 and observed that the medium intensity obstruction light was not functioning. A visual inspection of the lighting equipment installed at the site revealed it was not functioning. As of March 26, 2009, the ASR database still listed Bishop Tower Company as the owner of antenna structure number 1052967.

6. On March 27, 2009, the Houston Office issued a *Notice of Apparent Liability for Forfeiture* to ERF Wireless in the amount of thirteen thousand dollars (\$13,000), for the apparent willful and repeated violation of Sections 17.51(b) and 17.57 of the Rules.² ERF Wireless submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture.

III. DISCUSSION

7. The proposed forfeiture amounts in this case was assessed in accordance with Section 503(b) of the 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 ERF Wireless' 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

8. Section 17.51(b) of the Rules states that all high intensity and medium intensity obstruction lighting shall be exhibited continuously unless otherwise specified. Antenna structure number 1052967 is required to exhibit continuously a medium intensity obstruction light. An agent from the Houston Office observed that the medium intensity strobe light on antenna structure number 1052967 was not functioning on December 22 and 29, 2008, and on March 2 and 5, 2009. ERF Wireless admitted that it had not observed the structure lights at least once every 24 hours and did not maintain a properly working automatic alarm system to detect the failure of the structure lights.⁶ Moreover, ERF Wireless failed to notify the FAA about the lighting outage.⁷

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200932540001 (Enf. Bur., Houston Office, March 27, 2009) ("NAL").

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(E).

⁶ 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. 47 C.F.R. § 17.47(a).

⁷ The owner of an antenna structure is required 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

9. Section 17.57 of the Rules states that the owner of an antenna structure which is registered with the Commission must notify immediately the Commission upon any change in ownership information. ERF Wireless purchased antenna structure number 1052967 at least as early as March 2008. ERF Wireless was informed that it was not listed as the structure owner in the ASR database on March 2, 2009. However, as of March 24, 2009, the previous owner of the structure was still listed as the structure owner in the ASR database.

10. In response to the *NAL*, ERF Wireless states that it has replaced the medium intensity light on its antenna structure, updated the ownership information in the ASR database, and is trying to install an alarm system for the structure lights. However, corrective action taken to come into compliance with the Rules after an inspection is expected, and does not nullify or mitigate any prior forfeitures or violations.⁸

11. Finally, ERF Wireless requests a reduction of the forfeiture, because, “in its five year history, ERF has no prior offenses.” We have reviewed our records and conclude that the forfeiture should be reduced to \$10,400, based on ERF Wireless’ history of compliance with the rules.

12. We have examined ERF Wireless’ 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 reduce the proposed forfeiture to \$10,400, based on ERF Wireless’ history of compliance with the rules.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, ERF Wireless, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand four hundred dollars (\$10,400) for violations of Sections 17.51(b) and 17.57 of the Rules.⁹

14. 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.¹⁰ 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:

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.” 47 C.F.R. § 17.48.

⁸ See e.g., *Syntax-Brillian Corporation*, Forfeiture Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6323 (2008); *AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866 (2002); *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

⁹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 17.51(b), 17.57.

¹⁰ 47 U.S.C. § 504(a).

ARINQUIRIES@fcc.gov with any questions regarding payment procedures. ERF Wireless will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

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

FEDERAL COMMUNICATIONS COMMISSION

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