
Federal Communications Commission

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

In the Matter of)	
)	
Puerto Rico Telephone Company Inc.)	File Number EB-07-SJ-016
)	
San Juan, PR)	NAL/Acct. No. 200732680006
ASR 1010664)	
)	FRN 0001731470

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: May 23, 2007

By the Resident Agent, San Juan Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Puerto Rico Telephone Company Inc. (“PRTC”), owner of antenna structure # 1010664, in Yabucoa, Puerto Rico, apparently willfully and repeatedly violated Sections 17.47(a)(1), 17.50, and 17.51(a) of the Commission's Rules (“Rules”)¹ by failing to monitor the antenna structure’s lights, failing to paint its antenna structure to maintain good visibility, and failing to exhibit red obstruction lights from sunset to sunrise. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that PRTC is apparently liable for a forfeiture in the amount of twelve thousand dollars (\$12,000).

II. BACKGROUND

2. On March 6, 2007, in response to a complaint of a dark tower, agents from the Commission’s San Juan office of the Enforcement Bureau (“San Juan Office”) observed that the tower located in Yabucoa was not lit.³ On March 8, 2007, the agents returned to the antenna structure and noted the tower’s paint was completely washed away on the top four bands. The agents also observed that the tower remained unlit past 7:00 PM. In response to a Letter of Inquiry, PRTC admitted that between March 8, 2006 and March 8, 2007, the antenna structure did not have an automatic alarm monitoring system. PRTC also admitted that it was unaware of the outage prior to being so informed by the agents and that it did not conduct daily visual observations of the structure’s lights between March 8, 2006 and March 8, 2007. Finally, PRTC admitted that it had no documentation regarding the tower’s paint condition during this period.

III. DISCUSSION

3. 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. The term “willful” as used in Section 503(b) has been interpreted to

¹ 47 C.F.R. §§ 17.47(a)(1), 17.50, 17.51(a).

² 47 U.S.C. § 503(b).

³ After receiving the complaint that the antenna structure had been unlit for 3 months, an agent called the Federal Aviation Administration, which issued a Notice to Airmen (“NOTAM”) on February 28, 2007.

mean simply that the acts or omissions are committed knowingly.⁴ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁵

4. Section 17.47(a)(1) of the Rules requires that the owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications make an observation of the antenna structure’s lights at least once every 24 hours. Alternatively, owners may install an automatic light monitoring system. PRTC admitted that between March 8, 2006 and March 8, 2007 it did not have an automatic light monitoring system in place and it did not conduct daily observations of the structure. PRTC also admitted that it was unaware of the light outage on March 6 and 8, 2007 until being so informed by the agents.

5. Section 17.50 of the Rules requires that antenna structures requiring painting shall be cleaned or repainted as often as necessary to maintain good visibility. On March 8, 2007, an inspection of the antenna structure revealed that the paint on the top four bands of the tower had washed away completely, leaving the metal exposed and reducing the tower’s visibility. The paint’s condition was so deteriorated that it had to have occurred over more than one day. PRTC admitted that it had no documents regarding the paint’s condition between March 8, 2006 and March 8, 2007. PRTC stated that it has hired a contractor to repaint the structure.

6. Section 17.51(a) of the Rules requires that all red obstruction lighting shall be exhibited from sunset to sunrise unless otherwise specified. On March 6 and 8, 2007, agents from the San Juan Office observed that all required obstruction lighting on antenna structure #1010664 was extinguished. PRTC did not call in a NOTAM regarding the outage.

7. Based on the evidence before us, we find that PRTC apparently willfully and repeatedly violated Sections 17.47(a)(1), 17.50, and 17.51(a) of the Rules by failing to monitor the antenna structure’s lights, failing to repaint the antenna structure, and failing to exhibit any of the required obstruction red lights.

8. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, (“*Forfeiture Policy Statement*”), and Section 1.80 of the Rules, the base forfeiture amount for failing to comply with prescribed lighting and marking is \$10,000 and the base forfeiture amount for failing to make required measurements or conduct required monitoring is \$2,000.⁶ 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, and history of prior offenses, ability to pay, and other such matters as justice may require.⁷ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that PRTC is apparently liable for a (\$12,000) forfeiture.

⁴ 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 or any rule or regulation of the Commission authorized by this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ 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.”

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

⁷ 47 U.S.C. § 503(b)(2)(E).

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, 0.311, 0.314 and 1.80 of the Commission's Rules, Puerto Rico Telephone Company Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twelve thousand dollars (\$12,000) for violations of Sections 17.47(a)(1), 17.50, and 17.51(a) of the Rules.⁸

10. **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 for Forfeiture*, Puerto Rico Telephone Company Inc. **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, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, San Juan Office, Room 762, Federal Building, Hato Rey, PR 00918 and must include the NAL/Acct. No. referenced in the caption.

13. 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.

14. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.⁸

15. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Puerto Rico Telephone Company Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

William Berry
Resident Agent,
San Juan Office
South Central Region
Enforcement Bureau

⁸ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 17.47(a)(1), 17.50, 17.51(a).

⁸ See 47 C.F.R. § 1.1914.