

Federal Communications Commission

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

In the Matter of

Central Transport, Inc.
Sterling Heights, Michigan

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File No. EB-00-DT-935

NAL/Acct. No. 200232360001

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: October 29, 2001

By the District Director, Detroit Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Central Transport, Inc. has apparently violated Section 303(q) of the Communications Act of 1934 ("Act"), as amended,¹ and Sections 17.4(a) and 1.89(b) of the Commission's Rules² (the "Rules"). Respectively, these sections require painting and/or illumination of a radio tower if and when the tower may constitute a menace to air navigation, antenna structure owners to register their antenna structure, and the recipient to respond to Commission correspondence. We conclude that Central Transport, Inc. is apparently liable for a forfeiture in the amount of seventeen thousand dollars (\$17,000).

II. BACKGROUND

2. The Commission's obstruction marking and lighting of antenna structures and registration requirements operate in concert with the Federal Aviation Administration's ("FAA") regulations to ensure that antenna structures do not present hazards to air navigation. Generally, our rules require that antenna structures located close to airports or that are greater than 200 feet in height comply with painting and lighting specifications to ensure air safety. We require antenna structure owners to register structures with the Commission and post registration numbers near the base of structures to allow for easy contact if problems arise. The Rules require registration for all antenna structures that may pose a hazard to air navigation and have been in effect since July 1, 1998. We have repeatedly advised antenna structure owners that all existing, unregistered antenna structures subject to our Rules must be registered immediately or the owners could face a monetary forfeiture or other enforcement action.³

¹ 47 U.S.C. § 303(q).

² 47 C.F.R. §§ 17.4(a), 1.89(b).

³ Antenna structure owners were required to register existing antenna structures as of July 1, 1998 and to register new antenna structures prior to construction. *Streamlining the Commission's Antenna Structure Clearance Procedure*, 11 FCC Red 4272 (1995). Subsequent to the expiration of the filing period, the Commission staff issued a Public Notice warning antenna structure owners to register any unregistered antenna structures subject to our requirements immediately or face possible monetary forfeitures or other enforcement action. *Public Notice*, "No-Tolerance Policy

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3. Commission field agents routinely inspect antenna structures to determine compliance with antenna structure marking, painting and lighting requirements and they also respond to reports of unlit towers. The FAA also routinely notifies Commission field offices when owners fail to report that lights have been repaired. On November 2, 2000, a FCC agent from the Detroit Office conducted an inspection of the antenna structure located at 537 Bradford Street, Pontiac, Michigan. The agent found that no FCC antenna structure registration number was posted. Subsequently, the agent determined that the structure had not been registered with the Commission.

4. On November 13, 2000, a FCC agent from the Detroit Office observed the antenna structure lighting. The agent noted that the antenna structure top flashing beacon light was burning steady red, and the side lights were not on.

5. On November 14, 2000, a FCC agent from the Detroit Office again observed the antenna structure lighting. The agent again noted that the antenna structure top flashing beacon light was burning steady red and the side lights were not on. Further the agent contacted the FAA and determined that Central Transport, Inc. had not notified the FAA of the antenna structure's steady red burning top light.

6. On November 27, 2000, the Detroit District Director issued a Notice of Violation ("NOV") to Transport Communications, Inc., a wholly owned subsidiary of Central Transport, Inc., 34200 Mound Road, Sterling Heights, Michigan 48310, for failure to register its antenna structure with the Commission and for antenna tower lighting violations. No written response to the NOV was received.

7. On January 8, 2001, the District Director issued a Warning Letter to Transport Communications Inc, 34200 Mound Road, Sterling Heights, Michigan 48310-6699, for failure to reply to the Detroit Office NOV issued November 27, 2000.

III. DISCUSSION

8. Section 303(q) of the Act, as amended,⁴ requires tower owners to maintain the painting and/or illumination of the tower as prescribed by the Commission. Section 17.4(a) requires the registration of the antenna structure and Section 1.89(b) requires a written response be sent to the Notice of Violation.

9. Based on the evidence before us, we find that Central Transport, Inc. has willfully⁵ and repeatedly⁶ violated Section 303(q) of the Act, as amended, by failure to maintain the prescribed illumination of its antenna tower, and Sections 17.4(a) and 1.89(b) of the Commission's Rules by their failure to register its antenna tower and their failure to respond to official Commission correspondence. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture*

Adopted For Unregistered Antenna Structures," 1999 WL 10060 (WTB 1999).

⁴ 47 U.S.C. § 303(q).

⁵ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to 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).

⁶ Section 312(f)(2), which also applies to Section 503(b), provides: [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.

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Guidelines, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) (“*Forfeiture Policy Statement*”)⁷, sets the base forfeiture amount at ten thousand dollars (\$10,000) for the lighting violation, three thousand dollars (\$3,000) for failure to register the antenna structure and \$4,000 for failure to respond to official Commission correspondence. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,⁸ 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. Applying the Policy Statement and the statutory factors to the instant case and applying the inflation adjustments, we believe that a seventeen thousand dollar (\$17,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80 of the Rules⁹, Central Transport, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of seventeen thousand dollars (\$17,000) for willfully and repeatedly violating Section 303(q) of the Act, as amended, and Sections 17.4(a) and 1.89(b) of the Rules.

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, Central Transport, Inc.. 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. 200232360001.

13. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200232360001.

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. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

⁷47 C.F.R. § 1.80.

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, 0.311, and 1.80.

¹⁰ See 47 C.F.R. § 1.1914.

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16. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to Central Transport, Inc., 34200 Mound Road, Sterling Heights, Michigan 48310-6699.

FEDERAL COMMUNICATIONS COMMISSION

James A. Bridgewater
District Director
Detroit Office