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**Federal Communications Commission**

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

In the Matter of	)	
	)	
Hawaiian Telcom, Inc.	)	File Number: EB-09-HL-0094
	)	
Antenna Structure Registrant	)	NAL/Acct. No.: 200932860003
Kamuela, Hawaii	)	FRN: 0001520980
ASR No. 1002607	)	
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: September 28, 2009**

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

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Hawaiian Telcom, Inc. ("Hawaiian Telcom"), registrant of antenna structure #1002607 near Kamuela, Hawaii,<sup>1</sup> apparently repeatedly violated Section 303(q) of the Communications Act of 1934, as amended, ("Act"),<sup>2</sup> and Section 17.51(a) of the Commission's Rules ("Rules")<sup>3</sup> by failing to exhibit the structure's red obstruction lighting from sunset to sunrise; by failing to maintain the antenna structure painting and lighting in accordance with their Antenna Structure Registration ("ASR"), a violation of Section 17.6(a) of the Rules;<sup>4</sup> and by failing to monitor the antenna structure's lights, using a properly maintained indicator to register any failure of such lights, a violation of Section 17.47(a) of the Rules.<sup>5</sup> Hawaiian Telcom's failure to make the required observations of the lighting on the antenna structure resulted in its failure to notify the nearest Flight Service Station of the Federal Aviation Administration ("FAA") of the outage of the flashing obstruction light, a violation of Section 17.48 of the Rules.<sup>6</sup> We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>7</sup> that Hawaiian Telcom is apparently liable for forfeiture in the amount of ten thousand dollars (\$10,000).

**II. BACKGROUND**

2. Antenna structure #1002607 is an antenna tower of 47 meters (approximately 154 feet) in

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<sup>1</sup> "Kamuela" and "Waimea" refer to the same geographic location, and are used interchangeably.

<sup>2</sup> 47 U.S.C. § 303(q).

<sup>3</sup> 47 C.F.R. § 17.51(a).

<sup>4</sup> 47 C.F.R. § 17.6(a).

<sup>5</sup> 47 C.F.R. § 17.47(a).

<sup>6</sup> 47 C.F.R. § 17.48.

<sup>7</sup> 47 U.S.C. § 503(b).

height above ground. The registered owner is Hawaiian Telcom. According to the antenna structure registration (“ASR”) for antenna structure #1002607, the structure is required to be painted and lit in accordance with specific Chapters of the FAA Advisory Circular for Obstruction Marking and Lighting.<sup>8</sup> Specifically, the structure is required to be painted and have, at its top, a flashing red obstruction beacon, along with steady burning red side obstruction lights at the mid-point of its overall height.<sup>9</sup>

3. On June 25, 2009, the Enforcement Bureau’s Honolulu Resident Agent Office received a complaint that the antenna structure at the Hawaiian Telecom station/tower in Kamuela, Hawaii, located next to Highway 19 had been unlit for over a month. The Honolulu agent performed a search of the FCC databases for a tower in Kamuela, Hawaii, that was associated with Hawaiian Telcom and found an ASR record of #1002607 registered to Hawaiian Telcom. The Honolulu agent contacted the Federal Aviation Administration (“FAA”) Flight Service Station (“FSS”) to determine if the tower light outage had been reported. The FAA informed the Honolulu agent that no prior light outage report had been made for antenna structure #1002607. The Honolulu agent then contacted Hawaiian Telcom to request they investigate the tower light status of antenna structure in Kamuela, Hawaii.

4. On June 26, 2009, the Honolulu agent received an email from Hawaiian Telcom advising that they confirmed that the Hawaiian Telcom tower, antenna structure #1002607, in Kamuela, Hawaii was unlit, and stated that they had scheduled a contractor to replace the bulb the following week. Hawaiian Telcom acknowledged that they were unaware of the both the tower light outage and the requirements to file a NOTAM with the FAA FSS. The Honolulu agent informed Hawaiian Telcom that they were required to contact the FAA FSS to generate a NOTAM for the unlit structure. According to the FAA FSS log, a NOTAM was initiated by Hawaiian Telcom on June 26, 2009 at approximately 1:57pm HST.

5. On June 29, 2009 the Honolulu agent contacted the Waimea Police Department, Waimea, Hawaii, and asked that they dispatch an officer during nighttime hours to observe antenna structure #1002607. The agent received a phone call from the Waimea Police Department at 9:15 p.m. HST that evening confirming that the structure was unlit.

6. On July 1, 2009 a Honolulu agent inspected antenna structure #1002607. The agent observed, at approximately 7:05 p.m. HST and until about 7:30 p.m. HST, that the nighttime red obstruction top beacon light for antenna structure #1002607 was lit, but not flashing as required.<sup>10</sup> The agent also noted that there were no side obstruction lights on the tower, and that the structure painting was severely cracked, chipped, and faded. The agent contacted Hawaiian Telcom on July 2, 2009, requesting the logs concerning the light outage on antenna structure #1002607.

7. On July 27, 2009, Hawaiian Telcom eventually provided a single written record, which showed only that the top beacon was inoperative and then restored to service on June 30, 2009, the day of repair. Hawaiian Telcom acknowledged that the “[t]he site alarms for the beacon failure were not received for this specific event. In speaking to our . . . administrator, there have been some intermittent trap queue problems that may have contributed to the alarms not being received.”

### **III. DISCUSSION**

8. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to

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<sup>8</sup> See FAA Circular Number 70/7460-1G, Chapters 3, 4, 5 and 9.

<sup>9</sup> FAA Circular Number 70/7460-1J, Appendix 1, Figure 11.

<sup>10</sup> According to the U.S. Naval Observatory, sunset occurred at 7:06 p.m. HST on July 1, 2009, in the Waimea/Kamuela area.

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 mean simply that the acts or omissions are committed knowingly.<sup>11</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>12</sup>

9. 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.<sup>13</sup> Section 17.51(a) of the Rules states that all red obstruction lighting shall be exhibited from sunset to sunrise unless otherwise specified.<sup>14</sup> The FAA Advisory Circular chapters for antenna structure #1002607 require that the structure be painted and have, at its top, a flashing red beacon, along with mid-point steady burning red side obstruction lights.<sup>15</sup> Section 17.6(a) of the Rules requires that the antenna structure owner maintain the painting and lighting in accordance with the specifications set forth in the ASR. Section 17.47(a) of the Rules requires that the owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications shall make an observation of the antenna structure's lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure.<sup>16</sup> Section 17.48 of the Rules requires that registered antenna structures that have been assigned lighting specifications shall report immediately by telephone or telegraph to the FSS or FAA any observed or otherwise known extinguishment of any flashing obstruction light not corrected within 30 minutes.<sup>17</sup>

10. On June 25, 2009, the Enforcement Bureau's Honolulu Resident Agent Office received a complaint that antenna structure #1002607 located near Kamuela, Hawaii had been unlit for over a month. A Honolulu agent contacted the FAA Flight Service Station and found that Hawaiian Telcom had not reported the outage, and then contacted Hawaiian Telcom to request that they investigate the tower light status of antenna structure #1002607. On June 26, 2009, Hawaii Telcom confirmed to the Honolulu agent that antenna structure #1002607 was unlit. At that time, Hawaiian Telcom was not aware of the tower light outage, or of the need to issue a NOTAM. On June 29, 2009, a Waimea Police Officer observed that the top red beacon on antenna structure #1002607 was not functioning. On July 1, 2009, at approximately 7:05 p.m., and until approximately 7:30 p.m., a Honolulu agent observed that the top red obstruction light on antenna structure #1002607 was lit, but not flashing, as required.<sup>18</sup> The agent also confirmed that the ASR Number was not displayed, and that the structure did not have the two required steady burning red obstruction lights installed at the tower midpoint. In response to a request from the Honolulu agents, Hawaiian Telcom was

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<sup>11</sup> 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).

<sup>12</sup> 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."

<sup>13</sup> 47 U.S.C. § 303(q).

<sup>14</sup> 47 C.F.R. § 17.51(a).

<sup>15</sup> FAA Circular Number 70/7460-1G, Chapters 3, 4, 5 and 9, Appendix 2, Figure 1.

<sup>16</sup> 47 C.F.R. § 17.47(a).

<sup>17</sup> 47 C.F.R. § 17.48.

<sup>18</sup> FAA Circular Number 70/7460-1G, Chapters 3, 4, 5 and 9, Appendix 2, Figure 1.

only able to produce one day of logs concerning the light outage on antenna structure #1002607, and acknowledged that the site alarms for the failure of the beacon on antenna structure #1002607 had not been received.

11. Hawaiian Telcom's failure to properly observe and maintain an indicator designed to register any lighting failure resulted in Hawaiian Telcom's failure to monitor the lights on antenna structure #1002607. This failure to monitor resulted in Hawaiian Telcom's failure to notify the FAA Flight Service Station of the outage of the flashing obstruction light, which is required to be exhibited from sunset to sunrise. Based on the evidence before us, we find that Hawaiian Telcom apparently repeatedly violated Section 303(q) of the Act, and Sections 17.51(a), 17.47(a), 17.6(a) and 17.48 of the Rules, by failing to maintain the required red obstruction lighting on antenna structure #1002607; by failing to monitor the antenna structure's lights, using a properly maintained indicator designed to register any lighting failure; by failing to maintain the structure painting and lighting in accordance with the ASR specifications, and by failing to report the extinguishment of the top flashing red beacon on antenna structure #1002607.

12. 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"),<sup>19</sup> and Section 1.80 of the Rules, the base forfeiture amount for failing to comply with the prescribed lighting and/or marking for an antenna structure is \$10,000. 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,<sup>20</sup> 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. Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Hawaiian Telcom is apparently liable for a \$10,000 forfeiture.

#### IV. ORDERING CLAUSE

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Hawaiian Telcom, Inc. 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 17.6(a), 17.47(a), 17.48 and 17.51(a) of the Rules.<sup>21</sup>

14. **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, Hawaiian Telcom, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. 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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block

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<sup>12</sup> 12 FCC Rcd 17087(1997), *recon. denied* 15 FCC Rcd 303 (1999).

<sup>13</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>14</sup> 47 U.S.C. §§ 303(q), 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80, 17.6, 17.47(a), 17.48, 17.51(a).

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number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>22</sup> Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Hawaiian Telcom, Inc., shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

16. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Honolulu Resident Agent Office, P.O. Box 971030, Waipahu, Hawaii 96797-1030 and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall be sent to WR-Response@fcc.gov.

17. 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.

18. **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 Hawaiian Telcom, Inc., Attention To: HIA5, P.O. Box 2200, Honolulu, Hawaii 96841.

### FEDERAL COMMUNICATIONS COMMISSION

John R. Raymond  
Resident Agent  
Honolulu Resident Agent Office  
Western Region  
Enforcement Bureau

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<sup>22</sup> See 47 C.F.R. § 1.1914.