

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

In the Matter of)	
)	
Timothy J. Mullen)	File No.: EB-10-LA-0268
)	
Antenna Structure Registrant)	NAL/Acct. No.: 201232900003
Cawelo, California)	
ASR #1016437)	FRN: 0020481289

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 17, 2011

Released: November 18, 2011

By the District Director, Los Angeles Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Timothy J. Mullen (“Mullen”), registrant of antenna structure #1016437 in Cawelo, California,¹ apparently willfully and repeatedly violated section 303(q) of the Communications Act of 1934, as amended, (“Act”)² and sections 17.51(a), 17.48, and 17.57 of the Commission’s rules (“Rules”)³ by failing to: (1) exhibit the antenna structure’s red obstruction lighting from sunset to sunrise; (2) immediately notify the Federal Aviation Administration (FAA) of a known extinguishment of any flashing obstruction light; and (3) notify the Commission of the structure’s ownership change. We conclude that Mullen is apparently liable for a forfeiture in the amount of thirteen thousand dollars (\$13,000).

II. BACKGROUND

2. The antenna structure registration (“ASR”) for antenna structure #1016437 (the “Antenna Structure”) requires the structure to have obstruction marking and lighting.⁴ Specifically, the structure is required to be painted with aviation orange and white paint and have red obstruction lighting consisting of at least one flashing red beacon on top and steady-burning sidelights at the approximate midpoint of the tower.⁵

3. On December 15, 2010, in response to information that the lights on the Antenna

¹ While the coordinates listed for antenna structure #1016437 in the antenna structure registration (35°31'20" north latitude and 119°06'22" west longitude) correspond to 17282 Industrial Farm Road in Bakersfield, California, the antenna structure registration lists the location of the antenna structure as Cawelo, California.

² 47 U.S.C. § 303(q).

³ 47 C.F.R. §§ 17.51(a), 17.48, 17.57

⁴ See Chapters 3, 4, 5, and 9 of FAA Circular number 70/7460-1G. The “[r]ed obstruction lights should be operated by a satisfactory control device (e.g. photo cell, timer, etc.) adjusted so the lights will be turned on when the northern sky illuminance reaching a vertical surface falls below a level of approximately 35 footcandles (376.7 lux). They should also be tuned on when flight visibility is restricted during daylight hours when less than 35 footcandles of illuminance can be maintained.” Chapter 5, Paragraph 18(d) of FAA Circular 70/7460-1G.

⁵ *Id.*

Structure had completely failed, an agent from the Enforcement Bureau's Los Angeles Office contacted the registrant of record for the structure and was informed that ownership of the structure had transferred to Mullen in 2008.⁶ The agent then contacted the FAA Flight Service Station ("FSS") and requested that the FSS issue a Notice to Airmen ("NOTAM") for the Antenna Structure because a NOTAM had not been requested by the Antenna Structure's owner.

4. The next day, on December 16, 2010, a Los Angeles agent inspected the Antenna Structure after sunset⁷ and observed that none of the lights—including the red obstruction lights—on the structure were exhibited. On December 22, 2010, the agent telephoned Mullen who confirmed that he owned the Antenna Structure. On April 5, 2011, in response to a letter of inquiry⁸ issued by the Los Angeles Office, Mullen stated that, based on his power bill, the lights on the structure had failed in late October of 2010, and that the lights were non-operational from October 22, 2010, until December 28, 2010, when they were repaired.⁹ Mullen could not confirm that he notified the FAA of the outage.¹⁰ Mullen also stated that he obtained ownership of the structure on April 18, 2008.¹¹ A review of the Commission's ASR database reveals that Mullen updated the ownership information for the Antenna Structure on January 11, 2011.

III. DISCUSSION

5. Section 503(b) of the Communications Act of 1934, as amended ("Act"),¹² 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.¹³ 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 Act¹⁴ and the Commission has so interpreted the term in the section 503(b) context.¹⁵ The Commission may also assess

⁶ The Los Angeles Office also contacted the Bakersfield Police Department and the Bakersfield Police Department confirmed that the lights on the Antenna Structure were not functioning after sunset on December 15, 2010.

⁷ According to the National Oceanic and Atmospheric Administration, the local sunset on December 16, 2010, in Bakersfield, California, occurred at 4:45 p.m. See <http://www.srrb.noaa.gov/highlights/sunrise/sunrise.html>, visited June 30, 2011.

⁸ See *Letter of Inquiry* from Nader Haghghat, District Director, Los Angeles Office, Western Region, Enforcement Bureau, to Timothy J. Mullen, dated March 16, 2011 ("*LOI*"); Letter from Timothy J. Mullen to Nader Haghghat, District Director, Los Angeles Office, Western Region, Enforcement Bureau, dated April 5, 2011 ("*LOI Response*").

⁹ *LOI Response* at 1.

¹⁰ *LOI Response* at 1 - 2.

¹¹ *LOI Response* at 1.

¹² 47 U.S.C. § 503(b).

¹³ 47 U.S.C. § 312(f)(1).

¹⁴ 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 Act (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 ...").

¹⁵ 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.*").

a forfeiture for violations that are merely repeated, and not willful.¹⁶ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁷

A. Antenna Structure Lighting and Notification Violations

6. 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.¹⁸ Section 17.51(a) of the Rules states that all red obstruction lighting shall be exhibited from sunset to sunrise unless otherwise specified.¹⁹ 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.²⁰ Section 17.57 of the Rules states that the owner of any antenna structure with a registration number must notify the Commission immediately upon any change in ownership.²¹

7. As discussed above, on December 15, and 16, 2010, the lighting on the Antenna Structure, including the red obstruction lighting, was not exhibited. Further investigation by the Los Angeles Office revealed that the lighting on the structure failed on October 22, 2010, and was not operational again until December 28, 2010. Additionally, although Mullen became the owner of the structure on April 18, 2008, he did not update the ownership information for the Antenna Structure until January 11, 2011, after he was contacted by a Los Angeles agent. Based on the evidence before us, we find that Mullen apparently willfully and repeatedly violated section 303(q) of the Act and sections 17.51(a) and 17.57 of the Rules, by failing to maintain the required red obstruction lighting on the Antenna Structure for over two months, and by failing to update the ownership information for the Antenna Structure for over two years.

B. Proposed Forfeiture

8. Pursuant to the Commission’s *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for failing to comply with the prescribed lighting and/or marking for an antenna structure is \$10,000.²² The base forfeiture for failure to make required notifications, including ownership notifications, is \$3,000.²³ 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

¹⁶ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary 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).

¹⁷ 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.” See, e.g., *Southern California Broadcasting Co.*, 6 FCC Rcd 4387; *Callais Cablevision, Inc.* 16 FCC Rcd 1359.

¹⁸ 47 U.S.C. § 303(q).

¹⁹ 47 C.F.R. § 17.51(a).

²⁰ 47 C.F.R. § 17.48.

²¹ 47 C.F.R. § 17.57.

²² *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.

²³ *Id.*

offenses, ability to pay, and other such matters as justice may require.²⁴ Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mullen is apparently liable for a total forfeiture in the amount of \$13,000.

IV. ORDERING CLAUSES

9. 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, Timothy J. Mullen is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of thirteen thousand dollars (\$13,000) for violations of section 303(q) of the Act, and sections 17.51(a), 17.48, and 17.57 of the Rules.²⁵

10. **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, Timothy J. Mullen **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

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. 20554.²⁶ 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. Timothy J. Mullen will send electronic notification on the date said payment is made to WR-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.²⁷ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Western Region, Los Angeles Office, 18000 Studebaker Rd., #660, Cerritos, CA 90703 and include the NAL/Acct. No. referenced in the caption. Timothy J. Mullen shall also email the written response to WR-Response@fcc.gov.

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.

²⁴ 47 U.S.C. § 503(b)(2)(E).

²⁵ 47 U.S.C. §§ 503(b), 303(q); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 17.51(a), 17.48, 17.57.

²⁶ See 47 C.F.R. § 1.1914.

²⁷ 47 C.F.R. §§ 1.80(f)(3), 1.16.

14. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Timothy J. Mullen at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Nader Haghigat
District Director
Los Angeles Office
Western Region
Enforcement Bureau