

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

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| In the Matter of |) | |
| |) | |
| RAMCO Broadband Services |) | File No.: EB-10-HU-0002 |
| |) | |
| Owner of Antenna Structure |) | NAL/Acct. No: 201132540001 |
| ASR#: 1045666 |) | |
| Yorktown, Texas |) | FRN: 0019691591 |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 13, 2011

Released: January 13, 2011

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

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that RAMCO Broadband Services (“RAMCO”), owner of antenna structure number 1045666, in Yorktown, Texas,¹ apparently willfully and repeatedly violated sections 17.4(g), 17.48, 17.51(a), and 17.57 of the Commission’s Rules (“Rules”)² by failing to: (1) display the Antenna Structure Registration Number (“ASRN”) in a conspicuous place so that it is readily visible near the base of the antenna structure; (2) notify the Federal Aviation Administration (“FAA”) immediately of a known extinguishment of any flashing obstruction lighting; (3) exhibit all red obstruction lighting from sunset to sunrise; and (4) immediately notify the Commission upon a change in antenna structure ownership information. We conclude that RAMCO is apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000).

II. BACKGROUND

2. Antenna structure number 1045666 is 77.1 meters above ground in height and is required to be painted and lit.³ KFW Communications, Inc. sold antenna structure number 1045666 to RAMCO effective January 1, 2010.⁴ As of January 12, 2011, KFW Communications, Inc. is still listed as the owner of the structure in the Antenna Structure Registration (“ASR”) database.

¹ On January 6, 2010, RAMCO informed the Houston Field Office that it had dismantled its antenna structure and that it was no longer operating its cable system. To date, RAMCO has provided no verifiable evidence in support of these claims, e.g., sworn statements, copies of invoices, photographs, etc. In the event that RAMCO submits evidence to the Bureau that it: (1) has dismantled its antenna structure; (2) owns no other antenna structures; (3) has ceased operating its cable system in Yorktown, TX; and (4) owns no other cable systems, we will consider such evidence and take appropriate action.

² 47 C.F.R. §§ 17.4(g), 17.48, 17.51(a), and 17.57.

³ See Antenna Structure Registration Database, Registration Number 1045666. See also 47 C.F.R. § 17.21 (generally requiring towers exceeding 200 feet in height to be painted and lit).

⁴ Letter from Thomas Kurien, owner of KFW Communications, Inc. dba Almega Cable, to Lee Browning, Resident Agent, Houston Office, dated January 27, 2010. RAMCO also confirmed that it acquired the antenna structure effective January 1, 2010 in a telephone conversation with Agent Browning on March 16, 2010.

3. On January 15 and January 21, 2010, in response to a complaint, an agent from the Enforcement Bureau's Houston Office ("Houston Office") inspected antenna structure number 1045666 in Yorktown, Texas. The agent observed on both days that the obstruction lighting was not lit after sunset. The agent contacted the FAA on January 15, 2010 and determined a Notice to Airmen ("NOTAM") had not been issued for the light outage.⁵ On February 3, 2010 and March 16, 2010, the agent warned RAMCO orally that its antenna structure's lights were out on January 15 and 21, 2010, and that it was required to update its structure's ownership information in the ASR database. On February 24, 2010, the agent inspected antenna structure number 1045666 and observed that the ASRN was not displayed in a place readily visible near the base of the structure. On March 16, 2010, the agent warned RAMCO orally that the ASRN was not posted on antenna structure number 1045666. On September 28, 2010, the agent again observed that the ASRN was not posted near the base of the antenna structure and that the obstruction lighting was not lit after sunset. The agent contacted the FAA on September 28, 2010 and determined that a NOTAM had not been issued for the tower.⁶

III. DISCUSSION

4. Section 503(b) of the Communications Act of 1934, as amended ("the Act"),⁷ 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.⁸ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁹

5. Section 17.4(g) of the Rules requires the ASRN be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure.¹⁰ On February 24 and September 28, 2010, an agent from the Houston Office observed that the ASRN for antenna structure number 1045666 was not posted in a conspicuous place and was not visible from anywhere near the base of the structure. RAMCO was warned on March 16, 2010 about this violation and the violation was still not corrected on September 28, 2010. Thus, based on the evidence before us, we find that RAMCO apparently willfully and repeatedly violated section 17.4(g) of the Rules by failing to post the ASRN for antenna structure number 1045666 in a conspicuous and visible place near the structure's base.

6. Section 17.51(a) of the Rules requires all red obstruction lighting to be exhibited from sunset to sunrise unless otherwise specified.¹¹ Section 17.48 of the Rules requires that owners of registered

⁵ The FAA issued a NOTAM on January 15, 2010, at the agent's request.

⁶ The FAA issued a NOTAM on September 28, 2010, at the agent's request.

⁷ 47 U.S.C. § 503(b).

⁸ 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, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

⁹ 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."

¹⁰ 47 C.F.R. § 17.4(g).

¹¹ 47 C.F.R. § 17.51(a).

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.¹² On January 15, January 21, and September 28, 2010, an agent from the Houston Office observed that the red obstruction lighting for antenna structure number 1045666 was not lit after sunset. On January 15 and September 28, 2010, an agent from the Houston Office confirmed that RAMCO had not notified the FAA of the outage and no NOTAM had been issued. RAMCO was warned on February 3, 2010 and March 16, 2010 about the light outage and notification requirement and the violation was not corrected on September 28, 2010. Thus, based on the evidence before us, we find that RAMCO apparently willfully and repeatedly violated sections 17.48 and 17.51(a) of the Rules by failing to notify the FAA immediately of a known light outage and exhibit red obstruction lighting on antenna structure number 1045666 after sunset.

7. Section 17.57 of the Rules requires the owner of an antenna structure for which an ASRN has been obtained to immediately notify the Commission using FCC Form 854 upon any change in ownership information.¹³ RAMCO took ownership of antenna structure number 1045666 effective January 1, 2010.¹⁴ On February 3, 2010 and March 16, 2010, RAMCO was warned that it was required to update the ownership information for its structure in the ASR database when it acquired the structure. As of January 12, 2011, the registration for antenna structure number 1045666 still shows the previous structure owner as the owner. Thus, based on the evidence before us, we find that RAMCO apparently willfully and repeatedly violated section 17.57 of the Rules by failing to notify the Commission of a change in structure ownership from January 2, 2010 until January 12, 2011.

8. Pursuant to the Commission's *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for: (1) failing to comply with prescribed lighting and/or marking is \$10,000; and (2) failing to file required forms or information is \$3,000.¹⁵ Section 1.80 of the Rules does not establish a base forfeiture amount for failure to post the ASR number. The Commission has determined, however, that an appropriate base forfeiture amount for failure to post the ASR number is \$2,000 per violation.¹⁶ 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.¹⁷

9. Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that RAMCO is apparently liable for a total forfeiture of \$25,000, consisting of the following: \$6,000 for failing to file required updated ownership information; \$4,000 for failing to post the ASR number; and \$15,000 for failing to comply with lighting requirements. Because RAMCO did not remedy the ASR posting, ownership information, and tower lighting violations in a timely

¹² 47 C.F.R. § 17.48.

¹³ 47 C.F.R. § 17.57.

¹⁴ See *supra* note 4.

¹⁵ *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.

¹⁶ *American Towers Corporation*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1282 (2001) (finding failure to post an ASR number to be an informational requirement less serious than failure to file an antenna structure registration form); *KFW Communications LLC*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 201032540003 (Enf. Bur., Houston Office, released February 4, 2010), Forfeiture Order, 25 FCC Rcd 3691 (Enf. Bur. 2010).

¹⁷ 47 U.S.C. § 503(b)(2)(E).

manner after being warned of the violations, we find that an upward adjustment for each of these violations is warranted. Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that RAMCO is apparently liable for a \$25,000 forfeiture.

10. In the event that RAMCO has not dismantled its antenna structure, we direct RAMCO to submit a statement signed under penalty of perjury by an officer or director of RAMCO stating: (1) that it has posted the ASR number in a conspicuous and visible location near the antenna base; (2) that it has updated the ownership information for its tower in the ASR database; and (3) that all of the lights on its tower are functioning. If the lights have not yet been repaired, RAMCO is directed to provide a timetable for when the repairs will be complete and a certification that RAMCO has continued to notify the FAA of the lighting outage to ensure that a NOTAM for its tower remains current. This statement must be provided to the Houston Office at the address listed in paragraph 15 within fifteen days of the release date of this *NAL*.

IV. ORDERING CLAUSES

11. 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, RAMCO Broadband Services is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for violations of sections 17.4(g), 17.48, 17.51(a) and 17.57 of the Rules.¹⁸

12. **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*, RAMCO Broadband Services **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. **IT IS FURTHER ORDERED** that RAMCO Broadband Services **SHALL SUBMIT** a statement as described in paragraph 10 to the Houston Office within fifteen days of the release date of this *Notice of Apparent Liability for Forfeiture*.

14. 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 Number 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. 20554.⁸ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. RAMCO shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

15. The written statement seeking reduction or cancellation of the proposed forfeiture, if any,

¹⁸ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 17.4(g), 17.48, 17.51(a) and 17.57.

⁸ See 47 C.F.R. § 1.1914.

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, South Central Region, Houston Office, 9597 Jones Road #362, Houston, Texas, 77065 and must include the NAL/Acct. No. referenced in the caption. The statement should also be emailed to SCR-Response@fcc.gov.

16. 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.

17. **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 RAMCO Broadband Services at 726 US Highway 202 Suite 320-119, Bridgewater, NJ 08807-2737.

FEDERAL COMMUNICATIONS COMMISSION

Lee R. Browning
Resident Agent
Houston Office
South Central Region
Enforcement Bureau