

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

In the Matter of)	
)	
Timothy J. Mullen)	File No.: EB-10-LA-0268
)	NAL/Acct. No.: 201232900003
Registrant of Antenna Structure No. 1016437)	FRN: 0020481289
Cawelo, California)	

ORDER

Adopted: July 30, 2014

Released: July 31, 2014

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. We find that Timothy J. Mullen failed to light his antenna structure as required, notify the Federal Aviation Administration (FAA) of a lighting outage, and inform the Commission of an antenna structure ownership change. However, in light of information concerning whether Mr. Mullen was aware of his responsibilities concerning the structure, we do not impose a forfeiture. Nevertheless, we warn Mr. Mullen that future violations may result in substantial forfeitures, regardless of his financial situation.

2. Specifically, we find that Mr. Mullen violated Section 303(q) of the Communications Act of 1934, as amended (Act), and Sections 17.48, 17.51(a), and 17.57 of the Commission's rules (Rules) with respect to Antenna Structure No. 1016437 in Cawelo, California (the Antenna Structure).¹

II. BACKGROUND

3. On November 18, 2011, the Enforcement Bureau's Los Angeles Office (Los Angeles Office) issued a Notice of Apparent Liability for Forfeiture (*NAL*)² for thirteen thousand dollars (\$13,000) to Mr. Mullen for antenna structure lighting and notification violations occurring in 2010 involving the Antenna Structure. In response to the *NAL*, Mr. Mullen does not deny the violations, but states that he was first notified of his responsibilities regarding the Antenna Structure during the December 2010 inspection that resulted in the issuance of the *NAL*.³ Mr. Mullen also requests cancellation of the forfeiture based on his inability to pay.⁴

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ and the *Forfeiture Policy Statement*.⁷ In examining Mr.

¹ 47 U.S.C. § 303(q); 47 C.F.R. §§ 17.48, 17.51(a), 17.57.

² *Timothy J. Mullen*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 16011 (Enf. Bur. 2011) (*NAL*). A comprehensive recitation of the facts and history of this case can be found in the *NAL* and is incorporated herein by reference.

³ See Letter from Timothy J. Mullen, to Los Angeles Office, Western Region, Enforcement Bureau (Dec. 29, 2011) (on file in EB-10-LA-0268) (*NAL Response*).

⁴ See *id.* at 2.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

Mullen's *NAL 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.⁸

5. As Mr. Mullen does not deny any of the facts stated in the *NAL*, we affirm the *NAL*'s findings that Mr. Mullen violated Section 303(q) of the Act and Sections 17.48, 17.51(a), and 17.57 of the Rules.⁹ In his *NAL Response*, Mr. Mullen requests cancellation of the \$13,000 forfeiture because of his inability to pay, and provides three years of tax returns to support his claim.¹⁰ That information supports a finding, based on our precedent, that Mr. Mullen lacks the resources to pay a forfeiture in this proceeding.

6. In addition, there is a question about whether Mr. Mullen should have received a citation prior to the forfeiture in this case. A review of Commission records reveals that Mr. Mullen was not a Commission licensee at the time of the Antenna Structure light outage. Section 503(b)(5) of the Act requires that when a person is "nonlicensee tower owner," he or she must first receive a citation from the Commission, prior to incurring any forfeiture liability, unless he or she "has previously received notice of the obligations imposed by section 303(q) of this title from the Commission or the permittee or licensee who uses that tower."¹¹ Mr. Mullen has provided a sworn statement under penalty of perjury that he only learned of his responsibility to register the Antenna Structure in December 2010, when he met with a Los Angeles Office agent during the investigation that resulted in the issuance of the *NAL*.¹² During the investigation, however, the prior owner of the Antenna Structure, Communications Enterprises, Inc., informed the Los Angeles Office that it had sent Mr. Mullen a FCC Form 854 to update the registration in 2008.¹³

7. We find that the evidence is unclear whether Mr. Mullen received notice of his obligations as a nonlicensee tower owner concerning the Antenna Structure from the Commission or a permittee or a licensee that used the Antenna Structure prior to the investigation by the Los Angeles Office. Given this

⁷ *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*).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ See *NAL*, *supra* note 2.

¹⁰ See *NAL Response* at 2.

¹¹ 47 U.S.C. § 503(b)(5). Section 503(b)(5) requires that:

No forfeiture liability shall be determined under this subsection against any person, if such person does not hold a license, permit, certificate, or other authorization issued by the Commission, and if such person is not an applicant for a license, permit, certificate, or other authorization issued by the Commission, unless, . . . , such person (A) is sent a citation of the violation charged; (B) is given a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission which is nearest to such person's place of residence; and (C) subsequently engages in conduct of the type described in such citation. *The provisions of this paragraph shall not apply, however, . . . in the case of violations of section 303(q) of this title, if the person involved is a nonlicensee tower owner who has previously received notice of the obligations imposed by section 303(q) of this title from the Commission or the permittee or licensee who uses that tower.*

Id. (emphasis added).

¹² See *NAL Response* at 1. Mr. Mullen also states that the Antenna Structure has not been used for "communication purposes" since before he obtained apparent ownership of the structure in 2008. *Id.*

¹³ See Email from Paul G. Poor, Communications Enterprises, Inc., to Los Angeles Office, Western Region, Enforcement Bureau (Dec. 15, 2010) (on file in EB-10-LA-0268). No corroborating evidence exists in the Commission's records in this case.

uncertainty, along with the financial information produced by Mr. Mullen, we find that circumstances require that the proposed forfeiture not be imposed. However, we warn Mr. Mullen that he is on notice regarding his responsibilities as a nonlicensee tower owner and that future violations of this kind may result in substantial forfeitures that may not be reduced due to his financial circumstances.

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, the proposed forfeiture in the amount of thirteen thousand dollars (\$13,000) issued to Timothy J. Mullen **WILL NOT BE IMPOSED**.¹⁴

9. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Timothy J. Mullen at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

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