

Federal Communications Commission

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

In the Matter of)	
)	
Puerto Rico Telephone Company Inc.)	File No. EB-10-SJ-001
)	
San Juan, PR)	NAL/Acct. No.201032680002
Owner of Antenna Structure # 1010661)	
)	FRN 0001731470

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: February 16, 2010

By the Resident Agent or 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 number 1010661, in Aguadilla, Puerto Rico, apparently willfully and repeatedly violated Sections 17.48 and 17.51(a) of the Commission’s Rules (“Rules”)¹ by failing to notify the Federal Aviation Administration (“FAA”) immediately of a lighting outage and failing to exhibit red obstruction lighting 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 ten thousand dollars (\$10,000).

II. BACKGROUND

2. Antenna structure number 1010611 is 275.5 overall feet above sea level and, according to the Antenna Structure Registration database, is required to be lit with dual red and medium intensity flashing white lights.

3. On January 11, 2010, in response to a complaint of an unlit tower, an agent from the Commission’s San Juan office of the Enforcement Bureau (“San Juan Office”) contacted the FAA to determine if a current Notice to Airman (“NOTAM”) had been issued for the structure. The FAA informed the agent that no one had notified them of an outage on the structure and that no NOTAM had been issued. On January 12 and 18, 2010,³ agents from the San Juan Office observed that all of the structure’s lights were unlit after sunset.⁴ On January 18, 2010, an agent contacted the FAA to determine if the tower owner had reported the tower light outage and was informed that the owner had not done so.

4. On January 19, 2010, an agent from the San Juan Office contacted PRTC about the outage.

¹ 47 C.F.R. §§ 17.48, 17.51(a).

² 47 U.S.C. § 503(b).

³ An agent observed the unlit structure at 5:30 P.M. and 6:30 P.M. on January 12 and after 7:00 P.M. on January 18. The agent notified the FAA of the outage and the FAA issued a NOTAM regarding the structure.

⁴ Local sunset time was approximately 6:15 P.M.

PRTC was unaware that the lights on the structure were extinguished. On January 25, 2010, PRTC informed the San Juan Office that the red light had been repaired and that in a few days the white one would be installed. PRTC also stated that someone would be checking the structure's lights each night.

III. DISCUSSION

5. 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) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.⁵ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁶

6. Section 17.51(a) of the Rules requires that all red obstruction lighting be exhibited from sunset to sunrise. Section 17.47 of the Rules requires owners of antenna structures to observe structure lights visually once every 24 hours to ensure all lights are functioning properly as required or employ an automatic alarm system designed to detect any failure in the lights.⁷ Section 17.48 of the Rules requires that owners of registered antenna structures that have been assigned lighting specifications report immediately by telephone or telegraph to the FAA any observed or otherwise known extinguishment of any flashing obstruction light not corrected within 30 minutes.⁸ On January 12 and 18, 2010, agents from the San Juan Office observed that all required obstruction lighting on antenna structure number 1010661 was extinguished after sunset. PRTC did not notify the FAA of the outage prior to being informed of the outage on January 19, 2010. PRTC was unaware of the outage prior to January 19, 2010.

7. Based on the evidence before us, we find that PRTC apparently willfully and repeatedly violated Sections 17.48 and 17.51(a) of the Rules by failing to notify the FAA immediately of a lighting outage and failing to exhibit all of the required red obstruction lights on January 12 and 18, 2010.

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 \$10,000.⁹ 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.¹⁰ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that PRTC is apparently liable for a \$10,000 forfeiture.

⁵ 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).

⁶ 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."

⁷ 47 C.F.R. § 17.47.

⁸ 47 C.F.R. § 17.48(a).

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

¹⁰ 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 ten thousand dollars (\$10,000) for violations of Sections 17.48 and 17.51(a) of the Rules.¹¹

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 credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the 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 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. 20554.⁸ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, PRTC will send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

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.

¹¹ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 17.48, 17.51(a).

⁸ See 47 C.F.R. § 1.1914.

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14. **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