

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

In the Matter of	)	
	)	File No.: EB-11-DL-0071
Mobile Phone of Texas, Inc.	)	
	)	NAL/Acct. No.: 201232500001
Owner of Antenna Structure # 1057231	)	
	)	FRN: 0001667401
Vernon, Texas	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER**

Adopted: January 18, 2012

Released: January 18, 2012

By the District Director, Dallas Office, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Mobile Phone of Texas, Inc., owner of antenna structure number 1057231, in Vernon, Texas (the Antenna Structure), apparently willfully and repeatedly violated section 17.50 of the Commission's rules (Rules)<sup>1</sup> by failing to clean or repaint the Antenna Structure as often as necessary to maintain good visibility. We conclude that Mobile Phone of Texas, Inc. is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000). In addition, we direct Mobile Phone of Texas, Inc. to submit no later than thirty (30) calendar days from the date of this NAL a statement signed under penalty of perjury stating that the Antenna Structure has been cleaned and repainted.

**II. BACKGROUND**

2. The Antenna Structure is 139.3 meters in overall height above ground and is required to be painted and lighted.<sup>2</sup> On August 17, 2011, agents from the Dallas Office of the Enforcement Bureau (Dallas Office) inspected the Antenna Structure and observed that the structure's paint was scraped and peeling in several areas, leaving the metal exposed and reducing the structure's visibility. The agents also observed numerous unpainted black coaxial cables covering the Antenna Structure, which further reduced the visibility of the Antenna Structure's paint. Agents from the Dallas Office were unable to distinguish the alternating bands of paint on the Antenna Structure from a distance of 360 feet, primarily because of the unpainted black coaxial cables.<sup>3</sup>

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<sup>1</sup> 47 C.F.R. § 17.50.

<sup>2</sup> See Antenna Structure Registration database for antenna structure number 1057231. See also 47 C.F.R. § 17.21(a) (requiring antenna structures to be painted and lighted when they exceed 60.96 meters in height above ground).

<sup>3</sup> According to the Antenna Structure Registration database, antenna structure number 1057231 must be painted consistent with FCC Paragraphs 1, 3, 4, 13, and 21. FCC Paragraph 1 requires antenna structures to be painted throughout their height with alternate bands of aviation surface orange and white. The width of the bands must be equal and approximately one-seventh the height of the structure, provided however, that the bands shall not be more than 100 feet nor less than 1.5 feet in width.

### III. DISCUSSION

3. Section 503(b) of the Communications Act of 1934, as amended (Act),<sup>4</sup> 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. 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.<sup>5</sup> The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act<sup>6</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>7</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>8</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>9</sup>

#### A. Failure to Maintain the Antenna Structure’s Paint to Ensure Good Visibility

4. Section 17.50 of the Rules requires that antenna structures be cleaned or repainted as often as necessary to maintain good visibility.<sup>10</sup> On August 17, 2011, agents from the Dallas Office observed that the paint on the Antenna Structure was not in a condition that provided good visibility. The paint on the Antenna Structure was scraped and peeling in several areas and was obstructed by unpainted black coaxial cables covering the Antenna Structure. In order to maintain good visibility, the coaxial cables must be painted.<sup>11</sup> Given the condition of the paint and the coaxial cables, the agents concluded that the Antenna Structure was not clearly visible for more than one day. Based on the evidence before us, we find that Mobile Phone of Texas, Inc. apparently willfully and repeatedly violated section 17.50 of the Rules by failing to clean or repaint the Antenna Structure in order to maintain good visibility.

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<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 U.S.C. § 312(f)(1).

<sup>6</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> 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 [A]ct (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 ...”).

<sup>7</sup> See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454.

<sup>8</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>9</sup> 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.* at 1362.

<sup>10</sup> 47 C.F.R. § 17.50.

<sup>11</sup> The term “antenna structure” includes the radiating and/or receive system, its supporting structures, and any appurtenances mounted thereon. 47 C.F.R. § 17.2(a). Thus, “any cables appurtenant to the tower must also be painted in a manner which ensures the visibility of the underlying tower.” *Crown Communication, Inc.*, Forfeiture Order, 19 FCC Rcd 19917, 19919 (Enf. Bur. 2004).

## B. Proposed Forfeiture

5. Pursuant to the Commission's *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for failing to comply with prescribed painting of the tower marking is \$10,000.<sup>12</sup> 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.<sup>13</sup> Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mobile Phone of Texas, Inc. is apparently liable for a forfeiture in the amount of \$10,000.

6. We direct Mobile Phone of Texas, Inc., to submit a written statement, pursuant to section 1.16 of the Rules,<sup>14</sup> signed under penalty of perjury by an officer or director of Mobile Phone of Texas, Inc., stating that the Antenna Structure and the coaxial cables have been repainted to maintain good visibility of the structure. If the Antenna Structure has not yet been cleaned and repainted, we direct Mobile Phone of Texas, Inc., to provide a timetable for when the work will be completed. We also direct Mobile Phone of Texas, Inc. to describe the procedures it has implemented to ensure the Antenna Structure retains good visibility. This statement must be provided to the Dallas Office at the address listed in paragraph 11 within thirty (30) calendar days of the release date of this NAL.

## IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, Mobile Phone of Texas, Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violation of section 17.50 of the Commission's rules.<sup>15</sup>

8. **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 its Notice of Apparent Liability for Forfeiture and Order, Mobile Phone of Texas, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. **IT IS FURTHER ORDERED** that Mobile Phone of Texas, Inc. **SHALL SUBMIT** a statement as described in paragraph 6 to the Dallas Office within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

10. 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 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

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<sup>12</sup> *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*"), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

<sup>13</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>14</sup> 47 C.F.R. § 1.16.

<sup>15</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 17.50.

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.<sup>16</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Mobile Phone of Texas, Inc. will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

11. 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 1.80(f)(3) and 1.16 of the Rules.<sup>17</sup> Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Dallas Office, 9330 LBJ Freeway, Suite 1170, Dallas, TX 75243 and include the NAL/Acct. No. referenced in the caption. Mobile Phone of Texas, Inc. also shall email the written response to SCR-Response@fcc.gov.

12. 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.

13. **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 regular mail, to Mobile Phone of Texas, Inc. at P.O. Box 2247, Wichita Falls, TX 76307.

FEDERAL COMMUNICATIONS COMMISSION

James D. Wells  
District Director  
Dallas Office  
South Central Region  
Enforcement Bureau

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<sup>16</sup> See 47 C.F.R. § 1.1914.

<sup>17</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).