

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

In the Matter of)	
)	File No. EB-08-OR-0147
Southern Classic Millworks, LLC)	
)	NAL/Acct. No. 200932620001
Owner of Antenna Structure Located at)	
Coordinates N30° 30' 20" x W091° 01' 25.7")	FRN 0015398431
)	

MEMORANDUM OPINION AND ORDER

Adopted: September 24, 2009

Released: September 25, 2009

By the Deputy Bureau Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*MO&O*”), we deny the petition for reconsideration filed by Southern Classic Millworks, LLC (“*Millworks*”), owner of the antenna structure located at coordinates N30° 30' 20" x W091° 01' 25.7" in Greenwell Springs, Louisiana (“*Tower*”), of the *Forfeiture Order* issued February 4, 2009.¹ The *Forfeiture Order* imposed a monetary forfeiture in the amount of \$3,000 for *Millworks*’ willful and repeated violation of Section 17.4(a) of the Commission’s Rules (“*Rules*”).² The noted violations involved *Millworks*’ failure to register its antenna structure with the Commission.

II. BACKGROUND

2. On July 5, 2006, in response to a complaint regarding a tower light outage at 14461 Frenchtown Road, Greenwell Springs, Louisiana, agents from the Commission’s New Orleans Office of the Enforcement Bureau (“*New Orleans Office*”) contacted *Millworks*, the owner of the land at that address and on which the *Tower* is located. The agents learned from the *Millworks*’ employee responsible for the company’s antenna structures that it had recently purchased the *Tower*.³ This person indicated that *Millworks* was unaware of the Antenna Structure Registration (“*ASR*”) requirement and was instructed to have the *Tower* registered in the *ASR* database and have the registration number posted at the structure’s base. In addition, on July 12, 2006, an agent from the New Orleans Office instructed one of *Millworks*’ owners to register the *Tower* and have the registration number posted at the structure’s base. On August 1, 2006, *Millworks* responded by providing evidence that a radio licensee was a tenant on the *Tower*. On August 8, 2006, *Millworks* further informed the New Orleans Office that the previous owner failed to register the *Tower*.

¹ *Southern Classic Millworks, LLC*, Forfeiture Order, 24 FCC Rcd 1246 (Enf. Bur. South Central Region, 2009) (“*Forfeiture Order*”).

² 47 C.F.R. § 17.4(a).

³ *Millworks* corrected the lighting outage on the antenna structure on July 6, 2006.

3. On June 3, 2008, in response to a subsequent complaint alleging violations concerning the Tower,⁴ agents from the New Orleans Office conducted an inspection of the Tower. The Tower is 500 feet in height above ground level and was hosting a radio licensee. The Tower did not have an ASR number posted at or around its base. The agents consulted the ASR database and found that the Tower still was not registered.

4. On June 5, 2008, agents from the New Orleans Office interviewed one of Millworks' owners about the structure, who stated that he believed the Tower had been registered in 2006 along with another structure owned by Millworks. The employee responsible for the company's antenna structures, however, was unable to provide documentation showing that the Tower had been registered. Those agents again informed Millworks' owner and the employee responsible for the company's antenna structures that they were required to register the Tower.

5. On October 8, 2008, an agent from the New Orleans Office again spoke with the Millworks' employee responsible for the company's antenna structures, the same person with whom he had spoken on June 5. This person stated the Tower still was unregistered. This person also stated that one of Millworks' owners was in the process of finding a company to manage the antenna structure. As of November 6, 2008, review of the ASR database showed that the Tower was still not registered.

6. On November 20, 2008, the New Orleans Office issued a Notice of Apparent Liability for Forfeiture to Millworks in the amount of three thousand dollars (\$3,000), for the apparent willful and repeated violation of Section 17.4(a) of the Rules.⁵ Millworks failed to submit a response to the NAL. On February 4, 2009, the Bureau released a no response *Forfeiture Order*, imposing a \$3,000 forfeiture. On February 24, 2009, Millworks filed a petition for reconsideration requesting reduction or cancellation of the forfeiture.⁶

III. DISCUSSION

7. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁷ Section 1.80 of the Rules,⁸ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁹ In examining Millworks' petition, 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 any other such matters as justice may require.¹⁰

⁴ This complaint involved a lighting outage and unregistered tower; once contacted, Millworks addressed this issue, notifying the Federal Aviation Administration of the lighting outage on the antenna structure on June 5, 2008.

⁵ *Southern Classic Millworks, LLC*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200932620001 (Enf. Bur., New Orleans Office, November 20, 2008) ("*NAL*").

⁶ Although Millworks' letter was not captioned as a "Petition for Reconsideration," we have interpreted it as such. The letter was originally sent to the New Orleans Office, but it was stamped received by the Secretary's Office on March 4, 2009.

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

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

¹⁰ 47 U.S.C. § 503(b)(2)(E).

8. A petition for reconsideration that relies on facts not previously presented to the designated authority may be granted only if: (1) the designated authority determines that consideration of the facts relied on is required in the public interest; (2) the petition relies on facts which relate to events which occurred or circumstances which have changed since the last opportunity to present such matters; or (3) the petition relies on facts unknown to petitioner until after his last opportunity to present such matters.¹¹ All of the information provided in the petition for reconsideration was available and known to Millworks when it was provided an opportunity to respond to the *NAL*. Moreover, we do not find that the public interest requires consideration of the facts alleged in the petition for reconsideration.

9. In its petition for reconsideration, Millworks claims that, because it is in the cabinet business, not communications, it is unfamiliar with Commission rules and requirements. Millworks claims that one of its secretaries spoke to someone at the Commission to explain that its Tower is in close proximity to another tower of similar height and age, and was told that one registration for both towers was sufficient. Millworks does not, however, disclose or submit any documentation regarding the content of this alleged discussion with Commission staff.

10. Even if the public interest requires consideration of these alleged facts, and even assuming such alleged conversation took place, it does not warrant a grant of the Petition. The Commission has long held that statements by individual Commission staff members are not binding on the Commission, and the Commission has repeatedly warned that parties who rely on staff advice or interpretations do so at their own risk.¹² Moreover, an agent from the New Orleans Office informed Millworks on July 5 and 12, 2006, and June 5, 2008, that the Tower was required to be registered. Thus, even if a staff member previously advised Millworks that the Tower need not be registered, Millworks was provided ample *actual* notice that registration of the Tower was required prior to release of the *NAL* on November 20, 2008.

11. Once it received the *NAL*, Millworks asserts that it promptly hired an experienced broadcast engineer to register the Tower, which was completed on February 19, 2009.¹³ However, the Commission has long held that post-inspection corrective action taken to come into compliance with the Rules is expected, and such corrective action does not nullify or mitigate any prior forfeitures or violations.¹⁴ Accordingly, we find that Millworks' corrective action does not provide grounds to reconsider or reduce the forfeiture. Millworks adds that registration of the other nearby tower should have provided "adequate notice to the Federal Aviation Administration ("FAA") and airplane pilots of the hazard to aviation in the area."¹⁵ Regardless of whether the other registered tower alleviated, in whole or

¹¹ 47 C.F.R. § 1.106(c).

¹² See e.g., *Roamer One, Inc. and Certain 220 MHz Non-Nationwide Licensees*, Order, 17 FCC Rcd 3287, n.26 (2002), citing *Applications of Hinton Telephone Company*, Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 11625, 11637 (1995) and *AAT Electronics Corp.*, 53 RR 2d 1241, 1225-26 (1983), *aff'd sub nom., P&R Temmer v. FCC*, 743 F.2d 918, 931 (D.C. Cir. 1984).

¹³ Millworks notes that the recently hired engineer stated he has been registering towers for years and had always believed that "one registration was sufficient for two identical towers." The fact that Millworks and its engineer held the same mistaken belief regarding the registration requirements does not negate the fact that the Rules require separate registration of towers.

¹⁴ See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994), *Rama Communications, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 4981 (Enf. Bur. 2009), *Bethune-Cookman College, Inc.*, Forfeiture Order, 24 FCC Rcd 4513 (South Central Region 2009).

¹⁵ Millworks petition for reconsideration at 2.

in part, the hazard to air traffic, Section 17.4(a) of the Rules requires that the owner of *any* proposed or existing antenna structure that requires notice of proposed construction to the FAA must register the structure with the Commission.¹⁶

12. Finally, Millworks claims that it was unaware that it had to respond so quickly to the *NAL* prior to issuance of the *Forfeiture Order*.¹⁷ Paragraph 11 of the *NAL*, however, clearly states that a response or payment was due within thirty days of release of the *NAL*. The *Forfeiture Order* was issued February 4, 2009, 44 days after the *NAL* response or payment was due.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED**, pursuant to Section 405 of the Communications Act of 1934, as amended,¹⁸ and Section 1.106 of the Commission's Rules,¹⁹ that the Petition for Reconsideration filed by Southern Classic Millworks, LLC **IS DENIED**.

14. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,²⁰ Southern Classics Millworks, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand dollars (\$3,000) for violation of Section 17.4(a) of the Rules.

15. 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.²¹ 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. Millworks will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

¹⁶ 47 C.F.R. § 17.4(a). Section 17.7(a) of the Rules requires notification to the FAA for any construction or alteration of more than 200 feet in height above ground level. 47 C.F.R. § 17.7(a). Millworks' Tower required notification to the FAA because the structure exceeded 200 feet in height.

¹⁷ Millworks incorrectly referred to the *NAL* as a Notice of Violation. No Notice of Violation was issued to Millworks by the New Orleans Office.

¹⁸ 47 U.S.C. § 405.

¹⁹ 47 C.F.R. § 1.106.

²⁰ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 11.35(a), 73.3526.

²¹ 47 U.S.C. § 504(a).

16. **IT IS FURTHER ORDERED** that this Order shall be sent by regular mail and by certified mail, return receipt requested, to Southern Classic Millworks, LLC at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dana Shaffer
Deputy Bureau Chief, Enforcement Bureau