

**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)	

FORFEITURE ORDER

Adopted: January 8, 2015

Released: January 9, 2015

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$6,000 against Ohana Media Group, LLC (Ohana) for failing to exhibit the required lighting on its antenna structure and notify the Federal Aviation Administration (FAA) of a light outage. Ohana does not deny the violations, but argues that a forfeiture reduction or cancellation is warranted because it purportedly monitored its antenna structure in accordance with the Commission's rules. We find that Ohana's efforts to maintain a robust monitoring system do not absolve it of its responsibility to exhibit required antenna structure lighting and notify the FAA of the light outage. However, we find that Ohana made good faith efforts to comply with the Commission's antenna structure rules and has an overall history of compliance, warranting a forfeiture reduction.

2. Specifically, we issue a monetary forfeiture to Ohana, owner of antenna structure number 1005015 in Anchorage, Alaska (Antenna Structure), for willfully and repeatedly violating Section 303(q) of the Communications Act of 1934, as amended (Act),¹ and Sections 17.23 and 17.48(a) of the Commission's rules (Rules).²

II. BACKGROUND

3. On February 21, 2014, the Enforcement Bureau's Anchorage Office issued a Notice of Apparent Liability for Forfeiture (*NAL*) proposing a \$10,000 forfeiture against Ohana for failing to exhibit required flashing white lighting on the Antenna Structure during daylight hours and immediately notify the FAA of a light outage.³ In its *NAL Response*, Ohana requests reduction or cancellation of the proposed forfeiture because of its purported compliance with the antenna structure monitoring requirements set forth in the Rules, including Sections 17.47(a)(2) and 17.47(b).⁴ Specifically, Ohana argues that imposition of a forfeiture, where its properly-inspected monitoring system failed to alert it of the light outage "would

¹ 47 U.S.C. § 303(q).

² 47 C.F.R. §§ 17.23, 17.48(a). The Commission recently amended Sections 17.23 and 17.48 of the Rules. *See 2004 and 2006 Biennial Regulatory Review – Streamlining and Other Revisions of Parts 1 and 17 of the Commission's Rules Governing Construction, Marking and Lighting of Antenna Structures*, Report and Order, 29 FCC Rcd 9787 (2014) (*Part 17 Streamlining Report and Order*). The Rules cited to in this Forfeiture Order, however, were the Rules in effect at the time of the violations.

³ *Ohana Media Group, LLC*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 1818 (Enf. Bur. 2014) (*NAL*). A recitation of the facts of this case can be found in the *NAL* and is incorporated herein by reference.

⁴ *See* Response of Ohana Media Group, LLC, to Anchorage Office, Western Region, Enforcement Bureau, at 1–3 (Mar. 20, 2014) (on file in EB-FIELDWR-13-00009183) (*NAL Response*); 47 C.F.R. § 17.47(a)(2), (b).

essentially make Section 17.47(b) inoperative and meaningless by requiring that, to avoid forfeitures, a structure owner must in fact inspect its monitoring systems continually to ensure that they are always working as intended.”⁵ Ohana also requests a reduction of the proposed forfeiture because of its history of compliance with the Rules.⁶

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁷ Section 1.80 of the Rules,⁸ and the *Forfeiture Policy Statement*.⁹ In examining Ohana’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.¹⁰ As discussed below, we have fully considered Ohana’s *NAL Response* in light of these statutory factors and find that reduction of the proposed forfeiture is warranted.

5. Ohana does not deny any of the facts in the *NAL* and we therefore affirm the *NAL*’s findings that Ohana willfully and repeatedly violated Section 303(q) of the Act and Sections 17.23 and 17.48(a) of the Rules by failing to exhibit required flashing white lighting on the Antenna Structure during daylight hours and immediately notify the FAA of the light outage.¹¹ In its *NAL Response*, Ohana requests reduction or cancellation of the proposed forfeiture because Ohana complied with the antenna structure monitoring requirements of Section 17.47 of the Rules.¹² We disagree. Ohana was not cited with a violation of Section 17.47 of the Rules. Instead, Ohana was found apparently liable for failing to meet the antenna structure lighting requirements prescribed by Section 303(q) of the Act and Section 17.23 of the Rules as well as the FAA notification requirement found in Section 17.48(a) of the Rules.¹³ While compliance with the Section 17.47 monitoring requirement is required, the Commission has recently stated that its “top priority is to ensure that the lighting required under the [antenna structure registration] remains on” and reminded antenna structure owners that they may be subject to enforcement action for lighting outages “regardless of how robust their monitoring systems may be.”¹⁴ We note, however, that Ohana provided evidence that it inspected and tested its lighting alarm system a few days prior to the Anchorage Office’s inspection.¹⁵ We find that these actions constitute good faith efforts to comply with Rules and we reduce the proposed forfeiture to \$8,000.¹⁶

⁵ *Id.* at 2.

⁶ *Id.* at 3.

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

⁹ *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*).

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ *See NAL supra* note 3.

¹² *NAL Response* at 1–3.

¹³ *NAL*, 29 FCC Rcd at 1818, para. 1.

¹⁴ *Part 17 Streamlining Report and Order*, 29 FCC Rcd at 9801, para. 32.

¹⁵ *See NAL Response* at 2–3, Attachment 1.

¹⁶ *See, e.g., Sutro Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 15274, 15277, para. 10 (2004) (stating that the Commission has “generally provided reductions based on the good faith corrective efforts of a violator when those corrective efforts were taken prior to Commission notification of the violation”); *Radio One Licenses, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 15964, 15965, para. 4 (2003) (reductions based on good faith efforts (continued....))

6. Ohana also argues that it has a history of compliance with the Rules, warranting a forfeiture reduction.¹⁷ We agree. Therefore, after consideration of the entire record and the factors listed above, we find that a forfeiture in the amount of \$6,000 is warranted.¹⁸

IV. ORDERING CLAUSES

7. 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(f)(4) of the Rules, Ohana Media Group, LLC, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of six thousand dollars (\$6,000) for violations of Section 303(q) of the Act and Sections 17.23 and 17.48(a) of the Rules.¹⁹

8. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.²⁰ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.²¹ Ohana Media Group, LLC, shall send electronic notification of payment to WR-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²² 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.

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to comply generally involve situations where violators demonstrate that they initiated measures to correct or remedy violations prior to a Commission inspection or investigation); *see also W. Slope Commc'ns, LLC*, Forfeiture Order, 23 FCC Rcd 8384, 8389, para. 19 (Enf. Bur. 2008) (no good faith reduction given when antenna structure owner failed to notice failing antenna structure lighting alarm system for over three weeks).

¹⁷ *NAL Response* at 3.

¹⁸ *See, e.g., Centro Colegial Cristiano, Inc.*, Forfeiture Order, 28 FCC Rcd 14734 (Enf. Bur. 2013) (proposed forfeiture reduced based on history of compliance with the Rules).

¹⁹ 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 17.23, 17.48(a).

²⁰ 47 C.F.R. § 1.80.

²¹ 47 U.S.C. § 504(a).

²² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

9. 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. 20554.²³ 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.

10. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Ohana Media Group, LLC, at P.O. Box 99827, Seattle, Washington 98139, and its attorney, Daniel A. Kirkpatrick, Esquire, Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

²³ See 47 C.F.R. § 1.1914.