

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

In the Matter of
Mobile Phone of Texas, Inc.
Owner of Antenna Structure No. 1057231
Vernon, Texas
File No.: EB-11-DL-0071
NAL/Acct. No.: 201232500001
FRN: 0001667401

FORFEITURE ORDER

Adopted: August 21, 2012

Released: August 21, 2012

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to Mobile Phone of Texas, Inc. (Mobile Phone), owner of antenna structure number 1057231 in Vernon, Texas (the Antenna Structure), for its willful and repeated violation of Section 17.50 of the Commission’s rules (Rules).1 The noted violations involved Mobile Phone’s failure to clean or repaint the Antenna Structure as often as necessary to maintain good visibility.

II. BACKGROUND

2. On January 18, 2012, the Enforcement Bureau’s Dallas Office (Dallas Office) issued a Notice of Apparent Liability for Forfeiture and Order (NAL)2 to Mobile Phone for its failure to repaint the Antenna Structure. Mobile Phone submitted a response to the NAL requesting a substantial reduction of the proposed \$10,000 forfeiture, because (1) the company “has demonstrated a history of excellent overall regulatory compliance with the Commission’s rules over an extended period of time,”3 and (2) “as a small paging carrier, it does not have the ability to pay” the proposed forfeiture and “an extremely high forfeiture, like that proposed by the Commission could very well force Mobile Phone out of the paging business,” which would be “contrary to the economic recovery goals” of the federal government.4 In its NAL Response, Mobile Phone also stated that it had executed a contract with a tower company to have the

1 47 C.F.R. § 17.50.

2 Mobile Phone of Texas, Inc., Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 313 (Enf. Bur. 2012). A comprehensive recitation of the facts and history of this case can be found in the NAL and is incorporated herein by reference.

3 Letter from Richard D. Rubino, Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, Counsel for Mobile Phone of Texas, Inc., to P. Michele Ellison, Chief, Enforcement Bureau at 3 (dated Feb. 15, 2012) (on file in EB-11-DL-0071) (NAL Response).

4 Id. at 5-6.

Antenna Structure repainted as soon as possible.⁵ According to Mobile Phone, the Antenna Structure was repainted on March 16, 2012.⁶

III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),⁷ Section 1.80 of the Rules,⁸ and the *Forfeiture Policy Statement*.⁹ In examining Mobile Phone's response, Section 503(b)(2)(E) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation 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.¹⁰ As discussed below, we have considered Mobile Phone's response in light of these statutory factors, and find that a reduction of the forfeiture is justified based on history of compliance.

4. First, it is undisputed that, during the inspection on August 17, 2011, the paint on the Antenna Structure was scraped and peeling in several areas and was obstructed by unpainted black coaxial cables covering the Antenna Structure.¹¹ Thus, based on the evidence before us, we find that Mobile Phone willfully and repeatedly violated Section 17.50 of the Rules by failing to clean and repaint the Antenna Structure to maintain good visibility.

5. We now consider Mobile Phone's argument for a reduction of the proposed forfeiture based on its history of compliance with the Rules. Based on a review of our records, we find that a reduction on these grounds is warranted. Accordingly, we reduce the proposed forfeiture to \$8,000 based on Mobile Phone's history of compliance with the Rules.¹²

6. We decline, however, to further reduce the proposed forfeiture based solely on Mobile Phone's claimed status as a small paging carrier. Mobile Phone claims that it is unable to pay the proposed forfeiture but did not provide any documentation of its finances. As stated in the NAL, the Commission looks to "(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" to

⁵ *Id.* at 2.

⁶ Email from Mickey Shipman, General Manager, Mobile Phone of Texas, Inc., to the Dallas Office (Aug. 9, 2012, 1:42 P.M.) (on file in EB-11-DL-0071) (photograph of repainted structure attached).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

⁹ *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), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ *NAL*, 27 FCC Rcd at 314.

¹² *See, e.g., Gila Electronics, Inc.*, Forfeiture Order, 27 FCC Rcd 400, 402, para. 9 (Enf. Bur. 2012) (reducing forfeiture based on history of compliance with the Rules); *Taylor Communications, Inc.*, Forfeiture Order, 26 FCC Rcd 12885, 12888, para. 10 (Enf. Bur. 2011) (reducing forfeiture based on history of compliance with the Rules).

determine an entity's inability to pay.¹³ Thus, we cannot assess Mobile Phone's financial assertions and find no basis in the record before us for a reduction of the proposed forfeiture.

IV. ORDERING CLAUSES

7. 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(f)(4) of the Commission's rules, Mobile Phone of Texas, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violations of Section 17.50 of the Commission's rules.¹⁴

8. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.¹⁵ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.¹⁶ Mobile Phone of Texas, Inc. shall send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁷ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

9. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁸ If you have questions regarding payment procedures, please contact

¹³ *NAL*, 27 FCC Rcd at 316.

¹⁴ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 17.50.

¹⁵ 47 C.F.R. § 1.80.

¹⁶ 47 U.S.C. § 504(a).

¹⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁸ *See* 47 C.F.R. § 1.1914.

the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

10. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Mobile Phone of Texas, Inc. at P.O. Box 2247, Wichita Falls, TX 76307, and to its counsel, Richard D. Rubino at Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, 2120 L Street, NW, Suite 300, Washington, DC 20037.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau