

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

In the Matter of)	
)	
Ohana Media Group, LLC)	File No.: EB-FIELDWR-13-00009183
)	NAL/Acct. No.: 201432780003
Owner of Antenna Structure Number 1005015)	FRN: 0020417663
Anchorage, Alaska)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 20, 2014

Released: February 21, 2014

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Ohana Media Group, LLC (Ohana), owner of antenna structure number 1005015 in Anchorage, Alaska (Antenna Structure), apparently willfully and repeatedly violated Section 303(q) of the Communications Act of 1934, as amended (Act), and Sections 17.23 and 17.48(a) of the Commission’s rules (Rules),¹ by failing to exhibit required flashing white lighting on the Antenna Structure during daylight hours and notify immediately the Federal Aviation Administration (FAA) of the light outage. We conclude that Ohana is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. The Antenna Structure is 96.0 meters in overall height above ground level and is required to be lighted.² 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 June 10 and 11, 2013, an agent from the Enforcement Bureau’s Anchorage Resident Agent Office (Anchorage Office) inspected the Antenna Structure during daylight hours and did not observe top-mounted flashing white lighting during daytime hours. On June 11, 2013, the Anchorage agent determined that a Notice to Airmen (NOTAM) had not been issued for the Antenna Structure and contacted Ohana. After the agent advised Ohana of the light outage, Ohana initiated a NOTAM.³

4. On July 3, 2013, the Anchorage Office issued Ohana a Notice of Violation (NOV) for failing to exhibit required flashing white lighting on the Antenna Structure during daylight hours and notify

¹ 47 U.S.C. § 303(q); 47 C.F.R. §§ 17.23, 17.48(a).

² See Antenna Structure Registration database for antenna structure number 1005015. The relevant FAA recommendations for the Antenna Structure include Chapters 4, 8, and 12 of FAA Circular Number 70/7460-1K. Chapter 8 requires a dual lighting system, red lighting for nighttime, and flashing white lights for daytime operations. Chapter 8 also allows the omission of other types of marking when medium intensity white lights are operated on structures 153 meters above ground level or less during daytime or twilight.

³ 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).

immediately the FAA of the light outage.⁴ On July 22, 2013, Ohana submitted a response to the NOV⁵ stating upon contact by the Anchorage Office, Ohana confirmed the light was not functioning and that after initiating the NOTAM, steps were immediately taken to repair the antenna structure lighting. Ohana also stated that the automatic alarm system for the Antenna Structure lighting had been inspected as recently as June 4, 2013, and was found to be working, but that since the light outage on the Antenna Structure, Ohana had installed two redundant monitoring systems.⁶

III. DISCUSSION

5. Section 503(b) of the Act of 1934, 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.⁷ 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.⁸ 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,⁹ and the Commission has so interpreted the term in the Section 503(b) context.¹⁰ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹¹ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹²

⁴ *Ohana Media Group, LLC*, Notice of Violation, V201332780022 (July 3, 2013) (on file in EB-FIELDWR-13-00009183).

⁵ See Letter from Ohana Media Group, LLC, to Anchorage Resident Agent Office (Nov. 8, 2012) (on file in EB-FIELDWR-13-00009183) (NOV Response).

⁶ NOV Response at 2.

⁷ 47 U.S.C. § 503(b).

⁸ 47 U.S.C. § 312(f)(1).

⁹ 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”).

¹⁰ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹¹ 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).

¹² 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.

A. Failure to Exhibit Required Flashing White Lighting on the Antenna Structure and Notify the FAA of the Light Outage

6. 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.¹³ Section 17.23 of the Rules requires that “unless otherwise specified by the Commission, each new or altered antenna structure to be registered on or after January 1, 1966, must conform to the FAA’s painting and lighting recommendations set forth on the structure’s FAA determination of “no hazard,” as referenced in the ... FAA Advisory Circulars...”¹⁴ 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 with 30 minutes.”¹⁵

7. The evidence in this case is sufficient to establish that Ohana violated Section 303(q) of the Act and Sections 17.23 and 17.48(a) of the Rules. The Antenna Structure is required to have a top mounted flashing white light in operation during daylight hours.¹⁶ On June 10 and 11, 2013, an agent from the Anchorage Office inspected the Antenna Structure and failed to observe top-mounted flashing white lighting during daylight hours. On June 11, 2013, the agent determined that a NOTAM had not been issued for the Antenna Structure and notified Ohana of the non-functioning lighting. Upon notification by the Anchorage agent, Ohana initiated a NOTAM. Based on the evidence before us, we find that Ohana apparently willfully and repeatedly violated Section 303(q) of the Act and Sections 17.48(a) and 17.23 of the Rules by failing to exhibit flashing white lighting on the Antenna Structure during daylight hours and to notify the FAA immediately of the light 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 is \$10,000.¹⁷ 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.¹⁸ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Ohana 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 Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission’s rules,

¹³ 47 U.S.C. § 303(q).

¹⁴ 47 C.F.R. § 17.23.

¹⁵ 47 C.F.R. § 17.48(a).

¹⁶ See *supra* note 2.

¹⁷ *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.

¹⁸ 47 U.S.C. § 503(b)(2)(E).

Ohana Media Group, 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 17.23 and 17.48(a) of the Commission's Rules.¹⁹

10. **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, Ohana Media Group, 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. Ohana 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.²⁰ 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. 20554.²¹ 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 to Sections 1.16 and 1.80(f)(3) of the Rules.²² 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. Ohana Media Group, LLC also shall e-mail the written response to WR-Response@fcc.gov.

¹⁹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 17.23, 17.48(a).

²⁰ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²¹ See 47 C.F.R. § 1.1914.

²² 47 C.F.R. §§ 1.16, 1.80(f)(3).

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 Ohana Media Group, LLC at P.O. Box 99827, Seattle, Washington 98139.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Windel
Resident Agent
Anchorage Office
Western Region
Enforcement Bureau