

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

In the Matter of)	
)	File No.: EB-11-NF-0030
East Carolina Radio, Inc.)	
Owner of Antenna Structure # 1016851)	NAL/Acct. No.: 201232640001
Columbia, North Carolina)	
)	FRN: 0010274470
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: October 31, 2011

Released: November 1, 2011

By the Resident Agent, Norfolk Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (“NAL”), we find that East Carolina Radio, Inc., dba WERX-FM (“East Carolina”), owner of antenna structure number 1016851 (the “Antenna Structure”), in Columbia, North Carolina, apparently repeatedly violated section 303(q) of the Communications Act of 1934, as amended (“Act”)¹ and sections 17.49 and 17.51(a) of the Commission’s rules (“Rules”)² by failing to exhibit red obstruction lighting from sunset to sunrise and failing to maintain required records. We conclude that East Carolina is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000). In addition, no later than thirty (30) calendar days from the date of this NAL, East Carolina must submit a statement signed under penalty of perjury describing its timeframe for repairing the lights on the Antenna Structure, certifying that it will renew its notification to the Federal Aviation Administration (“FAA”) of the Antenna Structure’s light outage until the lights have been repaired, and asserting that it is maintaining its remote monitoring system as required.

II. BACKGROUND

2. On March 23, 2011, the FAA forwarded a complaint to the Commission made by a pilot about an unlit antenna structure.³ On April 12, 2011, a deputy of the Tyrrell County Columbia, North Carolina Sheriff’s Office (“Tyrrell County Sheriff’s Office”), at the request of an agent from the Commission’s Norfolk Office of the Enforcement Bureau (“Norfolk Office”), observed that all lights on the Antenna Structure, except one light approximately 100 feet above the ground, were unlit after sunset.⁴

3. On April 26, 2011, an agent from the Norfolk Office, accompanied by East Carolina’s contract engineer, inspected the Antenna Structure and found that the lights still were not functioning properly. The agent observed that the Antenna Structure’s remote light monitoring system was also not functioning properly—the transmitter reading reported by the system did not match the reading on the

¹ 47 U.S.C. § 303(q).

² 47 C.F.R. §§ 17.49, 17.51(a).

³ The FAA issued a Notice to Airmen regarding the light outage on the Antenna Structure on March 23, 2011.

⁴ Local sunset time was approximately 6:15 P.M. on April 12, 2011.

physical transmitter meter. East Carolina's contract engineer stated that the remote light monitoring system did not notify East Carolina of the extinguished top beacon until April 20, 2011,⁵ at which time East Carolina notified the FAA of the outage. The contract engineer also admitted that East Carolina did not maintain any logs regarding lighting outages⁶ and had no evidence that it conducted regular maintenance of its remote monitoring equipment.⁷ East Carolina later stated that it contacted a contractor to repair the Antenna Structure's lights either immediately after or the day after the inspection on April 26, 2011.⁸

III. DISCUSSION

4. Section 503(b) of the Act,⁹ 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. The Commission may assess a forfeiture for violations that are merely repeated, and not willful.¹⁰ The term "repeated" means the commission or omission of such act more than once or for more than one day.¹¹

A. Failure to Exhibit Required Obstruction Lighting

5. 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.¹² Section 17.51(a) of the Rules requires all red obstruction lighting to be exhibited from sunset to sunrise unless otherwise specified.¹³ Section 17.49 of the Rules requires antenna structure owners to maintain a record of any observed or otherwise known extinguishment or improper functioning of a structure light, including the date and time of the malfunction, FAA notification, and repair.¹⁴ The Antenna Structure is 214 meters above ground in overall height and is required to be lit with red flashing obstruction lights from sunset to sunrise.¹⁵ On April

⁵ On April 22, 2011, an agent from the Norfolk Office confirmed with the FAA that East Carolina did notify the FAA of the outage on April 20, 2011. See 47 C.F.R. § 17.48 (requiring antenna structure owners to notify the FAA immediately of any known or observed lighting outage lasting more than 30 minutes).

⁶ See 47 C.F.R. § 17.49 (requiring antenna structure owners to maintain a record of any known extinguishment or improper functioning of a structure light).

⁷ See 47 C.F.R. § 17.47(b) (requiring antenna structure owners to inspect at intervals not to exceed 3 months all automatic or mechanical control devices, indicators, and alarm systems associated with antenna structure lighting to ensure that such apparatus is functioning properly).

⁸ See Letter from Rick Loesch, President, East Carolina Radio Group, to Luther B. Bolden, Resident Agent, Norfolk Office, Enforcement Bureau, dated August 16, 2011. The Commission expects parties to take corrective action to come into compliance with the Rules, however, and post-inspection action does not nullify or mitigate any prior violations. See *International Broadcasting Corporation*, Order on Review, 25 FCC Rcd 1538 (2010); *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

⁹ 47 U.S.C. § 503(b).

¹⁰ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) ("*Callais Cablevision, Inc.*") (proposing a forfeiture for, *inter alia*, a cable television operator's repeated signal leakage).

¹¹ *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 at 4388 ¶ 5 (1991); *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362 ¶ 9.

¹² 47 U.S.C. § 303(q).

¹³ 47 C.F.R. § 17.51(a).

¹⁴ 47 C.F.R. § 17.49.

¹⁵ See Antenna Structure Registration database for antenna structure number 1016851.

12, 2011, a deputy of the Tyrrell County Sheriff's Office observed that all lights on the Antenna Structure, except one light approximately 100 feet above ground, were unlit after sunset. The Norfolk Office agent also observed that all of the Antenna Structure's lights except one light approximately 100 feet above ground, were still unlit on April 26, 2011. According to East Carolina, the Antenna Structure's malfunctioning remote light monitoring system¹⁶ did not alert it of the top beacon outage until April 20, 2011, at which point it notified the FAA of the outage. Moreover, East Carolina has no evidence that it conducted any scheduled maintenance or repairs of its remote light monitoring system¹⁷ and maintained no logs or records of structure lighting outages, notifications to the FAA, or lighting repairs. Therefore, based on the evidence before us, we find that East Carolina apparently repeatedly violated section 303(q) of the Act and section 17.51(a) of the Rules by failing to exhibit all of the required red obstruction lighting on the Antenna Structure on more than one day and apparently willfully and repeatedly violated section 17.49 of the Rules by failing to maintain required records.

B. Proposed Forfeiture

6. Pursuant to the Commission's *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for failing to comply with prescribed lighting and marking is \$10,000.¹⁸ 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.¹⁹ Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that East Carolina is apparently liable for a \$10,000 forfeiture.

7. We direct East Carolina to submit a statement signed under penalty of perjury by an officer or director of East Carolina stating: (1) that East Carolina is inspecting the Antenna Structure's remote monitoring system at least once every 3 months to ensure its proper operation; (2) East Carolina's timetable for repair of the Antenna Structure's lights; and (3) that East Carolina will renew the notification to the FAA of the Antenna Structure's light outage until the lights have been repaired. This statement must be provided to the Norfolk Office at the address listed in paragraph 12 within thirty (30) calendar days of the release date of this NAL.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, East Carolina Radio, Inc. dba WERX-FM, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE AND ORDER** in the amount of ten thousand dollars (\$10,000) for violations of section 303(q) of the Act and sections 17.49 and 17.51(a) of the Rules.²⁰

¹⁶ In a telephone conversation with an agent from the Norfolk Office on August 15, 2011, East Carolina's President noted that the repair person, hired after the April 26, 2011 inspection, stated the remote monitoring system suffered an electrical short.

¹⁷ While antenna structure owners are required to inspect their remote monitoring equipment at least once every 3 months, they are not required by the rules to maintain a record of such inspections. See *supra* note 6.

¹⁸ *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.

¹⁹ 47 U.S.C. § 503(b)(2)(E).

²⁰ 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 17.49, 17.51(a).

9. **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 and Order, East Carolina Radio, Inc. dba WERX-FM **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. **IT IS FURTHER ORDERED** that East Carolina Radio, Inc. dba WERX-FM **SHALL SUBMIT** a statement as described in paragraph 7 to the Norfolk Office within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

11. 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. 20554.²¹ 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. East Carolina shall send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

12. 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.²² The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Norfolk Office, 1457 Mount Pleasant Rd, Suite 113, Chesapeake, Virginia 23322 and must include the NAL/Acct. No. referenced in the caption.

13. 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.

²¹ See 47 C.F.R. § 1.1914.

²² 47 C.F.R. §§ 1.16, 1.80(f)(3).

14. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to East Carolina Radio, Inc. dba WERX-FM at 1331 Paradise Rd., Edenton, North Carolina 27932 and 2422 S. Wrightsville Ave., Nags Head, North Carolina 27959.

FEDERAL COMMUNICATIONS COMMISSION

Luther Bolden
Resident Agent
Norfolk Office
South Central Region
Enforcement Bureau