

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

In the Matter of)	
)	
Johnson Towers Corporation)	File No.: EB-11-TP-0038
)	NAL/Acct. No.: 201432700002
Owner of Antenna Structure Nos.:)	FRN: 0007783525
1060088, 1060089, and 1060090)	
Pinellas Park, Florida)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: November 1, 2013

Released: November 1, 2013

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Johnson Towers Corporation (JTC), owner of antenna structure numbers 1060088, 1060089, and 1060090 in Pinellas Park, Florida, apparently willfully and repeatedly violated Section 303(q) of the Communications Act of 1934, as amended (Act), and Sections 17.21(a), 17.23, and 17.57 of the Commission's rules (Rules)¹ by failing to install lights on two antenna structures and failing to update registration information in the Commission's Antenna Structure Registration (ASR) database to reflect the dismantlement of a registered tower (1060089). We conclude that JTC is apparently liable for a forfeiture in the amount of two hundred and thirty-four thousand dollars (\$234,000). In addition, we direct JTC to submit, no later than thirty (30) calendar days after the release date of this NAL, a statement signed under penalty of perjury stating that it is now in compliance with the Commission's antenna structure lighting and registration requirements. We also direct JTC to update the registrations in the ASR database for all three antenna structures to reflect the most recent "no hazard" determinations issued by the Federal Aviation Administration (FAA).

II. BACKGROUND

2. The Commission's antenna structure painting, lighting, and registration requirements operate in concert with FAA regulations to ensure that antenna structures do not present hazards to air navigation.² Generally, our rules require that antenna structures located close to airports or that are greater than 60.96 meters (200 feet) in height comply with painting and lighting specifications designed to ensure air safety.³ We require antenna structure owners to register antenna structures with the Commission and post ASR numbers at the base of antenna structures to allow for easy contact if problems arise.⁴ Accuracy of information in the ASR database is particularly important, because the database is used by Commission agents to ensure compliance with the Commission's antenna structure rules and the FAA's painting and lighting requirements.

¹ 47 U.S.C. § 303(q); 47 C.F.R. §§ 17.21(a), 17.23, 17.57.

² See 47 C.F.R. §§ 17.1–17.58.

³ See 47 C.F.R. §§ 17.7, 17.21.

⁴ See 47 C.F.R. § 17.4.

3. Antenna structure numbers 1060088, 1060089, and 1060090, as originally constructed, were all more than 104 meters in height above the ground.⁵ Because the three antenna structures were constructed near each other, the FAA originally required lighting and painting only for antenna structure number 1060089 (per the 1978 FAA determination of “no hazard”) (FAA Study).⁶

4. On April 14, 2011, in response to an inquiry from the FAA regarding an expired Notice to Airmen (NOTAM), an agent from the Enforcement Bureau’s Tampa Office (Tampa Office) observed that antenna structure number 1060089 had been dismantled and that the remaining two antenna structures were painted but contained no lighting systems.⁷ On April 19, 2011, the agent contacted JTC’s owner, who explained that antenna structure number 1060089 was accidentally knocked down in 2006. JTC’s owner stated he had tried to rebuild the structure, but due to permitting and other legal issues, had recently concluded that rebuilding was unlikely. The agent advised JTC to contact the FAA regarding the dismantlement of antenna structure number 1060089. The agent also informed JTC that antenna structure numbers 1060088 and 1060090 should be lighted now that the only lighted structure had been dismantled. Finally, the agent requested that JTC update the information in the ASR database for all three antenna structures. Over the next several months, an agent from the Tampa Office contacted JTC four times to inquire about its progress on installing lights on antenna structure numbers 1060088 and 1060090.

5. On October 12, 2011, an agent from the Tampa Office confirmed that the FAA had issued new FAA Studies dated September 27, 2011, for antenna structure numbers 1060088 and 1060090.⁸ The new FAA Studies required painting and lighting for both structures.⁹ That same day, the agent telephoned JTC’s owner, who stated that, due to financial constraints, lights would not be installed on the two structures until January 2012. At the end of January 2012, JTC’s owner stated that the lights would be installed in February 2012. On April 13, 2012, an agent from the Tampa Office again telephoned JTC’s owner, who stated that he had been unable to make progress on installing the lights due to health, financial, and legal issues. The agent also reminded JTC to submit an FCC Form 854 to update the information for antenna structure number 1060089 in the ASR database.

6. On May 22, 2012, February 14, 2013, July 14, 2013, and October 28, 2013, an agent from the Tampa Office confirmed that antenna structure numbers 1060088 and 1060090 still did not have lighting systems installed. In addition, the ASR database still shows antenna structure number 1060089 as being constructed and antenna structure numbers 1060088 and 1060090 as not requiring lighting or painting.

III. DISCUSSION

7. 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

⁵ See Antenna Structure Registration database for antenna structure numbers 1060088 (104.5 meters), 1060089 (108.8 meters), and 1060090 (104.8 meters).

⁶ See Antenna Structure Registration database for antenna structure number 1060089; see also FAA Study 97-ASO-5184-OE (Nov. 10, 1997) (summary on file in EB-11-TP-0038). Antenna structure numbers 1060088 and 1060090 did not require lighting or painting pursuant to FAA Study 78-ASO-446-OE (March 15, 1978). In an FAA Study, the FAA specifies the painting and lighting requirements it believes necessary to ensure that the antenna structure does not pose a hazard to air traffic.

⁷ On April 14, 2011, the agent from the Tampa Office notified the FAA that antenna structure numbers 1060088 and 1060090 were unlit. The FAA issued NOTAMs for these two structures on April 14, 2011. NOTAMs alert aircraft pilots of potential hazards, including antenna structure light outages, which could affect flight safety.

⁸ See FAA Study 2011-ASO-5252-OE (Sept. 27, 2011) (on file in EB-11-TP-0038); FAA Study 2011-ASO-5253-OE (Sept. 27, 2011) (on file in EB-11-TP-0038).

⁹ *Id.*

Commission thereunder, shall be liable for a forfeiture penalty.¹⁰ Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.¹¹ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹² and the Commission has so interpreted the term in the Section 503(b) context.¹³ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁴ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁵

A. Failure to Comply with Antenna Structure Lighting Requirements

8. 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.¹⁶ Section 17.21(a) of the Rules states that “[a]ntenna structures shall be painted and lighted when: (a) [t]hey exceed 60.96 meters (200 feet) in height above the ground or they require special aeronautical study.”¹⁷ Section 17.23 of the Rules states that an antenna structure “must conform to the FAA’s painting and lighting recommendations set forth on the structure’s FAA determination of ‘no hazard’”¹⁸

9. As discussed above, antenna structure numbers 1060088 and 1060090 are both more than 104 meters above ground in height and should be lighted according to the Rules and the FAA Studies issued on September 27, 2011. On April 19, 2011, an agent from the Tampa Office informed JTC that antenna structure numbers 1060088 and 1060090 must be lighted. On May 22, 2012, February 14, 2013, July 14, 2013, and October 28, 2013, an agent from the Tampa Office observed that antenna structure numbers 1060088 and 1060090 still had no installed lighting systems. Based on the evidence before us, we find that JTC apparently willfully and repeatedly violated Section 303(q) of the Act and Sections 17.21(a) and 17.23 of the Rules by failing to install required lighting systems on antenna structure numbers 1060088 and 1060090.

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 U.S.C. § 312(f)(1).

¹² H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms”).

¹³ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹⁴ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁵ 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.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, para. 9.

¹⁶ 47 U.S.C. § 303(q).

¹⁷ 47 C.F.R. § 17.21(a).

¹⁸ 47 C.F.R. § 17.23.

B. Failure to Notify Commission of Changes to Antenna Structure Registration Information

10. Section 17.57 of the Rules states that the “owner of an antenna structure for which an Antenna Structure Registration Number has been obtained must notify the Commission within 24 hours of completion of construction (FCC Form 854–R) and/or dismantlement (FCC Form 854). The owner must also immediately notify the Commission using FCC Form 854 upon any change in structure height or change in ownership information.”¹⁹

11. As discussed above, on April 19, 2011, JTC admitted that antenna structure number 1060089 had been dismantled in 2006. An agent from the Tampa Office informed JTC that it must submit an FCC Form 854 to notify the Commission of the structure’s dismantlement on April 19, 2011, and again on April 13, 2012. As of October 25, 2013, JTC had not submitted an FCC Form 854 regarding antenna structure number 1060089’s dismantlement. Based on the evidence before us, we find that JTC apparently willfully and repeatedly violated Sections 17.57 of the Rules by failing to notify the Commission of the dismantlement of antenna structure number 1060089.

C. Proposed Forfeiture

12. Section 503(b)(2)(D) of the Act²⁰ and Section 1.80(b)(7) of the Rules²¹ authorize the Commission to assess against entities such as JTC – who are not common carriers, broadcast licensees, or cable operators – a maximum forfeiture of \$16,000 for each violation, or each day of a continuing violation, up to a statutory maximum of \$112,500 for any single continuing violation.²² Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for failure to comply with prescribed lighting is \$10,000 and the base forfeiture amount for failure to file required forms or information, including failure to notify the Commission of changes to antenna structure registration information, is \$3,000.²³ 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, any history of prior offenses, ability to pay, and other such matters as justice may require.²⁴

13. Antenna structure number 1060089 was dismantled in 2006, yet JTC failed to submit an FCC Form 854 updating the ASR database for that structure for over six years. Based on the totality of the circumstances, we find this violation warrants an upward adjustment to the base forfeiture in the amount of \$6,000. JTC’s violation regarding antenna structure number 1060089 demonstrates a

¹⁹ 47 C.F.R. § 17.57.

²⁰ 47 U.S.C. § 503(b)(2)(D).

²¹ 47 C.F.R. § 1.80(b)(7).

²² On September 13, 2013, the statutory maximum forfeiture penalties for violations of Commission rules were adjusted for inflation. *See Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 28 FCC Rcd 10785 (Enf. Bur. 2013); *see also* Inflation Adjustment of Monetary Penalties, 78 Fed. Reg. 49, 370-01 (Aug. 14, 2013) (setting Sept. 13, 2013, as the effective date for the increases). The statutory maximum forfeiture for violations occurring after that date by non-licensees like JTC increased from \$112,500 to \$122,500. Given, however, the continuing nature of JTC’s violations and the fact that all but a very small part of the violation period here occurred under the prior rule, we have used the previous statutory maximum figure in setting the forfeiture amount in this case.

²³ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

²⁴ 47 U.S.C. § 503(b)(2)(E).

deliberate disregard of the Commission's rules that warrants stringent enforcement action. JTC failed to correct the violation for more than six years despite several warnings from FCC agents to comply with the registration rule. In addition, the violation left air traffic with no lighting to warn them of the existence of JTC's two remaining antenna structures located in Pinellas Park. The resulting risk of two unlit structures to passing aircraft demands a significant upward adjustment.²⁵ As a result, we propose a forfeiture in the amount of \$9,000 for JTC's failure to notify the Commission of the dismantlement of antenna structure number 1060089.²⁶

14. The base forfeiture amount for the failure to install required lighting systems on an antenna structure is \$10,000. As noted above, the antenna structure lighting provisions are designed to ensure that antenna structures are visible to air traffic. Despite repeated warnings from the Tampa Office agents prior to and after the issuance of the new FAA Studies in September 2011, JTC failed to act promptly to install lighting systems on antenna structure numbers 1060088 and 1060090. Indeed, as of October 28, 2013, JTC's violations had continued for more than two years. Accordingly, by statute, we may propose a forfeiture penalty of up to \$112,500 for each continuing violation.²⁷ We conclude JTC's actions were particularly egregious – given the potential public safety hazard to air traffic, and its blatant disregard for Commission authority – warranting forfeitures equal to the statutory maximum. Because the current FAA Studies and the Commission's rules require that *each* antenna structure be lighted, JTC's failure to install lighting systems on two antenna structures constitutes two separate violations. Thus, the proposed forfeiture for JTC's antenna structure lighting violations is the statutory maximum of \$112,500 per structure, for a total of \$225,000.

15. Accordingly, applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that JTC is apparently liable for a total forfeiture in the amount of \$234,000, consisting of the following: \$225,000 for two antenna structure lighting violations and \$9,000 for the antenna structure registration violation.

D. Reporting and Registration Requirements

16. We direct JTC to submit a written statement, pursuant to Section 1.16 of the Rules,²⁸ signed under penalty of perjury by an officer or director of JTC, stating that it has notified the FAA to ensure that an active NOTAM remains in place for antenna structure numbers 1060088 and 1060090 until the necessary lights have been installed. In addition, an officer or director of JTC shall certify that it has updated the ASR database: (1) for antenna structure number 1060089 to reflect the structure's dismantlement and (2) for antenna structure numbers 1060088 and 1060090 to reflect the requirements, including lighting, set forth in the FAA Studies issued on September 27, 2011.²⁹ This statement must be

²⁵ See, e.g., *Latin Broadcasting Co.*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 2170 (Enf. Bur. 2013) (upwardly adjusting proposed forfeiture by thirty-three percent for failing to update antenna structure ownership information for more than three and a half years); *Quinn Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 5787 (Enf. Bur. 2012) (upwardly adjusting proposed forfeiture by one hundred percent for failing to update antenna structure ownership information for more than eight years).

²⁶ We note that this reporting violation is continuing in nature, and as such, we could propose a forfeiture of \$16,000 per day per violation, up to the statutory maximum of \$112,500. See 47 C.F.R. § 1.80(b)(7). However, we decline to propose the statutory maximum forfeiture on a per day or per violation basis at this time. We believe that, while JTC's violation was serious, this level of monetary penalty for the reporting violation is not warranted in this instance and instead propose the upward adjustment on a per violation basis contained herein. We caution JTC and other potential violators that we will continue to evaluate the success of this approach and make any necessary changes in our forfeiture framework to promote greater compliance going forward.

²⁷ See *supra* para. 12.

²⁸ 47 C.F.R. § 1.16.

²⁹ See FAA Study 2011-ASO-5252-OE (Sept. 27, 2011) (on file in EB-11-TP-0038); FAA Study 2011-ASO-5253-OE (Sept. 27, 2011) (on file in EB-11-TP-0038).

provided to the Tampa Office at the address listed in paragraph 20 within five (5) calendar days of the release date of this NAL. Failure to update the registrations in the ASR database for all three antenna structures may result in additional enforcement action.

17. We direct JTC to submit a written statement, pursuant to Section 1.16 of the Rules,³⁰ signed under penalty of perjury by an officer or director of JTC, stating that lights on antenna structure numbers 1060088 and 1060090 have been installed and are being monitored as required.³¹ This statement must be provided to the Tampa Office within thirty (30) calendar days of the release date of this NAL.

IV. ORDERING CLAUSES

18. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111 and 1.80 of the Commission's rules, Johnson Towers Corporation is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of two hundred and thirty-four thousand dollars (\$234,000) for violations of Section 303(q) of the Act and Sections 17.21(a), 17.23, and 17.57 of the Commission's rules.³²

19. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Johnson Towers Corporation **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

20. **IT IS FURTHER ORDERED** that Johnson Towers Corporation **SHALL SUBMIT** a written statement, as described in paragraph 16, within five (5) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Tampa Office, 4010 W Boy Scout Blvd., Suite 425, Tampa, FL 33607. Johnson Towers Corporation shall also e-mail the written statement to SCR-Response@fcc.gov.

21. **IT IS FURTHER ORDERED** that Johnson Towers Corporation **SHALL SUBMIT** a written statement, as described in paragraph 17, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Tampa Office, 4010 W Boy Scout Blvd., Suite 425, Tampa, FL 33607. Johnson Towers Corporation shall also e-mail the written statement to SCR-Response@fcc.gov.

22. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Johnson Towers Corporation shall also send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.³³ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-

³⁰ 47 C.F.R. § 1.16.

³¹ See 47 C.F.R. § 17.47.

³² 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 1.80, 17.21(a), 17.23, 17.57.

³³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

23. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³⁴ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

24. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.³⁵ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Tampa Office, 4010 W Boy Scout Blvd., Suite 425, Tampa, FL 33607, and include the NAL/Acct. No. referenced in the caption. Johnson Towers Corporation also shall e-mail the written response to SCR-Response@fcc.gov.

25. 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 principles (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.

26. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to Johnson Towers Corporation at 9661 82nd Avenue North, Seminole, FL 33777-2736.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁴ See 47 C.F.R. § 1.1914.

³⁵ 47 C.F.R. §§ 1.16, 1.80(f)(3).