

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

In the Matter of )
)
Allegiance Communications, LLC ) File No.: EB-FIELDSCR-12-00001749
) NAL/Acct. No.: 201232500006
Owner of Antenna Structure No.: 1020734 ) FRN: 0010267862
McAlester, Oklahoma )
)
)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 25, 2012

Released: September 25, 2012

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Allegiance Communications, LLC (Allegiance Communications), owner of antenna structure number 1020734, in McAlester, Oklahoma (the Antenna Structure), apparently willfully and repeatedly violated Section 303(q) of the Communications Act of 1934, as amended (Act),<sup>1</sup> and Section 17.50 of the Commission’s rules (Rules)<sup>2</sup> by failing to clean or repaint the Antenna Structure as often as necessary to maintain good visibility. We conclude that Allegiance Communications is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. The Antenna Structure, which Allegiance Communications acquired in 2004, is 85.6 meters in overall height above ground and is required to be painted and lighted.<sup>3</sup> On February 28, 2012, an agent from the Dallas Office of the Enforcement Bureau (Dallas Office) inspected the Antenna Structure and observed that the structure’s paint was extremely faded, rusted, and washed away in multiple areas, leaving the metal exposed and reducing the structure’s visibility. Further, an agent from the Dallas Office was unable to distinguish the alternating bands of paint on the Antenna Structure from a quarter of a mile from the Antenna Structure.<sup>4</sup> When asked on June 5, 2012, an Allegiance Communications employee stated over the telephone that he was unable to determine when the Antenna

<sup>1</sup> 47 U.S.C. § 303(q).

<sup>2</sup> 47 C.F.R. § 17.50.

<sup>3</sup> See Antenna Structure Registration database for antenna structure number 1020734. 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>4</sup> According to the Antenna Structure Registration database, antenna structure number 1020734 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 shall 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. See FCC Forms 715/715A, paragraphs 1, 3, 12 and 21.

Structure had last been painted. On August 30, 2012, Allegiance Communications stated that it had repainted the Antenna Structure on August 24, 2012.<sup>5</sup>

### III. DISCUSSION

3. 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>6</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>7</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>8</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>9</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>10</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>11</sup>

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

4. 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>12</sup> Section 17.50 of the Rules requires that antenna structures be cleaned or repainted as often as necessary to maintain good visibility.<sup>13</sup> On February 28, 2012, an agent 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 extremely faded, rusted, and washed away in multiple areas. Specifically, the agent observed that the condition of the paint, at the time of the inspection, was so deteriorated that the agent concluded the Antenna Structure was not clearly visible for more than one day. Thus, based on the evidence before us, we find that Allegiance

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<sup>5</sup> See email from Greg Harrison, Allegiance Communications, LLC, to the Dallas Office (Aug. 30, 2012, 10:08 A.M.). Three photographs of the repainted Antenna Structure were attached to the email.

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 U.S.C. § 312(f)(1).

<sup>8</sup> H.R. Rep. No. 97-765, 97th 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>9</sup> See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

<sup>10</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>11</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, para. 9.

<sup>12</sup> 47 U.S.C. § 303(q).

<sup>13</sup> 47 C.F.R. § 17.50.

Communications apparently willfully and repeatedly violated Section 303(q) of the Act and Section 17.50 of the Rules by failing to clean and repaint the Antenna Structure in order to maintain good visibility.

## 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 tower marking is \$10,000.<sup>14</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>15</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Allegiance Communications is apparently liable for a forfeiture in the amount of \$10,000.

## IV. ORDERING CLAUSES

6. 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, Allegiance Communications, LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violation of Section 303(q) of the Act and Section 17.50 of the Commission's rules.<sup>16</sup>

7. **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, Allegiance Communications, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

8. 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. Allegiance Communications, LLC will 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>17</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

<sup>14</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>15</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>16</sup> 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 17.50.

<sup>17</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

9. 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>18</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).

10. 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 1.16 and 1.80(f)(3) of the Rules.<sup>19</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. Allegiance Communications, LLC also shall email the written response to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

11. 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.

12. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail, to Allegiance Communications, LLC at 1819 Airport DR., P.O. Box 1491, Shawnee, OK 74804.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>18</sup> See 47 C.F.R. § 1.1914.

<sup>19</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).