

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

In the Matter of)	
)	
Entravision Communications Corporation)	File Number: EB-06-SD-047
)	
Antenna Structure Registrant)	NAL/Acct. No.: 200632940006
ASR No. 1015656)	FRN: 0001529627
Imperial, California)	

FORFEITURE ORDER

Adopted: March 28, 2007

Released: March 30, 2007

By the Regional Director, Western Region, 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 Entravision Communications Corporation (“Entravision”), registrant of antenna structure #1015656 near Imperial, California, for repeated violation of Section 303(q) of the Commissions Act of 1934, as amended (“Act”),¹ and Section 17.23 of the Commission’s Rules (“Rules”).² On June 22, 2006, the Enforcement Bureau’s San Diego Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of \$10,000 to Entravision for failing to comply with painting and lighting requirements specified for antenna structure #1015656, and for failing to ensure that the structure was repainted as often as necessary to maintain good visibility.³ In this *Order*, we consider Entravision’s arguments that the antenna structure was not required to be painted, and that the lighting extinguishment on the antenna structure was not for the duration stated in the *NAL*.

II. BACKGROUND

2. Antenna structure #1015656 is an antenna tower of 114 meters (374 feet) in height above ground. Also, antennas for two FM Broadcast stations, KMXX(FM), licensed to Imperial, California, and KSEH(FM), licensed to Brawley, California, are located on the tower.⁴ According to antenna structure #1015656’s registration, the structure is required to have “Obstruction Marking and Lighting” in accordance with the applicable chapters of Federal Aviation Administration (“FAA”) Advisory Circular Number 70/7460-1H.⁵ Specifically, the structure is required to be painted and have obstruction lighting consisting of at least one flashing red beacon on top and two or more steady-burning red sidelights on

¹ 47 U.S.C. § 303(q).

² 47 C.F.R. § 17.23.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200632940006 (Enf. Bur., Western Region, San Diego Office, released June 22, 2006).

⁴ Entravision Holding, LCC, a sister company to the antenna structure owner, is the licensee of KMXX(FM) and KSEH(FM).

⁵ As stated on the antenna structure registration for antenna structure #1015656, these requirements are based on FAA aeronautical study 95-AWP-2089-OE.

opposite sides at the midpoint.⁶

3. On March 17, 2006, an agent from the Enforcement Bureau's San Diego Office observed that antenna structure #1015656 was not painted, but had installed a daytime white strobe light system. During the day of March 17, 2006, the San Diego agent observed that the top white strobe light was not functioning. During the evening of March 17, 2006, the nighttime red obstruction lights for the antenna structure were also observed by the agent and found to be functioning properly.

4. The agent advised the staff of the San Diego Office, which in turn contacted the FAA's Riverside Flight Service Station ("FSS"). The FSS issued a 15 day Notice to Airmen ("NOTAM") and informed the San Diego Office that no prior light outage report had been made for antenna structure #1015656.

5. On March 20, 2006, the agent returned to the Imperial, California, area and again inspected antenna structure #1015656. The agent observed that the structure was not painted and that the top white strobe light was not operational. The agent went to the studio location for KMXX(FM) and KSEH(FM) in El Centro, California, and discussed the tower lighting problem with the engineering staff of Entravision. The agent examined the records for antenna structure #1015656. A review of these records indicated that the top white strobe on antenna structure #1015656 may have been experiencing malfunctions since August, 2005.

6. On June 22, 2006, the San Diego Office issued a *NAL* in the amount of \$10,000 to Entravision, finding that Entravision apparently repeatedly failed to comply with painting and lighting requirements specified for antenna structure #1015656, and failed to ensure that the structure was repainted as often as necessary to maintain good visibility. Entravision filed a response ("*Response*") on July 4, 2006, arguing that the antenna structure is not required to be painted, and that that the top white strobe light on the structure had not been experiencing malfunctions since August 2005.

III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁷ Section 1.80 of the Rules,⁸ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁹ In examining Entravision'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.¹⁰

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.¹¹ Section 17.23 of the rules requires that registered antenna structures conform to the mandatory FAA painting and lighting recommendations set forth on the FAA Notice issued to the structure owner.¹² The antenna structure registrant must submit the

⁶ See FAA Advisory Circular Number 70/7460-1H, Chapters 3, 4, 5 and 13.

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

⁹ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ 47 U.S.C. § 303(q).

¹² 47 C.F.R. § 17.23.

FAA Notice for the structure to the Commission, as part of the antenna structure registration process, and the required FCC Form 854, and the Commission will prescribe antenna structure painting and/or lighting for the antenna structure.¹³ The FAA requires that its review and concurrence is required for alternatives to the marking requirements, and that Commission approval be obtained for antenna structures under Commission jurisdiction.¹⁴ The FAA Notice that was sent to the Commission by Entravision for antenna structure #1015656 requires that the structure be painted and have obstruction lighting consisting of at least one flashing red beacon on top and two steady-burning side lights at the midpoint.¹⁵ Section 17.50 of the Commission's Rules states that antenna structures requiring painting shall be cleaned or repainted as often as necessary to maintain good visibility.¹⁶ On March 17, 2006, and March 20, 2006, a San Diego agent observed that antenna structure #1015656 was not painted and that the antenna structure's top strobe white light was not functioning.

9. Entravision argues that painting is not required on antenna structure #1015656 and includes in its *Response* a 2002 aeronautical study by the FAA requiring "dual red and medium intensity" lighting on the structure.¹⁷ Entravision states that it confirmed the absence of a painting requirement with an FAA employee on June 30, 2006, when that FAA employee indicated that the 2002 aeronautical study does not require painting for antenna structure #1015656. While we acknowledge that Entravision produced the referenced study in support of its *Response*, we still find that Entravision violated Section 17.23 of the Rules in March of 2006. As the San Diego Office stated in the *NAL*, alternatives to the painting requirement are anticipated by the Commission, "in the form of high or medium intensity white lighting systems, provided the proposed alternative has received FAA review and concurrence."¹⁸ Once the FAA has approved of the proposed change, the antenna structure registrant must seek approval from the Commission before implementing the change."¹⁹ As of the date of this *Order*, the antenna structure registration for antenna structure #1015656 continues to state that the structure must comply with Chapters 3, 4, 5 and 13 of FAA Advisory Circular Number 70/7460-1H, meaning that the structure is required to be painted and have obstruction lighting consisting of at least one flashing red beacon on top and two or more steady-burning red sidelights on opposite sides at the midpoint.²⁰ Were Entravision's failure to update its antenna structure registration with the 2002 FAA study its only failing, we would reduce the proposed forfeiture amount.

10. However, as the San Diego Office also noted in the *NAL*, even if Entravision had filed the revised FAA study with the Commission and amended its antenna structure registration, and received approval from the Commission to maintain white lighting, instead of painting, on antenna structure #1015656, "Entravision would still be in violation of Section 17.23, for failing to conform to the mandatory FAA painting and lighting recommendations set forth on its FAA Notice, and Section 17.51,"²¹

¹³ 47 C.F.R. § 1.61(a)(5).

¹⁴ See FAA Advisory Circular Number 70/7460-1H, Chapter 3, Paragraph 37; FAA Advisory Circular Number 70/7460-1K, Chapter 3, Paragraph 36.

¹⁵ FAA Advisory Circular Number 70/7460-1H, Chapters 3, 4, 5, 13.

¹⁶ 47 C.F.R. § 17.50.

¹⁷ FAA aeronautical study 2002-AWP-791-OE.

¹⁸ FAA Advisory Circular Number 70/7460-1H, Chapter 3, Paragraph 37.

¹⁹ FAA Advisory Circular Number 70/7460-1H, Chapter 3, Paragraph 37; *NAL* at para. 8.

²⁰ See FAA Advisory Circular Number 70/7460-1H, Chapters 3, 4, 5 and 13.

²¹ 47 C.F.R. § 17.51.

. . . , for failing to continuously exhibit obstruction lighting, because the daytime white lighting system it installed at the top of the antenna structure was not functioning on either of the days the structure was observed by the San Diego agent.²² On the days observed by the San Diego agent, Entravision failed to ensure the daytime visibility of antenna structure #1015656 by either painting the structure, as required by its initial FAA aeronautical study, or by ensuring that the white top strobe light was functioning, as required by its current FAA aeronautical study. We therefore find no merit to Entravision's argument and caution Entravision to update the antenna structure registration for antenna structure #1015656 with the most recent aeronautical study.

11. Entravision acknowledges the light outages and its lack of awareness of the existence of the outages until the outages were brought to its attention by the San Diego agent. Nevertheless, Entravision also argues that, contrary to the statements in the *NAL*, the daytime white strobe lights on antenna structure #1015656 were not functioning only for a short time, not since August 2005. Entravision states that while its remote control system for the antenna structure was reporting the outage daily, the daily visual observations made of the structure showed otherwise. Entravision acknowledges that the individuals who made the visual observations were not available to do the daily observations when the white strobe light malfunctioned in March 2006. Consequently, Entravision does not dispute the March 17, and March 20, 2006, observations of the malfunctioning top white strobe light made by the San Diego agent, but states that it immediately arranged to have the white strobe light repaired and to repair the remote control system.

12. Section 17.49 of the Rules requires antenna structure registrants to "maintain a record of any observed or otherwise known extinguishment or improper functioning of a structure light . . ."²³ The San Diego agent was correct in reviewing these records to determine the extent of the lighting outage. If errors existed in these records, as Entravision now contends, the errors were caused by Entravision. In any event, Entravision does not dispute that the daytime white strobe was not functioning on March 17 and March 20, 2006, as observed by the San Diego agent. Therefore, we find no merit to this argument. Additionally, the Commission has stated in the past that a registrant is expected to correct errors when they are brought to the entity's attention and that such correction is not grounds for a downward adjustment in a forfeiture.²⁴

13. Finally, we note that Entravision does not dispute the fact that it failed to notify the FAA's Riverside FSS of the light outage on antenna structure #1015656, as required by Section 17.48 of the Rules.²⁵ This failure on Entravision's part required the San Diego Office to request the Riverside FSS to issue a 15 day NOTAM. Additionally, Entravision does not dispute and, in fact acknowledges in its *Response*, that for at least the middle part of March 2006, no daily observations were made by Entravision staff, as required by Section 17.47(a) of the Rules.²⁶

14. Based on the information before us, having examined it according to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*, we find that neither reduction nor cancellation of the proposed \$10,000 forfeiture is warranted.

²² *NAL* at para. 8, n.14.

²³ 47 C.F.R. § 17.49.

²⁴ *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871-76 (2002).

²⁵ 47 C.F.R. § 17.48.

²⁶ 47 C.F.R. § 17.47(a).

IV. ORDERING CLAUSES

15. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, Entravision Communications Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$10,000 for repeatedly violating Section 303(q) of the Act and Section 17.23 of the Rules.²⁷

16. 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.²⁸ 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. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.²⁹

17. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Entravision Communications Corporation at its address of record and its counsel of record, Barry A. Friedman, Esquire, Thompson Hine, at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

²⁷ 47 U.S.C. §§ 303(q), 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 17.23.

²⁸ 47 U.S.C. § 504(a).

²⁹ See 47 C.F.R. § 1.1914.