

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

In the Matter of	)	
	)	
Telava Wireless, Inc.	)	File No: EB-09-CG-0236
	)	NAL/Acct. No.: 201232320003
Owner of Antenna Structure No.: 1050174	)	FRN: 0015598162
Fordsville, Kentucky	)	
	)	

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

Adopted: April 4, 2012

Released: April 4, 2012

By the District Director, Chicago Office, Northeast Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Telava Wireless, Inc. (Telava), owner of antenna structure number 1050174 (the Antenna Structure) located in Fordsville, Kentucky, apparently willfully and repeatedly violated Section 303(q) of the Communications Act of 1934, as amended (Act)<sup>1</sup> and Sections 17.47 and 17.56(a) of the Commission's rules (Rules) by failing to make observations of the antenna structure lights at least once every 24 hours and to repair the unlit antenna structure lights as soon as practicable.<sup>2</sup> We conclude that Telava is apparently liable for a forfeiture in the amount of seventeen thousand dollars (\$17,000). In addition, we direct Telava to submit, no later than thirty (30) calendar days, a statement signed under penalty of perjury stating that the Antenna Structure is now in compliance with Part 17 of the Rules.

**II. BACKGROUND**

2. The Antenna Structure is located in Fordsville, Kentucky, is 70.1 meters in height above ground level, and is required to exhibit marking and medium intensity obstruction lighting in accordance with FAA Circular Number 70/7460-1K, Chapters 4, 6 and 12.<sup>3</sup>

3. On November 2, 2009, the Enforcement Bureau's Chicago Office (Chicago Office) received a complaint from the owner of the property on which the Antenna Structure is located. The property owner reported that the lights on the Antenna Structure had been out for several months and his attempts to reach Telava had been unsuccessful. An agent from the Chicago Office immediately contacted Telava by telephone and left voicemail messages with several different individuals at Telava. When Telava did not return the agent's calls, the agent notified the Federal Aviation Administration (FAA) of the light outage and the FAA issued a notice to airmen (NOTAM) that day.

4. On November 3, 2009, the agent received a phone call from a Telava representative, who confirmed that Telava owns the Antenna Structure and stated that Telava would repair the light outage. The Telava representative also stated that they did not know the lights were out until they

<sup>1</sup> 47 U.S.C. § 303(q).

<sup>2</sup> 47 C.F.R. §§ 17.47 and 17.56(a).

<sup>3</sup> See Antenna Structure Registration Database for antenna structure number 1050174. See also 47 C.F.R. § 17.21 (generally requiring towers exceeding 200 feet (60.96 meters) in height to be painted and lit).

received the agent's message and that they would ensure that a NOTAM remained in place until the lights were fixed.

5. On December 4, 2009, the property owner again contacted the Chicago Office and reported that the lights on the Antenna Structure remained unlit. The agent contacted the same Telava representative, who stated that the NOTAM had been extended and that the parts needed to fix the lights were on back-order. The Telava representative reported during a follow-up telephone call on January 7, 2010, that the lights would be fixed the following week.

6. Over the course of the next year, the agent contacted the Telava representative on a regular basis to determine whether the Antenna Structure's lights had been repaired. Each time, the Telava representative reported that they were still working on the repair. During a telephone conversation on December 6, 2010, the Telava representative reported that they were having trouble with their maintenance team and that the snow on the ground would prevent them from repairing the lights until the spring.

7. On January 4, 2011, the Chicago Office issued a letter of inquiry (LOI) to Telava in order to obtain additional information regarding the status of the Antenna Structure's lighting as well as to determine Telava's procedures for complying with Part 17 of the Rules.<sup>4</sup> In response to the LOI, Telava confirmed that it did not know about the Antenna Structure's light outage until notified by the FCC agent on November 3, 2009.<sup>5</sup> Telava also reported that its procedure for complying with the Commission's antenna structure monitoring requirements is to inspect the Antenna Structure on a quarterly basis.<sup>6</sup> Telava further reported that it planned to repair the light outage the following month, *i.e.*, February 2011.<sup>7</sup>

8. On April 20, 2011, an agent in the Chicago Office conducted an on-scene inspection of the Antenna Structure and found that the light outage had not been repaired. According to the property owner, the tower lights still have not been repaired as of the release date of this NAL.

### III. DISCUSSION

9. Section 503(b) of the Act,<sup>8</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>9</sup> 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,<sup>10</sup> and the Commission has so interpreted the term in the

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<sup>4</sup> Letter from James M. Roop, District Director, Chicago Office, to Telava Wireless, Inc., dated January 4, 2011.

<sup>5</sup> Letter from Boaz Yung, Executive Vice President, Telava Wireless, Inc., to James M. Roop, District Director, Chicago Office, dated January 21, 2011, at 1.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 2. Telava also reported in its response to the LOI that it received notification in September 2010 from the owner of the property where the tower is located that its lease for the land had been cancelled and that access to the property would be considered trespassing. *Id.* In a telephone conversation with the District Director of the Chicago Office, the property owner stated that Telava has never contacted him in order to gain access to the tower and that all Telava needs to do is call him so that he can unlock the gate.

<sup>8</sup> 47 U.S.C. § 503(b).

<sup>9</sup> 47 U.S.C. § 312(f)(1).

Section 503(b) context.<sup>11</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>12</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>13</sup>

#### A. Failure to Monitor Antenna Structure Lighting

10. 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.<sup>14</sup> Section 17.47(a) of the Rules states that the owner of any antenna structure that is registered with the Commission and has been assigned lighting specifications “(1) [s]hall make an observation of the antenna structure’s lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights, to insure that all such lights are functioning properly as required; or alternatively, (2) [s]hall 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.”<sup>15</sup> Telava’s Antenna Structure is 70.1 meters in height above ground level and must be painted and lit.<sup>16</sup> In response to the LOI, Telava reported that it inspected the Antenna Structure on a quarterly basis, a protocol which does not comply with any of the monitoring options set out in Section 17.47(a) of the Rules. Accordingly, we conclude that Telava apparently willfully and repeatedly violated Section 17.47(a) of the Rules by failing to implement an adequate light monitoring procedure.

#### B. Failure to Repair Antenna Structure Lighting As Soon As Practicable

11. Section 17.56(a) of the Rules states that “[r]eplacing or repairing of lights, automatic indicators or automatic indicators or automatic control or alarm systems shall be accomplished *as soon as practicable*.”<sup>17</sup> It is undisputed that the Antenna Structure’s lights have been unlit since at least November 3, 2009, when the Telava representative spoke to the FCC agent and reported that Telava

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<sup>10</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>11</sup> See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

<sup>12</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>13</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.*, 16 FCC Rcd at 1362.

<sup>14</sup> 47 U.S.C. § 303(q).

<sup>15</sup> 47 C.F.R. § 17.47(a).

<sup>16</sup> Antenna structures must be painted and lighted when they exceed 60.96 meters in height above ground. See 47 C.F.R. § 17.21.

<sup>17</sup> 47 C.F.R. § 17.56(a)(emphasis added).

would repair the light outage and update the NOTAMs with the FAA. Although Telava has provided several explanations over the past two years for its inability to repair the light outage, we do not believe that any of those explanations, either taken individually or together, would reasonably prevent Telava from repairing the light outage for more than two years. By any reasonable interpretation of the requirement that repairs be made “as soon as practicable,” Telava has failed to comply with that requirement.<sup>18</sup> Accordingly, we find that Telava willfully and repeatedly failed to comply with Section 17.56(a) of the Rules by failing to repair the Antenna Structure’s light outage as soon as practicable.

### C. Proposed Forfeiture and Reporting Requirement

12. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, (*Forfeiture Policy Statement*), and Section 1.80 of the Rules, the base forfeiture amount for failing to comply with prescribed lighting is \$10,000 and failing to conduct required monitoring is \$2,000.<sup>19</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, any 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>20</sup> We believe that Telava’s continued failure to correct the light outage for more than two years demonstrates a deliberate disregard for the Commission’s rules and warrants an upward adjustment of \$5,000. Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Telava is apparently liable for a total forfeiture in the amount of \$17,000.<sup>21</sup>

13. We also direct Telava to submit a written statement, pursuant to Section 1.16 of the Rules,<sup>22</sup> in addition to any statement it might submit pursuant to paragraph 18, signed under penalty of perjury by an officer or director of Telava stating that it is currently monitoring the Antenna Structure’s lights on a daily basis and that the lights on the Antenna Structure have been restored. If the lights on the Antenna Structure have not been restored, Telava’s statement shall provide a timeframe for lighting restoration.<sup>23</sup> This statement must be provided to the Chicago Office at the address listed in paragraph 16 within thirty (30) calendar days of the release date of this NAL.

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<sup>18</sup> See *SpectraSite Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 7884 (2002)(finding, *inter alia*, that failure to repair antenna structure lights for three months did not meet the requirement in 47 C.F.R. § 17.56(a) to correct light outages “as soon as practicable.”)

<sup>19</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), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80. See *SpectraSite Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 7884 (2002)(assessing, *inter alia*, forfeitures in the amount of \$10,000 for failure to replace or repair lights).

<sup>20</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>21</sup> Today, we issued another enforcement action involving another antenna structure owned by Telava with lighting and monitoring violations. These two proceedings raise concerns that Telava may have a systemic compliance issue with the Commission’s antenna structure lighting and monitoring rules. *Telava Wireless, Inc.*, Notice of Apparent Liability for Forfeiture and Order, DA 12-533 (Enf. Bur. rel. Apr. 4, 2012).

<sup>22</sup> 47 C.F.R. § 1.16.

<sup>23</sup> We note that, in the Notice of Apparent Liability for Forfeiture and Order issued to Telava today by the Enforcement Bureau’s Atlanta Office, Telava is directed to submit: (1) a list of all antenna structures owned by Telava (other than the structures which are the subject of enforcement proceedings); (2) the date of the last observation of the structures’ lights; (3) how often the structures’ lights are observed visually; (4) whether an automatic light monitoring system is in place; and (5) the current status of the structures’ lights. Further, for each of Telava’s antenna structures where the lights are not operational, Telava is directed to state: (1) when the lights went dark or malfunctioned; (2) when the FAA was notified; (3) whether an active NOTAM is in place, along with the corresponding NOTAM number; and (4) a timeframe for repair. See *supra* note 21.

#### IV. ORDERING CLAUSES

14. 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, Telava Wireless, Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seventeen thousand dollars (\$17,000) for violations of Section 303(q) of the Act and Sections 17.47 and 17.56(a) of the Rules.<sup>24</sup>

15. **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, Telava Wireless, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

16. **IT IS FURTHER ORDERED** that Telava Wireless, Inc. **SHALL SUBMIT** a statement as described *supra* in paragraph 13 to the Chicago Office 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, Northeast Region, Chicago Office, 1550 North Northwest Highway, Room 306, Park Ridge, IL 60068. Telava Wireless, Inc. shall also email the written statement to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

17. 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/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 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>25</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](mailto:ARINQUIRIES@fcc.gov). Telava Wireless, Inc. shall also send electronic notification on the date said payment is made to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

18. 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>26</sup> The written statement, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Chicago Office, 1550 North Northwest Highway, Room 306, Park Ridge, IL 60068, and must include the NAL/Account number referenced in the caption. The statement should also be emailed to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

19. 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

<sup>24</sup> 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 17.47 and 17.56(a).

<sup>25</sup> See 47 C.F.R. § 1.1914.

<sup>26</sup> See 47 C.F.R. §§ 1.80(f)(3), 1.16.

(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.

20. **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 Telava Wireless, Inc. at 353 Sacramento Street, Suite 1500, San Francisco, California 94111.

FEDERAL COMMUNICATIONS COMMISSION

James M. Roop  
District Director  
Chicago District Office  
Northeast Region  
Enforcement Bureau