

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

In the Matter of)	
)	File No. EB-02-KC-806
Professional Communications Inc.)	
Owner of Antenna Structure #1037282 located)	NAL/Acct. No. 200332560009
near Peculiar, Missouri)	
)	FRN 0006-1497-36
)	

FORFEITURE ORDER

Adopted: June 2, 2004

Released: June 4, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000), to Professional Communications Inc. (“PCI”), owner of antenna structure #1037282 near Peculiar, Missouri, for willful and repeated violation of Section 17.51(a) of the Commission’s Rules (“Rules”).¹ The noted violation involves PCI’s failure to exhibit all red obstruction lighting on the antenna structure from sunset to sunrise from November 11-15, 2002 and on December 3, 2002.

2. On January 24, 2003, the Commission's Kansas City, Missouri Field Office (“Kansas City Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to PCI in the amount of ten thousand dollars (\$10,000).² PCI filed a response to the *NAL* on February 14, 2003.

II. BACKGROUND

3. On November 11, 2002, a tenant on PCI’s antenna structure notified PCI of a beacon lighting outage on the structure. TowerSentry, the company hired by PCI to monitor remotely its antenna structure and notify the Federal Aviation Administration (“FAA”) of any outages, did not detect this outage. PCI contacted United Tower Inc. (“UTI”) in Wichita, Kansas and contracted with it to conduct repairs on the structure.³ The FAA was not notified of the lighting outage on the structure consistent with Section 17.48(a) of the Rules.⁴

¹ 47 C.F.R. § 17.51(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332560009 (Enf. Bur., Kansas City Office, released January 24, 2003).

³ UTI personnel repaired the outages by replacing all lamps on the structure on November 15, 2002.

⁴ *See* 47 C.F.R. § 17.48(a).

4. On December 3, 2002, a Commission agent from the Kansas City Office inspected PCI's antenna structure and observed that there was no lighting between the 1/2 overall height level and the top most flashing beacon and that a beacon at the 1/3 overall height level was lighted but not flashing. After being so informed by the agent, PCI notified the FAA of the outage. In a letter dated December 9, 2002, PCI stated that it hired UTI to perform required quarterly tower inspections of the lighting system and components of the automatic alarm system on a going-forward basis.

5. On January 24, 2003, the Kansas City Office issued the *NAL* for violation of Section 17.51(a) of the Rules. On February 14, 2003, PCI submitted a response to the *NAL*. In that response, PCI seeks a reduction or cancellation of the proposed forfeiture. PCI asserts that TowerSentry did not detect or notify the FAA of the outage on November 11 or December 3, 2002 due to unforeseen technical problems with the remote monitoring system. Moreover, PCI alleges the agent's observations on December 3, 2002 were inconsistent with UTI's subsequent inspection of the antenna structure.⁵ PCI notes that it promptly contacted the FAA of this outage. Accordingly, PCI asserts that the violations were not "willful."

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁶ Section 1.80 of the Rules,⁷ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining PCI's response, Section 503(b) of the Act requires that the Commission take into account 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.⁸

7. Section 17.51(a) of the Rules requires that all red obstruction lighting on antenna structures exceeding 200 feet be exhibited from sunset to sunrise.⁹ The Antenna Structure Registration for PCI's antenna structure requires that red obstruction lighting be exhibited at night. PCI does not dispute that one or more beacons were inoperable or functioning improperly on the antenna structure from November 11-15, 2002 and on December 3, 2002. PCI argues, however, that the lighting outage was the result of an unexpected and unforeseeable event, damage created by rodents, and therefore, was not "willful." We disagree. Section 17.47 of the Rules requires antenna structure owners registered with the Commission

⁵ The agent noted that there was no lighting between the 1/2 overall height level and the top-most flashing beacon and that the beacon at the 1/3 overall height level was lighted but not flashing. In addition, the agent observed that the side lighting at the 5/6 overall height level was not lighted. According to PCI's response to the *NAL*, UTI observed that the 2/3 beacon light was inoperable, the 1/3 beacon was lighted but not flashing, and all side lighting was operational. The agent's and UTI's differing observations regarding the side lighting do not impact the decision reached herein. Antenna structure owners must notify the FAA of any malfunctioning top steady or flashing obstruction lights. There are no inconsistencies between the agent's and UTI's observations regarding these beacon lights.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 C.F.R. § 17.51(a).

and subject to lighting specifications to make an observation of the antenna structure's lights at least once every 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights, to insure the proper functioning of the antenna structure's lights.¹⁰ Alternatively, antenna structure owners are required to “provide and properly maintain an automatic alarm system designed to detect any failure of such lights and to provide indication of such failure to the owner.”¹¹ It does not appear from the record before us that PCI made daily observations of its antenna structure in Peculiar, nor does PCI present any evidence that it had properly inspected or maintained the automatic alarm system prior to FCC notification, as required by Section 17.47.¹² Moreover, PCI had or should have had actual notice of malfunctions in the automatic alarm system on November 11, 2002 when it received a telephone call from a tenant instead of notification from TowerSentry. There is no evidence in the record to demonstrate that PCI inquired about the cause of the alarm system failure at that time. PCI’s actions subsequent to FCC notification of the violations to monitor the alarm system and prevent future rodent damage constitute corrective action to come into compliance with Commission Rules and do not nullify or mitigate any prior violations.¹³ Thus, we find that PCI’s violation of Section 17.51(a) of the Rules was willful¹⁴ and repeated.¹⁵

8. PCI asserts that the forfeiture should be reduced or cancelled because it notified the FAA of the outage on December 3, 2002 within a few hours of being contacted by the agent. PCI’s compliance with the requirement to notify the FAA of the extinguishment or improper functioning of lights on December 3, however, is expected and does not warrant a reduction of the forfeiture amount.

9. We have examined PCI’s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that PCI willfully and repeatedly violated Section 17.51(a) of the Rules and find no basis for cancellation or reduction of the forfeiture proposed for this violation.¹⁶

¹⁰ 47 C.F.R. § 17.47.

¹¹ *Id.*

¹² *See id.*

¹³ *See Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994).

¹⁴ 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,’ ... 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).

¹⁵ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is “repeated” if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. *See* H.R. Rep. 97th Cong. 2d Sess. 51 (1982). *See Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

¹⁶ *See Florida Power and Light Company*, 17 FCC Rcd 7296 (2002).

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(f)(4) of the Rules,¹⁷ Professional Communications Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 17.51(a) of the Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁸ Payment shall be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200332560009, and FRN0006-1497-36. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁹

12. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Professional Communications Inc.'s President, D. Garry Munson, 8588 Katy Freeway, Suite 240, Houston, Texas 77024.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁸ 47 U.S.C. § 504(a).

¹⁹ See 47 C.F.R. § 1.1914.