

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

In the Matter of)	
)	
Washington Gas Light)	File No.: EB-10-CF-0209
)	
Antenna Structure Registrant)	NAL/Acct. No.: 201132340003
Springfield, Virginia)	
ASR # 1035329)	FRN: 0016494148

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 31, 2011

Released: September 1, 2011

By the District Director, Columbia Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Washington Gas Light (“Washington Gas”), owner of antenna structure registration (“ASR”) number 1035329 in Prince Frederick, Maryland, apparently willfully and repeatedly violated sections 17.51(a), 17.48, and 17.57 of the Commission’s rules (“Rules”)¹ by failing to: (1) exhibit all red obstruction lighting from sunset to sunrise; (2) immediately notify the Federal Aviation Administration (“FAA”) of a known extinguishment of any flashing obstruction lighting; and (3) immediately notify the Commission upon a change in ownership information. We conclude that Washington Gas is apparently liable for a forfeiture in the amount of thirteen thousand dollars \$13,000.

II. BACKGROUND

2. Antenna structure number 1035329 (the “Antenna Structure”), located at 8950 Hallowing Point Road in Prince Fredrick, Maryland, is 502.8 feet above sea level and is required to exhibit marking and red obstruction lighting from sunset to sunrise.²

3. On October 19, 2010, in response to a complaint, an agent from the Enforcement Bureau’s Columbia Office (“Columbia Office”) inspected the Antenna Structure number 1035329 during daytime hours and observed that the tower was properly painted. A nearby property owner who was working at the antenna structure site informed the agent during the inspection that the antenna structure’s top beacon light had been unlit for at least a month. The agent contacted the FAA later that day and was informed that no Notice to Airmen (“NOTAM”) had been issued for the light outage. When the agent determined that the name listed in the Commission’s ASR database was incorrect and the new owner had not yet been identified, the agent followed up with the FAA and a NOTAM was issued at the agent’s request that same

¹ 47 C.F.R. § 17.47(a)(1), 17.48(a), 17.51(a) and 17.57.

² See Antenna Structure Registration Database, Registration Number 1035329. See also 47 C.F.R. § 17.21 (generally requiring towers exceeding 200 feet in height to be painted and lit).

day. On October 20, 2010, the agent returned to the antenna structure site during evening hours and confirmed that the top beacon was unlit.³

4. On October 21, 2010, after determining that the tower is owned by Washington Gas, the agent spoke to a representative of Washington Gas, who confirmed that Washington Gas owns the Antenna Structure. The Washington Gas representative advised the agent that Washington Gas also notified the FAA of the light outage on October 19, 2010.

5. On December 7, 2010, the Columbia Office issued a Letter of Inquiry (“LOI”) to Washington Gas seeking additional information about the light outage and confirming ownership of the antenna structure.⁴ In response to the LOI, Washington Gas confirmed that it purchased the Antenna Structure in September 2010 and that it did not file updated ownership information with the Commission until December 9, 2010.⁵ Additionally, Washington Gas stated that a construction worker at the site notified them on October 15, 2010 that the top beacon was unlit and that they notified the FAA of the light outage on October 19, 2010.⁶ Washington Gas also reported that the entire lighting system was replaced the week of December 9, 2010.⁷

III. DISCUSSION

6. Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁸ provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. Section 312(f)(1) of the Act defines willful as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁹ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act¹⁰ and the Commission has so interpreted the term in the section 503(b) context.¹¹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹² The term “repeated” means the commission or omission of such act more than once or for more than one day.¹³

³ At the time of the inspection, the agent also observed that the side lights at the one-quarter level, the side-lights at the three-quarter level, and the beacon at the one-half level were lit.

⁴ Letter from Salomon Satche, District Director, Columbia Office, to Washington Gas Light, dated December 7, 2010.

⁵ Letter from Orlando Spencer, Communications Architect, Washington Gas Light, to Salomon Satche, District Director, Columbia Office, dated January 24, 2011.

⁶ *Id.*

⁷ *Id.*

⁸ 47 U.S.C. § 503(b).

⁹ 47 U.S.C. § 312(f)(1).

¹⁰ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the [A]ct (e.g., section 503).... As defined ... ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission’s application of those terms ...”).

¹¹ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting Co.*”).

¹² See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 (continued....)

7. Section 17.51(a) of the Rules requires all red obstruction lighting to be exhibited from sunset to sunrise unless otherwise specified.¹⁴ Section 17.48 of the Rules requires that owners of registered antenna structures that have been assigned lighting specifications report immediately by telephone or telegraph to the FAA any observed or otherwise known extinguishment of any flashing obstruction light not corrected within 30 minutes.¹⁵ On October 20, 2010, an agent from the Columbia Office observed that the top beacon on antenna structure number 1035329 was not lit after sunset. In response to the LOI, Washington Gas admitted that it learned of the light outage on October 15, 2010, but did not notify the FAA of the outage until October 19, 2010. Thus, based on the evidence before us, we find that Washington Gas apparently willfully and repeatedly violated sections 17.51(a) and 17.48 of the Rules by failing to exhibit the top red beacon on the Antenna Structure number after sunset and by failing to notify the FAA immediately of a known light extinguishment.

8. Section 17.57 of the Rules requires that the owner of an antenna structure immediately notify the Commission using FCC Form 854 upon any change in structure height or change in ownership information.¹⁶ In response to the LOI, Washington Gas reported that it purchased the Antenna Structure on September 1, 2010 and that it filed an FCC Form 854 on December 9, 2010. Because Washington Gas failed to notify the FCC of a change in the structure's ownership until December 9, 2010, we find that Washington Gas apparently willfully and repeatedly violated section 17.57 of the Rules.

9. Pursuant to the Commission's *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for: (1) failure to comply with prescribed lighting and/or marking is \$10,000; and (2) failure to file required forms or information is \$3,000.¹⁷ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, 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.¹⁸ Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Washington Gas is apparently liable for a total forfeiture in the amount of \$13,000.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.311, 0.314 and 1.80 of the Commission's rules, Washington

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¶ 10 (2001) ("*Callais Cablevision, Inc.*") (proposing a forfeiture for, *inter alia*, a cable television operator's repeated signal leakage).

¹³ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

¹⁴ 47 C.F.R. § 17.51(a).

¹⁵ 47 C.F.R. § 17.48(a).

¹⁶ 47 C.F.R. § 17.57.

¹⁷ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁸ 47 U.S.C. § 503(b)(2)(E).

Gas Light is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of thirteen thousand dollars \$13,000 for violations of sections 17.51(a), 17.48, and 17.57 of the Rules.¹⁹

11. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Washington Gas Light **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN 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. 20554.²⁰ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Washington Gas Light shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov.

13. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules.²¹ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Columbia Office, 9200 Farm House Lane, Columbia, Maryland 21046 and include the NAL/Acct. No. referenced in the caption. Washington Gas also shall e-mail the written response to NER-Response@fcc.gov.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

¹⁹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 17.51(a), 17.48, and 17.57.

²⁰ 47 C.F.R. § 1.1914.

²¹ 47 C.F.R. §§ 1.80(f)(3), 1.16.

15. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Washington Gas Light, 6801 Industrial Road, Springfield, VA 22151.

FEDERAL COMMUNICATIONS COMMISSION

Salomon Satche
District Director
Columbia Office
Northeast Region
Enforcement Bureau