

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

In the Matter of)
ACS Wireless, Inc.) File No.: EB-FIELDWR-12-00005502
Registrant of Antenna Structure No. 1204036) NAL/Acct. No.: 201432780002
Eagle River, Alaska) FRN: 0001567940

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: November 4, 2013

Released: November 5, 2013

By the Resident Agent, Anchorage Resident Agent Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that ACS Wireless, Inc. (ACS), registrant of antenna structure number 1204036 (the Antenna Structure), in Eagle River, Alaska, apparently willfully and repeatedly violated Section 303(q) of the Communications Act of 1934, as amended (Act)1, and Sections 17.47, 17.48, and 17.51(a) of the Commission’s rules (Rules),2 by failing to: (1) monitor obstruction lighting on a daily basis or maintain an alarm system; (2) notify the Federal Aviation Administration (FAA) of a known lighting outage, and (3) exhibit required red obstruction lighting from sunset until sunrise. We conclude that ACS is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000). We direct ACS to submit, no later than thirty (30) calendar days from the date of this NAL, a statement, signed under penalty of perjury, confirming compliance of Section 17.47 of the Rules concerning the monitoring of lighting on the Antenna Structure.3

II. BACKGROUND

2. The Antenna Structure is 61.0 meters in overall height above ground level and is required to be lighted.4 Specifically, the Antenna Structure is required to have red lighting, i.e., a red flashing beacon mounted at the top level and steady-burning red lights at the intermediate level to increase conspicuity during nighttime.

3. On November 29 and November 30, 2012, an agent of the Enforcement Bureau’s Anchorage Resident Agent Office (Anchorage Office) observed that the Antenna Structure’s lights were not operating and the structure was completely dark during nighttime hours. On November 30, 2012, the agent

1 47 U.S.C. § 303(q).

2 47 C.F.R. §§ 17.47, 17.48, 17.51(a).

3 47 C.F.R. § 17.47.

4 See Antenna Structure Registration database for antenna structure number 1204036. See also 47 C.F.R. § 17.23 (antenna structures requiring notice to the Federal Aviation Administration (FAA) must comply with the FAA’s painting and lighting recommendations). The relevant FAA recommendations for the Antenna Structure include Chapters 4 and 5 of FAA Circular Number 70/7460-1J. Chapter 5 requires at least one red flashing (L-864) beacon mounted at the top level and steady-on red lights at the intermediate level. Chapter 5 also requires daytime and twilight marking for the Antenna Structure.

contacted the Federal Aviation Administration (FAA) and learned that no Notice to Airmen (NOTAM) was currently issued for the Antenna Structure.⁵ Later on in the day, the agent contacted ACS personnel and advised them of the light outage and the issuance of the NOTAM.

4. On December 19, 2012, the Anchorage Resident Agent Office issued a Notice of Violation (NOV) to ACS concerning the extinguished lights.⁶ In the NOV Response,⁷ ACS acknowledged becoming aware of the outage on November 30, 2012, apparently after being contacted by the Anchorage agent, and “without delay” took steps to purchase and install replacement lighting for the Antenna Structure.⁸ ACS stated that the new lighting was installed on December 7, 2012.⁹

III. DISCUSSION

5. 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.¹⁰ 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.¹¹ 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,¹² and the Commission has so interpreted the term in the Section 503(b) context.¹³ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁴ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁵

⁵ See 47 C.F.R. § 17.48 (requiring antenna structure 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 November 30, 2012.

⁶ See *ACS Wireless, Inc.* Notice of Violation, V201332780004 (Dec 19, 2012) (NOV).

⁷ See Response to Notice of Violation from ACS Wireless, Inc., (Feb 26, 2013) (on file in EB-FIELDWR-12-00005502) (NOV Response).

⁸ See NOV Response at 1.

⁹ *Id.*

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 U.S.C. § 312(f)(1).

¹² 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 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 . . .”).

¹³ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹⁴ 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).

¹⁵ 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

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A. Failure to Exhibit Required Obstruction Lighting on the Antenna Structure, Failure to Monitor Antenna Structure Lighting, and Failure to Notify the FAA

6. The evidence in this case is sufficient to establish that ACS violated Section 303(q) of the Act and Sections 17.47, 17.48, and 17.51(a) of the Rules. 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.¹⁶ 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.¹⁷ 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.”¹⁸ Section 17.48(a) of the Rules states that owners of antenna structures “shall report immediately by telephone or telegraph to the nearest Flight Service Station or office of the Federal Aviation Administration any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes”¹⁹ Section 17.51(a) of the Rules requires the exhibition of all red obstruction lighting from sunset to sunrise unless otherwise specified.²⁰

7. The Antenna Structure is 61 meters above ground in overall height and is required to be lighted, at nighttime, with a red flashing lighting beacon at the top of the structure and steady burning red lights at the intermediate level.²¹ On November 29, and November 30, 2012, an agent from the Anchorage Office observed that the Antenna Structure was not lighted during nighttime hours, and determined that ACS had failed to notify the FAA of the outage. As discussed above, ACS acknowledged that the red lighting on the Antenna Structure was not functioning when contacted on November 30, 2012, by the Anchorage agent, and installed new lighting on December 7, 2012. ACS did not appear to have a functioning monitoring system in place at the time of the agent’s inspection, and was unaware of the light outage until contacted by the agent. Therefore, based on the evidence before us, we find that ACS apparently willfully and repeatedly violated Section 303(q) of the Act and Sections 17.47, 17.48, and 17.51(a) of the Rules by failing to monitor the lighting on the Antenna Structure or maintain a properly functioning automatic alarm system, failing to exhibit required red obstruction lighting on the Antenna Structure, and failing to notify the FAA of the outage.

B. Proposed Forfeiture

8. 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, monitoring requirements, and notification of extinguished lights is \$10,000.²² In assessing the monetary forfeiture amount, we must also

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commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

¹⁶ 47 U.S.C. § 303(q).

¹⁷ 47 C.F.R. § 17.47(a).

¹⁸ 47 C.F.R. § 17.47(b).

¹⁹ 47 C.F.R. § 17.48(a).

²⁰ 47 C.F.R. § 17.51(a).

²¹ See Antenna Structure Registration database for antenna structure number 1204036.

²² *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,

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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.²³ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that ACS is apparently liable for a total forfeiture in the amount of \$10,000.

9. We further order ACS to submit a written statement, pursuant to Section 1.16 of the Rules, signed under penalty of perjury by an officer or director of ACS stating that it is now in compliance with the requirements of Section 17.47 of the Rules concerning the monitoring of lighting on the Antenna Structure.²⁴ This statement must be provided to the Anchorage Office at the address listed in paragraph 12 within thirty (30) calendar days of the release date of this NAL.

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, ACS Wireless, Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of Section 303(q) of the Act and Sections 17.51(a), 17.48, and 17.47 of the Rules.²⁵

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, ACS Wireless, 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. **IT IS FURTHER ORDERED** that ACS Wireless, Inc., **SHALL SUBMIT** a written statement, as described in paragraph 9, above, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Anchorage Resident Agent Office, P.O. Box 231949, Anchorage, Alaska 99523-1949. ACS shall also e-mail the written statement to WR-Response@fcc.gov.

13. 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. ACS Wireless, Inc., shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁶ 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-

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15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

²³ 47 U.S.C. § 503(b)(2)(E).

²⁴ 47 C.F.R. § 1.16.

²⁵ 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 17.47, 17.48, 17.51(a).

²⁶ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

14. Any request for making full payment over time 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. 20554.²⁷ 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.

15. 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.²⁸ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Western Region, Anchorage Resident Agent Office, P.O. Box 231949, Anchorage, Alaska 99523-1949, and include the NAL/Acct. No. referenced in the caption. ACS Wireless, Inc., also shall e-mail the written response to WR-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 principles (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 and Order shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to ACS Wireless, Inc., at 600 Telephone Ave, Anchorage, AK 99503.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Windel
Resident Agent
Anchorage Resident Agent Office
Western Region
Enforcement Bureau

²⁷ See 47 C.F.R. § 1.1914.

²⁸ 47 C.F.R. §§ 1.16, 1.80(f)(3).