

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

In the Matter of	)	
	)	
Miller Communications, LLC	)	File No.: EB-10-AT-0140
	)	
Owner of Antenna Structure	)	NAL/Acct. No.: 201132480001
ASR # 1018669	)	
Red Hill, GA	)	FRN: 0006147490
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER**

Adopted: April 12, 2011

Released: April 12, 2011

By the District Director, Atlanta Office, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Miller Communications, LLC (“Miller”), owner of antenna structure number 1018669 located in Red Hill, Georgia (“Tower”), apparently willfully and repeatedly violated section 303(q) of the Communications Act of 1934, as amended (“Act”)<sup>1</sup> and sections 17.47(a) and 17.51(a) of the Commission’s rules (“Rules”)<sup>2</sup> by failing to monitor antenna structure lighting and failing to exhibit all red obstruction lighting from sunset to sunrise. We conclude that Miller is apparently liable for a forfeiture in the amount of twelve thousand dollars (\$12,000).

**II. BACKGROUND**

2. On December 9, 2010, in response to a complaint that the lights on the Tower had been non-functional since October 2010, an agent from the Enforcement Bureau’s Atlanta Office (“Atlanta Office”) contacted the Federal Aviation Administration (“FAA”) and learned that no one had contacted the FAA about a light outage on the Tower<sup>3</sup> and that a Notice to Airmen (“NOTAM”) had not been issued for the Tower.<sup>4</sup> On December 10, 2010,<sup>5</sup> the agent telephoned Miller’s owner, who stated he lives in New Jersey, had no means to monitor the Tower’s lights,<sup>6</sup> and was unaware of the NOTAM process or that he

<sup>1</sup> 47 U.S.C. § 303(q).

<sup>2</sup> 47 C.F.R. §§ 17.47(a), 17.51(a).

<sup>3</sup> See 47 C.F.R. § 17.48 (requiring owners of registered antenna structures that have been assigned lighting specifications to report immediately to the FAA any observed or otherwise known extinguishment of any flashing obstruction light not corrected within 30 minutes).

<sup>4</sup> The FAA issued a NOTAM on December 9, 2010, at the agent’s request.

<sup>5</sup> Miller was first contacted on December 9, 2010 about the Tower, but denied owning the Tower during the telephone conversation. Miller subsequently determined that it did in fact own the Tower.

<sup>6</sup> See 47 C.F.R. § 17.47(a) (requiring owners of antenna structures to make an observation of the antenna structure’s lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights; or alternatively, to maintain an automatic alarm system designed to detect any failure of such lights).

was required to notify the FAA in the event of a lighting malfunction. Later on December 10, 2010, Miller's owner confirmed that the Tower's lights had been restored. On January 19, 2011, Miller's owner confirmed that he was previously not monitoring the Tower's lights and stated that the Tower's lights are now being monitored.<sup>7</sup>

3. On February 25, 2011, an agent from the Atlanta Office inspected the Tower, observed the red obstruction lights were functioning properly, and obtained the power meter number for the Tower. On March 3, 2011, the agent received power meter daily energy usage for the Tower from Hart Electric Membership Corporation, which showed that the Tower's power consumption was nearly zero from October 1, 2010 through December 9, 2010. The Tower's energy usage increased significantly after the lighting was restored on December 10, 2010.<sup>8</sup> The energy usage for the Tower, therefore, confirms that the Tower's lights were not lit from October 1, 2010 through December 9, 2010.

### III. DISCUSSION

4. Section 503(b) of the Act<sup>9</sup> 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 term "willful" as used in section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>10</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>11</sup>

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.<sup>12</sup> Section 17.51(a) of the Rules requires all red obstruction lighting to be exhibited from sunset to sunrise unless otherwise specified.<sup>13</sup> The Tower is 69.4 meters above ground in overall height and is required to be painted and lit.<sup>14</sup> According to electricity usage information, the Tower's lights were not lit from October 1, 2010 until December 9, 2010. During this period, Miller did not contact the FAA about the Tower light outage. Moreover, Miller's owner admitted that he was not monitoring the Tower's lights prior to December 10, 2010, the day the Tower's lights were restored. Thus, based on the evidence before us, we find that Miller apparently willfully and repeatedly violated section 303(q) of the Act and section 17.51(a) of the Rules by failing to exhibit required red obstruction lighting on the Tower after sunset from October 1, 2010 until December 9, 2010.

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<sup>7</sup> See email from Jim Miller, Owner, Miller Communications, LLC, to the Atlanta Office (dated January 19, 2011).

<sup>8</sup> See para. 2 *supra*.

<sup>9</sup> 47 U.S.C. § 503(b).

<sup>10</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that "[t]he 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 any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

<sup>11</sup> 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."

<sup>12</sup> 47 U.S.C. § 303(q).

<sup>13</sup> 47 C.F.R. § 17.51(a).

<sup>14</sup> See Antenna Structure Registration database for antenna structure number 1018669. See also 47 C.F.R. § 17.21 (requiring antenna structures more than 60.96 meters in height to be painted and lighted).

6. Section 17.47(a) of the Rules<sup>15</sup> requires owners of antenna structures that are required to be lighted to make an observation of the antenna structure's lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights. This requirement ensures that an antenna structure owner will be notified promptly of any failure in a structure's lights. Miller's owner admitted that prior to December 10, 2010, Miller had not conducted any monitoring of the Tower's lights. Also, Miller did not maintain an automatic light monitoring system.<sup>16</sup> Thus, based on the evidence before us, we find that Miller apparently willfully and repeatedly violated section 17.47(a) of the Rules by failing to make observations of the Tower's lights at least once each 24 hours.

7. 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/or marking is \$10,000 and the base forfeiture amount for failure to conduct required monitoring is \$2,000.<sup>17</sup> 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, and history of prior offenses, ability to pay, and other such matters as justice may require.<sup>18</sup> Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Miller is apparently liable for a total forfeiture of \$12,000, consisting of a \$10,000 forfeiture for violation of section 303(q) of the Act and section 17.51(a) of the Rules and a \$2,000 forfeiture for violation of section 17.47(a) of the Rules.

8. We direct Miller to submit a statement signed under penalty of perjury by an officer or director of Miller stating that it is currently monitoring the Tower's lights as required pursuant to section 17.47 of the Rules. This statement must be provided to the Atlanta Office at the address listed in paragraph 13 within fifteen days of the release date of this Notice of Apparent Liability for Forfeiture.

#### 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 Rules, Miller Communications, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twelve thousand dollars (\$12,000) for violation of section 303(q) of the Act and sections 17.47(a) and 17.51(a) of the Rules.<sup>19</sup>

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Miller Communications, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. **IT IS FURTHER ORDERED** that, within fifteen days of the release date of this Notice of Apparent Liability for Forfeiture, Miller Communications, LLC **SHALL SUBMIT** a sworn statement as described in paragraph 8 to the Atlanta Office listed below.

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<sup>15</sup> 47 C.F.R. § 17.47(a).

<sup>16</sup> 47 C.F.R. § 17.47(b) (allowing antenna structure owners to employ an automatic light monitoring system in lieu of daily observations).

<sup>17</sup> *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.

<sup>18</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>19</sup> 47 U.S.C. §§ 303(q), 503(b), 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 17.47(a), 17.51(a).

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.<sup>20</sup> If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov). If payment is made, Miller will send electronic notification on the date said payment is made to [SCR-Response@fcc.gov](mailto:SCR-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. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, Atlanta Office, 3575 Koger Blvd; Ste 320, Duluth, GA 30096, along with the NAL/Acct. No. referenced in the caption. The statement should also be emailed to [SCR-Response@fcc.gov](mailto:SCR-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.

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 Miller Communications, LLC, ATTN: Jim Miller, 14 Polkville Rd, Columbia, NJ 07832.

FEDERAL COMMUNICATIONS COMMISSION

Douglas Miller  
District Director,  
Atlanta Office  
South Central Region  
Enforcement Bureau

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<sup>20</sup> See 47 C.F.R. § 1.1914.