

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

In the Matter of)	
)	
Global Tower, LLC)	File No.: EB-FIELDNER-13-00012308
)	NAL/Acct. No.: 201532360001
Owner of Antenna Structure Number 1002474)	FRN: 0009764150
Oak Park, Michigan)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 17, 2014

Released: October 17, 2014

By the District Director, Detroit Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$10,000 against Global Tower, LLC (Global) for apparently failing to exhibit required lighting on its antenna structure and properly monitor its antenna structure lighting. Unlit antenna structures present a significant public safety risk, especially to passing aircraft. On two consecutive days, Enforcement Bureau agents observed that Global's antenna structure was completely unlit at night. Global concedes that it was unaware of the lighting outage for multiple days and that it failed to properly monitor its antenna structure's lighting or maintain an operational lighting alarm system, warranting an increased proposed penalty.

2. Specifically, we find that Global, owner of Antenna Structure Number 1002474 in Oak Park, Michigan (Antenna Structure), apparently willfully and repeatedly violated Section 303(q) of the Communications Act of 1934, as amended (Act), and Sections 17.47(a) and 17.51(a) of the Commission's rules (Rules), by failing to: (1) monitor the Antenna Structure's obstruction lighting on a daily basis or maintain an operational lighting alarm system; and (2) exhibit required red obstruction lighting on the Antenna Structure from sunset to sunrise.¹

II. BACKGROUND

3. On November 18, 2013, an agent from the Enforcement Bureau's Detroit Office (Detroit Office) observed that the Antenna Structure was completely unlit after sunset.² The agent immediately contacted the Federal Aviation Administration (FAA) and learned that no Notice to Airmen (NOTAM) had been issued warning pilots of the Antenna Structure lighting outage.³ The agent therefore opened a NOTAM regarding the Antenna Structure lighting outage with the FAA. The next day, the Detroit Office agent again observed that the Antenna Structure was completely unlit. On November 21, 2013, the agent contacted Global regarding the Antenna Structure lighting outage via email and notified the company that he had opened a NOTAM with the FAA.⁴ In response, Global stated it was unaware of the lighting outage and

¹ 47 U.S.C. § 303(q); 47 C.F.R. §§ 17.47(a), 17.51(a).

² The Antenna Structure is 243.8 meters in height above ground and is required to be painted and display a red flashing beacon at the top level. *See* 47 C.F.R. § 17.21.

³ *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).

⁴ Email from James A. Bridgewater, District Director, Detroit Office, Northeast Region, FCC Enforcement Bureau, to Global Tower, LLC (Nov. 21, 2013, 12:47 p.m. EST) (on file in EB-FIELDNER-13-00012308).

informed the agent that it would investigate immediately.⁵ On November 25, 2013, Global contacted the Detroit Office agent and reported that it dispatched a vendor to the Antenna Structure on November 21, 2013, who replaced the Antenna Structure's lighting alarm and repaired the lighting that day.⁶

4. On December 31, 2013, the Detroit Office issued a Notice of Violation (NOV) to Global for failing to monitor the Antenna Structure's obstruction lighting on a daily basis or maintain an alarm system and exhibit required red obstruction lighting on the Antenna Structure from sunset to sunrise.⁷ On January 7, 2014, Global submitted a response to the NOV, stating that it was unaware of the Antenna Structure lighting outage until it was contacted by the Detroit Office, that its remote lighting alarm had failed for multiple days, that it took immediate steps to correct the problem, and that the Antenna Structure's lighting system now functioned properly.⁸

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.⁹ 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.¹⁰ 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,¹¹ and the Commission has so interpreted the term in the Section 503(b) context.¹² The Commission may also assess a forfeiture for violations that are merely repeated,

⁵ Email from Leslie Nixon, Compliance Specialist, Global Tower Partners, to James A. Bridgewater, District Director, Detroit Office, Northeast Region, FCC Enforcement Bureau (Nov. 21, 2013) (on file in EB-FIELDNER-13-00012308).

⁶ Email from Leslie Nixon, Compliance Specialist, Global Tower Partners, to James A. Bridgewater, District Director, Detroit Office, Northeast Region, Enforcement Bureau (Nov. 25, 2013) (on file in EB-FIELDNER-13-00012308).

⁷ *Global Tower, LLC*, Notice of Violation, V201432360009 (Dec. 31, 2013) (on file in EB-FIELDNER-13-00012308) (NOV).

⁸ See Letter from Global Tower, LLC, to James A. Bridgewater, District Director, Detroit Office, Northeast Region, Enforcement Bureau (Jan. 7, 2014) (on file in EB-FIELDNER-13-00012308).

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 U.S.C. § 312(f)(1).

¹¹ 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").

¹² See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

and not willful.¹³ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁴

A. Failure to Monitor Antenna Structure Lighting and Exhibit Required Red Obstruction Lighting on the Antenna Structure

6. The evidence in this case is sufficient to establish that Global violated Section 303(q) of the Act and Sections 17.47(a) 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.¹⁵ 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 provide indication of such failure to the owner.¹⁶ Section 17.51(a) of the Rules states that “[a]ll red obstruction lighting shall be exhibited from sunset until sunrise unless otherwise specified.”¹⁷

7. On November 18, 2013, and again on November 19, 2013, a Detroit Office agent observed that the required red obstruction lights on the Antenna Structure were extinguished both before sunrise and after sunset. In addition, Global conceded that it failed to monitor the Antenna Structure’s obstruction lighting on a daily basis or maintain an operational lighting alarm system for multiple days. Based on the evidence before us, we find that Global apparently willfully and repeatedly violated Section 303(q) of the Act and Sections 17.47(a) and 17.51(a) of the Rules by failing to: (1) monitor the Antenna Structure’s obstruction lighting on a daily basis or maintain an operational lighting alarm system; and (2) exhibit required red obstruction lighting on the Antenna Structure from sunset to sunrise.

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 antenna structure lighting is \$10,000.¹⁸ 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.¹⁹ Global concedes that it was unaware of the lighting outage for multiple days and that it failed to properly monitor the Antenna Structure’s lighting or maintain an operational lighting alarm system. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules,

¹³ 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).

¹⁴ 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, para. 9.

¹⁵ 47 U.S.C. § 303(q).

¹⁶ 47 C.F.R. § 17.47(a).

¹⁷ 47 C.F.R. § 17.51(a).

¹⁸ *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.

¹⁹ 47 U.S.C. § 503(b)(2)(E).

and the statutory factors to the instant case, we conclude that Global is apparently liable for a total forfeiture in the amount of \$10,000.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Rules, Global Tower, LLC 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 17.47(a) and 17.51(a) of the Rules.²⁰

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

11. 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. Global Tower, LLC shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²¹ 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.

12. 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. 20554.²² 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.

13. 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

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

²¹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²² See 47 C.F.R. § 1.1914.

to Sections 1.16 and 1.80(f)(3) of the Rules.²³ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Detroit Office, 24897 Hathaway Street, Farmington Hills, Michigan 48335, and include the NAL/Acct. No. referenced in the caption. Global Tower, LLC also shall email the written response to NER-Response@fcc.gov.

14. 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.

15. **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 Global Tower, LLC at 750 Park of Commerce Boulevard, Suite 300, Boca Raton, Florida 33487.

FEDERAL COMMUNICATIONS COMMISSION

James A. Bridgewater
District Director
Detroit Office
Northeast Region
Enforcement Bureau

²³ 47 C.F.R. §§ 1.16, 1.80(f)(3).