

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

In the Matter of)	File No. EB-06-SE-366
Telcom Rentals, Inc.)	NAL/Acct. No. 200732100032
Lake Charles, Louisiana)	FRN # 0005891031

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 16, 2007

Released: May 18, 2007

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Telcom Rentals, Inc. (“Telcom”), owner of an antenna structure located in Lake Charles, Louisiana, apparently liable for a forfeiture in the amount of three thousand dollars (\$3,000) for willful and repeated violation of Section 17.4(a)(1) of the Commission’s Rules (“Rules”).¹ The noted apparent violation involves Telcom’s failure to register its antenna structure with the Commission prior to construction of the tower.

II. BACKGROUND

2. Telcom completed construction of the Lake Charles, Louisiana antenna structure in April 2002, and filed an application to register the structure on May 22, 2002, along with an environmental assessment.² On June 19, 2002, the American Bird Conservancy/Forest Conservation Council (“Conservancy-Council”) filed a petition to deny Telcom’s application alleging failure to provide an adequate environmental assessment.

3. In April 2006, the Wireless Telecommunications Bureau became aware that Telcom had constructed the antenna structure in 2002 prior to its registration, when Telcom and the City of Lake Charles filed a request for special temporary authority for the municipality to collocate its licensed transmitter on Telcom’s antenna structure. On August 10, 2006, the Wireless Telecommunications Bureau dismissed the Conservancy-Council petition,³ and registered Telcom’s antenna structure.⁴ However, because it appeared that Telcom had failed to register its antenna structure prior to construction as required by Section 17.4(a) of the Rules, the Wireless Telecommunications Bureau subsequently referred the case to the Spectrum Enforcement Division of the Enforcement Bureau for

¹ 47 C.F.R. § 17.4(a)(1).

² See File No. A0267094.

³ The Conservancy-Council withdrew its petition on August 2, 2006, because its concerns had been addressed by Telcom’s addition of white strobe lights to the tower. The petition was dismissed as moot on August 10, 2006, by the Wireless Telecommunications Bureau. See Letter from Dan Abeyta, Esq., Assistant Chief, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission to Telcom Rentals, Inc. (August 10, 2006).

⁴ Antenna Structure Registration No. 1254599.

investigation and possible enforcement action.

4. On January 4, 2007, the Enforcement Bureau's Spectrum Enforcement Division issued Telcom a letter of inquiry ("LOI") to investigate whether it failed to register its antenna structure prior to construction of the tower.⁵ In its January 8, 2007 response to the LOI,⁶ Telcom stated that it had received a building permit on December 14, 2001, ordered and received the tower in January 2002, received a "no hazard" determination from the Federal Aviation Administration ("FAA") on January 25, 2002,⁷ and began construction of the tower in March 2002.⁸ Telcom states that the construction was completed in April 2002, and that no further modifications have been made to the structure since its completion. Telcom states that the reason it built the tower prior to registration was a lack of understanding and knowledge of the proper order in which things were required to be done; furthermore, it states that the employee associated with the project is no longer employed with the company.⁹

III. DISCUSSION

5. Section 17.4(a)(1) of the Rules¹⁰ provides that, effective July 1, 1996, the owner of any proposed or existing antenna structure that requires notice of proposed construction to the FAA must register the structure with the Commission prior to construction or alteration. Failure to register the tower in a timely manner is a violation of significance; the Commission has repeatedly found that registration of towers is of utmost importance in the interests of public safety.¹¹

6. As a tower owner, Telcom is required to complete registration of its tower with the Commission prior to construction of the tower. Telcom began construction of its tower without Commission registration in March 2002, completed construction in April 2002, filed for tower registration in May 2002, and did not complete registration of the tower until August 10, 2006. By failing to register its tower prior to construction and for more than four years thereafter, Telcom apparently violated Section 17.4(a)(1) of the Rules.

7. Section 503(b) of the Act,¹² and Section 1.80(a) of the Rules,¹³ provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term "willful" means that the violator

⁵ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Telcom Rentals, Inc. (January 4, 2007).

⁶ Letter from Perry Vincent, President, Telcom Rentals, Inc. to Susan Stickley, Esq., Spectrum Enforcement Division, Enforcement Bureau., Federal Communications Commission (January 8, 2007).

⁷ *Id.* (FAA study 01-ASW-7956-OE, filed December 10, 2001).

⁸ *Id.* at 1.

⁹ *Id.*

¹⁰ 47 C.F.R. § 17.4(a)(1).

¹¹ *AT&T Wireless Services, Inc.*, Forfeiture Order, 16 FCC Rcd 6805, 6806 (Enf. Bur. 2001); *AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21871 (2002).

¹² 47 U.S.C. § 503(b).

¹³ 47 C.F.R. § 1.80(a).

knew that it was taking the action in question, irrespective of any intent to violate the Commission's Rules.¹⁴ The term "repeated" means that the action was taken more than once, or, in the case of a continuing violation, for more than one day.¹⁵ Based on the record before us, it appears that Telcom's violation of Section 17.4(a)(1) of the Rules was willful and repeated.

8. In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act¹⁶ directs us to consider factors, such as: "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 such other matters as justice may require."¹⁷

9. The Commission has established base forfeiture amounts for certain violations,¹⁸ but has not specified a base forfeiture amount for constructing an antenna structure prior to registration as required under Section 17.4(a)(1) of the Rules. The Commission has stated, however, that "any omission of a specific rule violation from the ... [forfeiture guidelines] should not signal that the Commission considers any unlisted violation as nonexistent or unimportant."¹⁹ Moreover, the Commission retains its discretion to issue forfeitures on a case-by-case basis.²⁰ Referring to the base forfeiture amount of \$3,000 for failure to file required forms,²¹ the Commission has specified \$3,000 as the forfeiture amount for violations of Section 17.4(a)(2) of the Rules²² for failure to register an antenna structure.²³ In this case, Telcom failed to register its antenna structure prior to its tower construction. Accordingly, taking all statutory factors into account, we conclude that failure to register an antenna is sufficiently similar to the case at hand such that a base forfeiture amount of \$3,000 is appropriate for Telcom's apparent willful and repeated violation of Section 17.4(a)(1) of the Rules.

10. Telcom's response to the *LOI* gives us no basis for mitigation of the proposed forfeiture amount. Telcom states that it was unaware of the "order in which things were to be done."²⁴ As a tower

¹⁴ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

¹⁵ *Id.*

¹⁶ 47 U.S.C. § 503(b)(2)(E).

¹⁷ 47 U.S.C. § 503(b)(2)(E). See also *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines ("Forfeiture Policy Statement")*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁸ See *Forfeiture Policy Statement* 12 FCC Rcd at 17133-15; see also 47 C.F.R. § 1.80(b).

¹⁹ *Forfeiture Policy Statement*, 12 FCC Rcd at 17099.

²⁰ *Id.*

²¹ See 47 C.F.R. § 1.80(b).

²² 47 C.F.R. § 17.4(a)(2).

²³ See *AT&T Wireless Services, Inc.*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd. 7891, 7896 (2002), *forfeiture ordered*, 17 FCC Rcd 21866, 21873-74 (2002); *Florida Food Products*, Forfeiture Order, 19 FCC Rcd 24923 (Enf. Bur. 2004), *recon. denied*, 21 FCC Rcd 9999 (Enf. Bur. 2006), *recon. pending*; *Sutro Corporation*, Forfeiture Order, 18 FCC Rcd 20529 (Enf. Bur. 2003), *review denied*, 19 FCC Rcd 15274 (2004).

²⁴ Letter from Perry Vincent at 1.

owner, Telcom is charged with the responsibility of knowing and complying with the Act and the Rules, including the requirement that it must register the antenna structure with the Commission prior to its construction.²⁵ The Commission has long held that a downward adjustment of an assessed forfeiture is not justified where violators claim their actions or omissions were due to inadvertent errors or unfamiliarity with the statutory or regulatory requirements.²⁶

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80 of the Rules,²⁷ Telcom Rentals, Inc. **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of three thousand dollars (\$3,000) for willfully and repeatedly violating Section 17.4(a)(1) of the Rules.

12. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Telcom Rentals, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. 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. A request for full payment of the *NAL* under an installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁸

14. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

15. 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-

²⁵ See *Discussion Radio, Incorporated, WDIS(AM)*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7437 (2004); *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002).

²⁶ See *Profit Enterprises, Inc.*, Forfeiture Order, 8 FCC Rcd 2846, 2846 (1993) (denying the mitigation claim of a manufacturer/distributor who thought that the equipment certification and marketing requirements were inapplicable, stating that its “prior knowledge or understanding of the law is unnecessary to a determination of whether a violation existed ... ignorance of the law is [not] a mitigating factor”); *Lakewood Broadcasting Service, Inc.*, Memorandum Opinion and Order, 37 FCC 2d 437, 438 (1972) (denying a mitigation claim of a broadcast licensee who asserted an unfamiliarity with the station identification requirements, stating that licensees are expected “to know and conform their conduct to the requirements of our Rules”).

²⁷ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

²⁸ See 47 C.F.R. § 1.1914.

year period; (2) financial statements prepared according to generally accepted accounting practices; 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.

16. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Mr. Perry Vincent, President, Telcom Rentals, Inc., 701 Martin Luther King Highway, P.O. Box 3143, Lake Charles, Louisiana 70602.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau