

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

In the Matter of)	
)	
Cox Communications, Inc.)	File No.: EB-11-NF-0100
)	NAL/Acct. No.: 201232640001
Owner of Antenna Structure No. 1047860)	FRN No.: 0001834696
Atlanta, Georgia)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 27, 2012

Released: September 27, 2012

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Cox Communications, Inc. (Cox), owner of antenna structure number 1047860 (the Antenna Structure), in Portsmouth, Virginia, apparently willfully and repeatedly violated Section 303(q) of the Communications Act of 1934, as amended (Act)¹ and Sections 17.47 and 17.51(b) of the Commission's rules (Rules)² by failing to: (1) maintain a functioning automatic alarm system, and (2) exhibit required daytime medium intensity obstruction lighting. We conclude that Cox is apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000).

II. BACKGROUND

2. The Antenna Structure is 94.6 meters in overall height above ground level and is required to be painted and lighted.³ Specifically, the Antenna Structure is required to have dual lighting, *i.e.*, red lights at nighttime and medium intensity flashing white lights during the daytime and at twilight.

3. On October 24, 2011, an agent from the Enforcement Bureau's Norfolk Office (Norfolk Office) observed that the Antenna Structure was unpainted and unlit during daytime hours. The agent contacted the Federal Aviation Administration (FAA) and learned that no Notice to Airmen (NOTAM) had been issued for the Antenna Structure.⁴ On October 28, 2011, the agent contacted Cox's local representative, who stated to the agent that he was unaware of the outage. The Cox representative also stated that he would investigate the situation.

¹ 47 U.S.C. § 303(q).

² 47 C.F.R. §§ 17.47, 17.51(b).

³ See Antenna Structure Registration database for antenna structure number 1047860. See also 47 C.F.R. § 17.21 (requiring antenna structures more than 60.96 meters in height above ground to be painted and lighted).

⁴ See 47 C.F.R. § 17.48 (requiring tower owners to notify the FAA immediately of any known outages of tower lighting lasting more than 30 minutes). The agent informed the FAA of the lighting outage and the FAA issued a NOTAM for the Antenna Structure on October 24, 2011.

4. On October 30 and 31, 2011, and again on November 1, 2011, an agent from the Norfolk Office observed that the Antenna Structure was still unpainted and unlit during daytime hours. On November 1, 2011, Cox admitted that the Antenna Structure's daytime lights were extinguished and stated that it had notified the FAA of the outage that day.⁵

5. On February 24, 2012, the Norfolk Office issued a letter of inquiry (*LOI*) to Cox regarding the lighting outage on the Antenna Structure.⁶ Cox filed its response to the *LOI* on March 28, 2012.⁷ In its *LOI Response*, Cox states that it first learned of the light outage on its Antenna Structure from the FCC agent.⁸ Cox also states that the lights were repaired as of November 9, 2011.⁹ Cox further states that it employs an automatic light monitoring system for the Antenna Structure, but due to a "previously unknown anomaly," the system failed to report the outage.¹⁰ In particular, Cox claims that "[i]n conducting its investigation into the Bureau's inquiries, however, Cox discovered that following the installation and initial successful test of the [automatic light monitoring system for the Antenna Structure] on March 24, 2010, several quarterly lighting inspections (QLI) were not performed pursuant to Cox's standard policies and procedures. Cox first became aware of a potential problem when it re-examined [its system] and observed that the four lighting outage dates referenced in the Bureau's February 24, 2012 inquiry had no corresponding alarms or NOTAMs in the automatic Monitoring System."¹¹ Finally, Cox claims that it "immediately corrected [the light outages], commenced QLI for the Tower, and confirmed correct lighting and monitoring system configuration, notification, and operation."¹²

III. DISCUSSION

6. Section 503(b) of the Act, 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.¹³ Section 312(f)(1) of the Act defines "willful" as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.¹⁴ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹⁵ and the Commission has so interpreted the term in the Section

⁵ Email from David Belcher, Cox Communications, to Luther Bolden, Resident Agent, Norfolk Office, South Central Region, Enforcement Bureau (dated Nov. 1, 2011, 5:17 P.M. E.S.T.).

⁶ Letter from Luther Bolden, Resident Agent, Norfolk Office, South Central Region, Enforcement Bureau, to Charles Henderson, Cox Communications, Inc. (dated Feb. 24, 2012) (on file in EB-11-0100).

⁷ Letter from Gary S. Lutzker, Counsel for Cox Communications, Inc., to Luther Bolden, Resident Agent, Norfolk Office, South Central Region, Enforcement Bureau, at 2 (dated Mar. 28, 2012) (*LOI Response*) (on file in EB-11-0100).

⁸ *Id.* at 2.

⁹ *Id.* at 7.

¹⁰ *Id.* at 1.

¹¹ *Id.* at 6.

¹² *Id.*

¹³ 47 U.S.C. § 503(b).

¹⁴ 47 U.S.C. § 312(f)(1).

¹⁵ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in Section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each

(continued...)

503(b) context.¹⁶ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁷ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁸

A. Failure to Exhibit Required Obstruction Lighting and Failure to Properly Maintain Automatic Alarm System

7. 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.¹⁹ Section 17.47(a) of the Rules requires antenna structure owners to observe the lights on antenna structures visually once every 24 hours or alternatively to install and properly maintain an automatic alarm system designed to detect any failure of such lights and to provide indication of such failure to the owner.²⁰ Section 17.47(b) of the Rules also requires owners employing automatic alarm systems to “inspect at intervals not to exceed 3 months . . . all . . . alarm systems associated with the antenna structure lighting to insure that such apparatus is functioning properly.”²¹ Section 17.51(b) of the Rules requires all high intensity and medium intensity obstruction lighting to be exhibited continuously unless otherwise specified.²²

8. The Antenna Structure is 94.6 meters above ground in overall height and is required to be lighted continuously with medium intensity flashing white lights during the daytime and at twilight.²³ On October 24, October 30, October 31, and November 1, 2011, an agent from the Norfolk Office observed that the Antenna Structure was not lighted during daylight hours. As discussed above, Cox admitted that the medium intensity flashing white lights were extinguished during the day and that the lights were repaired on November 9, 2011. Cox also acknowledged that its automatic alarm system failed to monitor the lighting on the Antenna Structure, due in part to the system’s improper installation. In addition, Cox failed to inspect its alarm system every three months as required. Therefore, based on the evidence before us, we find that Cox apparently willfully and repeatedly violated Section 303(q) of the Act and Sections 17.47 and 17.51(b) of the Rules by failing to maintain a properly functioning automatic alarm system and failing to exhibit required daytime medium intensity obstruction lighting on the Antenna Structure.

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case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms . . .”).

¹⁶ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹⁷ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁸ 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.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

¹⁹ 47 U.S.C. § 303(q).

²⁰ 47 C.F.R. § 17.47(a).

²¹ 47 C.F.R. § 17.47(b).

²² 47 C.F.R. § 17.51(b).

²³ See Antenna Structure Registration database for antenna structure number 1047860.

B. Proposed Forfeiture Amount

9. 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 marking is \$10,000.²⁴ 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.²⁵ Because of Cox's ability to pay,²⁶ and to serve as an effective deterrent (not simply a cost of doing business), a forfeiture above the base forfeiture amount is necessary and appropriate.²⁷ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Cox is apparently liable for a total forfeiture in the amount of \$20,000.

IV. ORDERING CLAUSES

10. 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 Commission's rules, Cox Communications, Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for violations of Section 303(q) of the Communications Act, and Sections 17.47 and 17.51(b) of the Commission's rules.²⁸

11. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Cox Communications, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Cox Communications, Inc. shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁹ 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:

²⁴ *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*), recons. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

²⁵ 47 U.S.C. § 503(b)(2)(E).

²⁶ In 2011, Cox Communications, Inc. reported \$9.4 billion in annual revenues. Cox Communications, Inc.'s parent company, Consolidated Cox Enterprises, Inc. reported \$14.7 billion in revenues for 2011. See http://www.coxenterprises.com/about-cox/annual-review/revenues.aspx#UB_LTPZITpc (last visited Aug. 6, 2012).

²⁷ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099-100, para. 24 (stating need to take into account a violator's ability to pay in determining the amount of a forfeiture to guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business). See also *Tesla Exploration, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 9808, 9811, para. 10 (2012) (finding that it was appropriate to consider Tesla Exploration, Ltd.'s total annual revenues as a basis for upwardly adjusting the base forfeiture amount). It is well-established Commission policy to consider the revenues of a violator's parent company. See, e.g., *SM Radio, Inc.*, Order on Review, 23 FCC Rcd 2429, 2433, para. 12 (2008) (citations omitted).

²⁸ 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 17.47, 17.51(b).

²⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- 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.

13. 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. 20554.³⁰ 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.

14. 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 1.16 and 1.80(f)(3) of the Rules.³¹ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Norfolk Office, 1457 Mount Pleasant Rd, Suite 113, Chesapeake, Virginia 23322 and include the NAL/Acct. No. referenced in the caption. Cox Communications, Inc. also shall e-mail the written response to SCR-Response@fcc.gov.

15. 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.

³⁰ See 47 C.F.R. § 1.1914.

³¹ 47 C.F.R. §§ 1.16, 1.80(f)(3).

16. **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 First Class Mail, to Cox Communications, Inc., at 1400 Lake Hearn Ave., Atlanta, Georgia 30319, and to its counsel, Gary Lutzker, Dow Lohnes PLLC, 1200 New Hampshire Ave, NW, Suite 800, Washington, DC 20036-6802.

FEDERAL COMMUNICATIONS COMMISSION

Luther Bolden
Resident Agent
Norfolk Office
South Central Region
Enforcement Bureau