

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

In the Matter of)	
)	
James Cable, LLC)	File No.: EB-11-DL-0083
)	NAL/Acct. No.: 201232500003
Owner of Antenna Structure No.: 1016806)	FRN: 0002748044
)	
Durant, Oklahoma)	

FORFEITURE ORDER

Adopted: September 26, 2012

Released: September 26, 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 ten thousand dollars (\$10,000) to James Cable, LLC (James Cable), owner of antenna structure number 1016806 in Durant, Oklahoma (the Antenna Structure), for willful and repeated violation of Section 17.50 of the Commission's rules (Rules).¹ The noted violation involved James Cable'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 James Cable for its failure to repaint the Antenna Structure. James Cable submitted a response to the *NAL* requesting cancellation of the proposed \$10,000 forfeiture because the company "initiated serious steps to restore the Antenna Structure well before the FCC inspection and had been delayed due to the unanticipated significant and unbudgeted financial impact that full tower replacement represented."³ James Cable also requests that the FCC consider that it "has no prior offenses concerning its towers"⁴ and that it is a small cable operator, who qualified for a financial hardship waiver of the FCC's set top box implementation requirements.⁵ Finally, James Cable states that it had executed a contract on February 15, 2012 to replace the current Antenna Structure and that the new compliant antenna structure was scheduled for installation by May 31, 2012.⁶

¹ 47 C.F.R. § 17.50.

² *James Cable, LLC*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 309 (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 George Psyllos, Chief Financial Officer, James Cable, LLC, to James Wells, District Director, Dallas Office, at 2-3 (Feb. 15, 2012) (on file in EB-11-DL-0083) (*NAL Response*).

⁴ *Id.* at 3.

⁵ *Id.* at 1.

⁶ *Id.*

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 James Cable'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 James Cable's response in light of these statutory factors, and find no grounds upon which to cancel or reduce the forfeiture.

4. First, it is undisputed that, during the inspection by the Dallas Office on September 6, 2011, the paint on the Antenna Structure was severely faded and chipped and the structure was in need of repainting.¹¹ Thus, based on the evidence before us, we affirm the findings in the *NAL* and find that James Cable 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 address James Cable's claim that its pre-inspection efforts warrant reduction or cancellation of the proposed forfeiture. James Cable argues that it had determined, prior to the agents' inspection, that the Antenna Structure needed to be repainted, had allocated up to \$10,000 for repainting the structure in its 2011 capital budget, and had hired a professional tower inspection company to evaluate the tower. James Cable further argues that the Antenna Structure was not repainted in 2011, as planned in the 2011 capital budget, because the professional tower inspection company recommended in January 2011 that the Antenna Structure be replaced, rather than repainted. James Cable asserts it could not afford to pay the replacement costs in 2011, which were estimated to be between \$150,000-\$200,000. It claims that "other options¹² were explored that would allow for tower replacement within the financial capabilities of the Company, . . . [and after the inspection], the Company decided to retain title to the Antenna Structure and to budget for a complete replacement early in the next budget year."¹³ While the Antenna Structure was inspected by a professional company prior to the September 2011 agent inspection and James Cable spoke with a few entities about possible projects, James Cable did not execute or pre-pay any contracts to repaint or replace the Antenna Structure prior to the Commission inspection.¹⁴ Accordingly, we do not find James Cable's pre-inspection efforts sufficient to justify cancellation or reduction of the proposed forfeiture. As the Bureau stated in *Gold Coast Broadcasting Company*, "we do not believe that merely having discussions with contractors regarding the repainting of the tower prior to

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 James Cable knew the Antenna Structure needed to be repainted prior to January 2011, because it had allocated funds for repainting in the 2011 budget, which was established in advance of 2011. See *NAL Response* at 2-3.

¹² James Cable "inquired whether the tower company would consider acquiring the Antenna Structure land . . . , build a new tower and lease antenna space back to the Company." James Cable also "contacted another tower company to determine whether it might be interested in bidding on the project." *NAL Response* at 2.

¹³ *NAL Response* at 2.

¹⁴ See, e.g., *Barinowski Investment Company, LP*, Forfeiture Order, 18 FCC Rcd 25067 (Enf. Bur. 2003) (identifying need to repaint the tower and pre-paying for future painting of the tower prior to any notice of inspection merits a reduction of the proposed forfeiture, not cancellation).

the agent's inspection warrants a reduction of the forfeiture amount on the basis of good faith."¹⁵ Moreover, we do not consider its actions to be in "good faith," because James Cable knowingly chose to allow the Antenna Structure's paint to remain in an unsatisfactory state from some time prior to January 2011 until beyond February 2012, the time at which it signed a contract for structure replacement.

6. We also decline to reduce or cancel the proposed forfeiture based on James Cable's history with the Commission. When determining history of compliance, we look to an entity's compliance with all of the Commission's rules, as opposed to just the rules relating to antenna structures.¹⁶ James Cable admits that it has received "several" Notices of Violation from the Enforcement Bureau regarding cable signal leakage.¹⁷ Thus, we conclude cancellation or reduction of the proposed forfeiture on these grounds is not warranted.

7. Finally, we decline to reduce or cancel the proposed forfeiture based solely on James Cable's claimed status as a small cable operator. Although James Cable may be a small cable operator, it did not request a reduction based on ability to pay and did not provide any financial documentation of its finances when asked to do so.¹⁸ Thus, we cannot assess James Cable's ability to pay the forfeiture and find no basis in the record before us for cancellation or reduction of the proposed forfeiture.

IV. ORDERING CLAUSES

8. 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, James Cable, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violation of Section 17.50 of the Commission's rules.¹⁹

9. 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.²⁰ 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.²¹ James Cable, LLC 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.²² When completing the FCC Form 159, enter the

¹⁵ See *Gold Coast Broadcasting Company*, Forfeiture Order, 18 FCC Rcd 8576, 8577, para. 6 (Enf. Bur. 2003) (talking with contractors to repaint a tower is insufficient to justify forfeiture reduction based on good faith).

¹⁶ The Commission has consistently rejected history of overall compliance claims based on issuance of NOVs in other cases. See, e.g., *Arnold Broadcasting Company, Inc.*, Memorandum Opinion and Order, 20 FCC Rcd 10617 (Enf. Bur. 2005).

¹⁷ *NAL Response* at 3. See Notice of Violation, NOV No. V20063250002 (June 21, 2006), Notice of Violation, NOV No. V20063250006 (July 24, 2006).

¹⁸ See *NAL*, 27 FCC Rcd at 312; see also email from SCR-Response@fcc.gov to George Psyllos, Chief Financial Officer, James Cable, LLC (sent Feb. 17, 2012, 9:01 a.m.) (requesting financial documentation if James Cable was claiming inability to pay the proposed forfeiture). James Cable did not provide any financial documentation but offered in its response "background on our company and the economic challenges it faces as a small rural cable operator." See email from George Psyllos, Chief Financial Officer, James Cable, LLC, to SCR-Response@fcc.gov (rec'd Feb. 20, 2012, 4:50 p.m.).

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

²⁰ 47 C.F.R. § 1.80.

²¹ 47 U.S.C. § 504(a).

²² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

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. 20554.²³ If you have questions regarding payment procedures, please contact 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 Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to James Cable, LLC at 38710 Woodward Avenue, Suite 180, Bloomfield Hills, MI 48304.

FEDERAL COMMUNICATIONS COMMISSION

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

²³ See 47 C.F.R. § 1.1914.