

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

In the Matter of)	
)	
Concilio Mision Cristiana Fuente De Agua Viva,)	
)	File Number EB-02-SJ-019
Owner of Antenna Structure Registration No.)	
1010646)	NAL/Acct. No.200232680004
)	
San Juan, PR)	FRN 0000-0131-85
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: May 14, 2002

By the Enforcement Bureau, San Juan Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that Concilio Mision Cristiana Fuente De Agua Viva (“Concilio”), owner of antenna structure no. 1010646 at Guaynabo, Puerto Rico, willfully violated Sections 17.4(g), 17.51, and 17.57 of the Commission's Rules (“Rules”),¹ by failing to display the Antenna Structure Registration (“ASR”) number, failing to exhibit the prescribed obstruction lighting, and failing to notify the Commission of a change in ownership of the structure. The violation of Section 17.4(g) of the Rules also is a repeated violation. We find Concilio Mision Cristiana Fuente De Agua Viva apparently liable for forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. On March 25, 2002, the FCC Enforcement Bureau’s San Juan Resident Agent Office (“San Juan Office”) received a complaint from the Federal Aviation Administration (“FAA”) concerning Concilio’s antenna structure no. 1010646 used as part of radio station WRSJ(AM). The complaint alleged that the lighting on the structure had been unlit for several days.

3. On March 26, 2002, an agent from the San Juan Office inspected the antenna

¹ 47 C.F.R §§ 17.4(g), 17.51, and 17.57.

structure after local sunset at 7:30 P.M. The agent observed all lights on the structure unlit. Additionally, the agent observed no posting of the ASR number on or near the tower or anywhere on the property.

4. On March 27, 2002, the agent conducted an inspection of radio station WRSJ(AM).² The agent advised Concilio that the lighting on the antenna structure was not functioning. WRSJ's general manager and engineer stated that the antenna structure required neither lighting nor registration because it was only 153 feet tall. A copy of the ASR dated November 28, 1996, specified the structure's overall height above ground as 46.6 meters or 153 feet. However, the station license for WRSJ(AM) showed the overall height above ground as 222.5 feet. WRSJ's general manager and engineer stated that no one at the station was aware of the lighting malfunction since the automatic alarm for the lighting system failed to notify them. They stated that the alarm system operated on the same electrical circuit as the obstruction lighting so that when that circuit failed, both the lights and the alarm system failed to function. They also stated that no one at the station made a report of the light outage to the FAA. Additionally, the ASR lists the structure owner as "Andres Gomez DBA ABG Realty Investment." Concilio stated this was the previous owner of the antenna structure.

5. On March 28, 2002, the agent went to Concilio's antenna structure and, using a laser hypsometer/rangefinder, measured the height above ground to be 70 meters, or 230 feet.

6. On April 2, 2002, the agent returned to the antenna structure accompanied by representatives of Concilio. Concilio measured the structure's height above ground and found it to be 222.5 feet. The agent observed that the ASR number still was not posted on or near the tower nor anywhere on the property. Concilio representatives stated that, to their knowledge, no report to the FAA of the light outage had been made.

III. DISCUSSION

7. Section 17.4(g) of the Rules requires the ASR Number be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. The antenna structure was observed on March 26, 2002 and April 2, 2002 and no ASR number was posted. Section 17.51 of the Rules requires prescribed obstruction lighting be exhibited from sunset to sunrise unless otherwise specified. The antenna structure was observed on March 26, 2002 after sunset at 7:30 P.M. with its obstruction lights not functioning. Concilio admitted that they were unaware of the light outage, that the automatic alarm system had failed to notify them of the light outage, and that no report to the FAA of the light outage had been made. Section 17.57 of the Rules requires the owner to immediately notify the Commission using FCC Form 854 upon any change in structure height or change in ownership. Commission records reflect the structure's previous owner.

² Concilio is the licensee of radio station WRSJ(AM) in addition to being owner of the antenna structure.

8. Based on the evidence before us, we find Concilio willfully³ violated Sections 17.4(g), 17.51, and 17.57 of the Rules by failing to post the ASR number, failing to exhibit prescribed obstruction lighting, and failing to report changes in structure ownership. The violation for Section 17.4(g) of the Rules also is repeated⁴ in that it occurred on more than one day.

9. Pursuant to Section 1.80(b)(4) of the Rules,⁵ the base forfeiture amount for failure to comply with prescribed lighting is \$10,000, and for failure to file required forms or information (e.g., failure to notify the Commission of a change in ownership information) is \$3,000. The Rules do not establish a base forfeiture amount for failure to post the antenna structure registration number.⁶ The Commission has determined, however, that an appropriate base forfeiture amount for failure to post the ASR number is \$2,000 per violation.⁷ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include 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 Considering the entire record and applying the factors listed above, this case warrants a \$15,000 forfeiture.

IV. ORDERING CLAUSES

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ The term “repeated” means the commission or omission of an act more than once or, if such commission or omission is continuous, for more than one day. 47 U.S.C. § 312(f)(2).

⁵ 47 C.F.R. § 1.80(b)(4)

⁶ See *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”), 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999). The *Forfeiture Policy Statement* states that “... any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant. *Forfeiture Policy Statement*, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act. *Id.*”

⁷ *American Tower Corporation*, 16 FCC Rcd 1282 (2001).

⁸ 47 U.S.C. § 503(b)(2)(D).

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁹ and Sections 0.111, 0.311 and 1.80 of the Rules,¹⁰ Concilio Mision Cristiana Fuente De Agua Viva is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of fifteen thousand dollars (\$15,000) for willful and repeated violation of Section 17.4(g) of the Rules, and willful violation of Sections 17.51 and 17.57 of the Rules, by failing to display the Antenna Structure Registration number, failing to exhibit the prescribed obstruction lighting on its antenna structure, and failing to notify the Commission of a change in ownership of the structure.

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the RELEASE DATE of this NOTICE OF APPARENT LIABILITY, May 14, 2002, Concilio Mision Cristiana Fuente De Agua Viva SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.¹¹

13. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

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 practices ("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 shall be sent by Certified Mail Return Receipt Requested to Concilio Mision Cristiana Fuente De Agua Viva, P.O. Box 4039, Carolina, PR 00984.

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹¹ See 47 C.F.R. § 1.1914.

FEDERAL COMMUNICATIONS COMMISSION

William Berry
Resident Agent - San Juan Office, Enforcement Bureau