

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

In the Matter of	)	
	)	
Super Towers, Inc.	)	File No.: EB-11-TP-0142
	)	NAL/Acct. No.: 201232700006
Owner of Antenna Structure Number 1027587	)	FRN: 0019442458
Bonita Springs, Florida	)	

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

Adopted: July 18, 2012

Released: July 18, 2012

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

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Super Towers, Inc. (Super Towers), owner of antenna structure number 1027587 (the Antenna Structure), in Bonita Springs, Florida, apparently willfully and repeatedly violated Section 303(q) of the Communications Act of 1934, as amended (Act), and Sections 17.47(a), 17.48(a), and 17.51(a) of the Commission’s rules (Rules)<sup>1</sup> by failing to (1) exhibit red obstruction lighting from sunset to sunrise, (2) notify the Federal Aviation Administration (FAA) of a known lighting outage, and (3) monitor the antenna structure lighting on a daily basis. We conclude that Super Towers is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000). In addition, we direct Super Towers to submit, no later than thirty (30) calendar days from the date of this NAL, a statement signed under penalty of perjury stating that it complies with the Commission’s antenna structure lighting, notification, and monitoring requirements.

**II. BACKGROUND**

2. Antenna structure number 1027587 is 223.7 meters in overall height above ground and is required to be painted and lighted.<sup>2</sup> On December 8, and again on December 15, 2011, in response to a complaint, an agent from the Enforcement Bureau’s Tampa Office (Tampa Office) inspected the Antenna Structure after sunset and observed that the top red obstruction light was not lighted.<sup>3</sup> On December 8, 2011, the agent contacted the FAA and determined that Super Towers had not notified the FAA of the light outage.<sup>4</sup>

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<sup>1</sup> 47 U.S.C. § 303(q); 47 C.F.R. §§ 17.47(a), 17.48(a), 17.51(a).

<sup>2</sup> See 47 C.F.R. § 17.21(a) (requiring antenna structures more than 60.96 meters in height above the ground to be painted and lighted). See also Antenna Structure Registration database for antenna structure number 1027587.

<sup>3</sup> Local sunset time was 5:34 p.m. EST.

<sup>4</sup> An agent from the Tampa Office notified the FAA of the lighting outage and the FAA issued a Notice to Airmen (NOTAM) for the Antenna Structure on December 8, 2011.

3. On December 16, 2011, an agent from the Tampa Office telephoned Super Towers and spoke with its contract engineer/on scene representative. The contract engineer stated that Super Towers learned of the light outage on the Antenna Structure on December 15, 2011 from a tenant on the structure. Super Towers also stated that (1) the structure did not have an alarm system to monitor the lights, (2) it relied on an “unreliable local” to observe the lights on a daily basis, and (3) it had not contacted the FAA concerning the light outage.

### III. DISCUSSION

4. Section 503(b) of the Act 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.<sup>5</sup> 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>6</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>7</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>8</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>9</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>10</sup>

#### A. Failure to Monitor and Exhibit Required Obstruction Lighting on the Antenna Structure and Notify the FAA of the Lighting Outage

5. 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>11</sup> Section 17.51(a) of the Rules states that “[a]ll red obstruction lighting shall be exhibited from sunset until sunrise unless otherwise specified.”<sup>12</sup> Section 17.47(a) of the Rules states that owners of antenna structures “(1) shall make an observation of the antenna structure’s lights at least once each 24 hours either visually . . . to insure that all such lights are functioning properly as required; or alternatively (2) shall provide and properly maintain an automatic alarm system designed to detect any failure of such lights and to provide indication

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<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 U.S.C. § 312(f)(1).

<sup>7</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 act (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>8</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>9</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>10</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>11</sup> 47 U.S.C. § 303(q).

<sup>12</sup> 47 C.F.R. § 17.51(a).

of such failure to the owner.”<sup>13</sup> Section 17.48(a) of the Rules states that owners of antenna structures “shall report immediately by telephone or telegraph to the nearest Flight Service Station or office of the Federal Aviation Administration any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes . . . .”<sup>14</sup>

6. On December 8, and again on December 15, 2011, an agent from the Tampa Office observed that the required top red obstruction light on the Antenna Structure was extinguished after sunset. During a telephone conversation with an agent on December 16, 2011, Super Towers admitted that (1) it had learned of the light outage on the previous day, (2) it was not observing the structure’s lights once every 24 hours and had no automatic alarm system, and (3) it had not previously notified the FAA of the outage. Based on the evidence before us, we find that Super Towers apparently willfully and repeatedly violated Section 303(q) of the Act and Sections 17.47(a), 17.48(a) and 17.51(a) of the Rules by failing to (1) exhibit all required red obstruction lighting from sunset to sunrise on the Antenna Structure, (2) report the light outage to the FAA, and (3) monitor the Antenna Structure’s lights as required.

#### **B. Proposed Forfeiture Amount and Reporting Requirement**

7. 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 lighting and marking is \$10,000.<sup>15</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>16</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Super Towers is apparently liable for a total forfeiture in the amount of \$10,000.

8. We direct Super Towers to submit a written statement, pursuant to Section 1.16 of the Rules,<sup>17</sup> signed under penalty of perjury by an officer or director of Super Towers, stating that the lights on the Antenna Structure have been restored, including the date of restoration, or setting forth the timeframe for when the lights on the Antenna Structure will be repaired or replaced. Super Towers shall also certify that it will notify the FAA to ensure a NOTAM remains in place until the antenna structure lights are restored. In addition, Super Towers shall state that it now complies, or describe the steps it will take to comply, with the Section 17.47 monitoring requirements. This statement must be provided to the Tampa Office at the address listed in paragraph 11 within thirty (30) calendar days of the release date of this NAL.

#### **IV. ORDERING CLAUSES**

9. 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, Super Towers, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in

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<sup>13</sup> 47 C.F.R. § 17.47(a).

<sup>14</sup> 47 C.F.R. § 17.48(a).

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

<sup>16</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>17</sup> 47 C.F.R. § 1.16.

the amount of ten thousand dollars (\$10,000) for violations of Section 303(q) of the Act and Sections 17.47(a), 17.48(a), and 17.51(a) of the Commission's rules.<sup>18</sup>

10. **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, Super Towers, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. **IT IS FURTHER ORDERED** that Super Towers, Inc. **SHALL SUBMIT** a statement as described in paragraph 8 to the Tampa 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, South Central Region, Tampa Office, 4010 West Boy Scout Blvd. Suite 425, Tampa, Florida, 33607. Super Towers, Inc. shall also e-mail the written statement to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

12. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Super Towers, Inc. shall also send electronic notification on the date said payment is made to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov). Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>19</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

13. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>20</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

<sup>18</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(a), 17.48(a), 17.51(a).

<sup>19</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>20</sup> See 47 C.F.R. § 1.1914.

14. 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>21</sup> Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Tampa Office, 4010 West Boy Scout Blvd. Suite 425, Tampa, Florida, 33607 and include the NAL/Acct. No. referenced in the caption. Super Towers, Inc. also shall email the written response to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

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-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.

16. **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 First Class Mail to Super Towers, Inc. at 17 Crooked LN, Manchester, MA 01944.

FEDERAL COMMUNICATIONS COMMISSION

Ralph Barlow  
District Director  
Tampa Office  
South Central Region  
Enforcement Bureau

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<sup>21</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).