

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

In the Matter of)	
)	File No: EB-06-BF-024
Forever of PA, Inc.)	
Antenna Structure Registrant)	NAL/Acct. No.: 200732280002
ASR # 1027115)	
Hollidaysburg, PA)	FRN: 0006161855

MEMORANDUM OPINION AND ORDER

Adopted: November 21, 2011

Released: November 22, 2011

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, issued pursuant to section 405 of the Communications Act of 1934, as amended (“Act”),¹ and section 1.106 of the Commission’s rules (“Rules”),² we deny in part and grant in part a Petition for Reconsideration (“*Petition*”) filed by Forever of PA, Inc. (“Forever”).³ The *Petition* seeks reconsideration of a *Forfeiture Order* that imposed a monetary forfeiture of \$10,000 against Forever for willfully violating sections 17.47, 17.48, and 17.51(a) of the Rules⁴ by failing to comply with the antenna structure lighting, monitoring, and reporting requirements specified for antenna structure # 1027115.⁵ For the reasons set forth below, we grant in part and deny in part the *Petition* and reduce the forfeiture to \$8,000.

II. BACKGROUND

2. Forever is the registrant of antenna structure # 1027115 (the “Antenna Structure”), and is subject to the Commission’s Part 17 rules which require, *inter alia*, daily observation of obstruction lighting or an automatic alert system that detects and reports any failure of the lights, notification of extinguishment or improperly functioning lights, and exhibition of obstruction lighting from sunset to sundown.⁶ In February of 2006, the Enforcement Bureau’s Buffalo Office (“Buffalo Office”) received a report of a light

¹ 47 U.S.C. § 405.

² 47 C.F.R. §1.106.

³ Forever of PA, Inc., Petition for Reconsideration (filed March 18, 2008).

⁴ 47 C.F.R. §§ 17.47, 17.48, 17.51(a).

⁵ See *Forever of PA, Inc.*, Forfeiture Order, 23 FCC Rcd 2605 (Enf. Bur., Northeast Region 2008) (“*Forfeiture Order*”), *aff’g*, *Forever of PA*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200732280002 (Enf. Bur., Buffalo Office, rel. Feb. 22, 2007) (“*NAL*”). A comprehensive recitation of the facts and history of this case can be found in the *NAL* and the *Forfeiture Order*, which are incorporated here by reference.

⁶ 47 C.F.R. §§ 17.47, 17.48, 17.51(a).

outage on the Antenna Structure, and determined that no Notice to Airmen (“NOTAM”) had been issued.⁷ During an inspection of the Antenna Structure on February 24, 2006, an FCC agent determined that all of the tower lights were functioning except for the top beacon light.⁸

3. The Buffalo Office subsequently issued an *NAL* proposing a forfeiture in the amount of \$10,000 against Forever for “apparently willfully violat[ing] [s]ections 17.47, 17.48, and 17.51 of the Commission’s [r]ules by failing to comply with the antenna structure lighting, monitoring, and reporting requirements specified” for the Antenna Structure.⁹ Forever responded to the *NAL* on March 13, 2007.¹⁰ In its *Response*, Forever did not dispute that the top red beacon was unlit or that it did not notify the FAA of the light outage.¹¹ Rather, Forever argued (i) that it was unaware of the monitoring system’s limitations until the FCC agent’s inspection, and thus its actions were not willful, and (ii) that it took corrective actions within days after the FCC’s inspection.¹² Moreover, Forever’s Chief Operator submitted a declaration in response to the *NAL* asserting that he had not, as the FCC agent claimed, stated during the inspection that he knew the tower’s monitoring system was not capable of detecting individual light outages.¹³ The Regional Director for the Northeast Region of the Enforcement Bureau (“Region”) considered and rejected Forever’s arguments in the *Forfeiture Order*, and held that Forever willfully violated sections 17.47, 17.48, and 17.51(a) of the Rules by (1) failing to properly maintain the top red beacon on the Antenna Structure, (2) failing to report to the FAA the outage of the top red beacon, and (3) failing to ensure that a proper antenna structure monitoring system was installed.¹⁴

4. Forever’s *Petition* largely repeats the arguments raised in its *Response*.¹⁵ Challenging the *Forfeiture Order*’s finding that the violations were willful, Forever again seeks reconsideration and cancellation or reduction of the forfeiture, claiming that it was not aware of the monitoring system’s limitations until notified by the FCC agent.¹⁶ Forever also seeks a reduction or cancellation of the forfeiture based on its history of compliance with the Rules.¹⁷

⁷ A pilot originally reported the light outage to the Federal Aviation Administration (“FAA”). *NAL* at 1.

⁸ *Id.* at 1-2.

⁹ *Id.* at 1.

¹⁰ Letter from Lynn A. Deppen, Member, Forever of PA, Inc., to David Viglione, Resident Agent, Buffalo Office, Northeast Region, Enforcement Bureau, Federal Communications Commission, dated March 13, 2007 (“*Response*”).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at Attachment 7.

¹⁴ See *Forfeiture Order*, 23 FCC Rcd at 2606-2607. The *Forfeiture Order* declined to rely on the Chief Operator’s declaration in response to the *NAL*, but rather, the Region relied on the contemporaneous handwritten notes of the FCC agent, which reflect the Chief Operator’s statement during the inspection that he knew about the monitoring system’s limitations.

¹⁵ *Petition* at 1-6.

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 4-5.

III. DISCUSSION

5. Reconsideration is appropriate only where the petitioner shows a material error or omission in the original order or raises additional facts not known or existing until after the petitioner's last opportunity to present such matters.¹⁸ A petition that simply repeats arguments previously considered and rejected will be denied.¹⁹ Forever has failed to either demonstrate error or to present new facts or changed circumstances, as required. In fact, Forever again raises the very same argument already considered and rejected in the *Forfeiture Order*: that the violation was not willful because Forever was unaware of the monitoring system's deficiencies.²⁰ We therefore deny the *Petition* to the extent it again challenges the Region's finding of willfulness,²¹ but we take the opportunity below to further respond to Forever's claims regarding its knowledge of the monitoring system's limitations and its relation to our willfulness finding. We also address Forever's newly raised assertion of history of compliance.

6. As the Region found in the *Forfeiture Order*, even if it were to accept that Forever was not aware of the monitoring system's limitations, the violation was willful.²² The term "willful," when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate a rule. Because Forever knowingly operated the monitoring system, the violation was willful.²³ In sum, we find that it was Forever's omission that resulted in its willful operation of a monitoring system that could not detect single light outages. Accordingly, we find no basis for reconsideration and therefore affirm the finding in the *Forfeiture Order* that Forever willfully violated sections 17.47, 17.48, and 17.51(a) of the Rules.

¹⁸ See *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. 1965), *cert. denied*, 383 U.S. 967 (1966); 47 C.F.R. § 1.106(c).

¹⁹ See *Infinity Broadcasting Operations, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 4216 (2004); *Bennett Gilbert Gaines*, Memorandum Opinion and Order, 8 FCC Rcd 3986 (Rev. Bd. 1993).

²⁰ See *Petition* at 2-4.

²¹ See *Forfeiture Order*, 23 FCC Rcd at 2606-2607, ¶¶ 5-6 (rejecting Forever's claim that the violation was not willful).

²² *Id.* In any event, we disagree with Forever's claim that, despite the FCC agent's contemporaneous handwritten notes from the inspection, it "makes no sense" that the Chief Operator would have stated that he was aware of the monitoring system's deficiencies given "the station's experience with the monitoring equipment." See *Petition* at 2. In making such a claim, Forever relies on the fact that the tower never experienced the outage of an individual light, but rather only experienced complete tower light outages, at which time the monitoring system properly notified the Chief Operator. *Id.* at 3. Forever contends, therefore, that the Chief Operator could not have known about the monitoring system's deficiencies with regard to individual light outages. *Id.* at 3-4. The Chief Operator, however, did not tell the agent that he knew about the deficiency based on his experience with the tower's actual outages, but rather that he knew that the monitoring system, as installed, was incapable of detecting individual light outages and that a modification was required for the system to have such capability. Thus, the station's past experience with the monitoring system provides no basis for disregarding the contemporaneous handwritten notes of our agent, which reflect the Chief Operator's statement that he knew of the monitoring system's deficiencies.

²³ *Forfeiture Order*, 23 FCC Rcd at 2607, ¶ 6. Furthermore, if Forever had adequately complied with section 17.47(b) of the Rules, which requires tower owners to "inspect at intervals not to exceed 3 months all automatic or mechanical control devices, indicators, and alarm systems associated with the antenna structure lighting . . .," Forever would have discovered that its monitoring system was incapable of detecting single light outages.

7. Finally, Forever contends that a reduction or cancellation of the forfeiture amount is warranted based on its history of compliance with the Commission's rules.²⁴ We have reviewed our records and we agree. We therefore reduce the forfeiture amount from \$10,000 to \$8,000.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, pursuant to section 405 of the Act and section 1.106 of the Commission's rules,²⁵ that the Petition for Reconsideration filed on March 18, 2008 by Forever of PA, Inc., **IS GRANTED IN PART AND DENIED IN PART**.

9. **IT IS FURTHER ORDERED** that the *Forfeiture Order* **IS AFFIRMED IN PART AND MODIFIED IN PART** and that pursuant to section 503(b) of the Act, Forever of PA, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$8,000 for willful violations of sections 17.47, 17.48, and 17.51(a) of the Commission's Rules.²⁶

10. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Rules within thirty (30) days of the release of this Memorandum Opinion and Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for enforcement pursuant to section 504(a) of the Act.²⁷ 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 NAL/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. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Forever of PA, Inc. shall also send electronic notification to NER-Response@fcc.gov on the date said payment is made.

²⁴ *Petition* at 4.

²⁵ 47 U.S.C. § 405; 47 C.F.R. § 1.106.

²⁶ 47 U.S.C. § 503(b); 47 C.F.R. §§ 17.47, 17.48, 17.51(a).

²⁷ 47 U.S.C. § 504(a).

11. **IT IS FURTHER ORDERED** that a copy of this Memorandum Opinion and Order shall be sent, by both regular mail and Certified Mail/Return Receipt Requested, to Forever of PA, Inc. at 6400 Sheridan Drive, Suite 140, Box #6, Williamsville, New York, and to its counsel, Allan G. Moskowitz, at Kaye Scholer LLP, 901 15th Street, N.W., Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau