

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

In the Matter of)	
)	
Cornerstone TeleVision, Inc.)	File No.: EB-FIELDNER-12-00002081
)	NAL/Acct. No.: 201332400001
Owner of Antenna Structure No. 1053126)	FRN: 0003739364
Brookville, Pennsylvania)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 18, 2013

Released: March 19, 2013

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Cornerstone TeleVision, Inc. (Cornerstone), owner of antenna structure number 1053126 (Antenna Structure) in Brookville, Pennsylvania,¹ apparently willfully and repeatedly violated Section 303(q) of the Communications Act of 1934, as amended (Act), and Sections 17.51(a) and 17.47(a) of the Commission's rules (Rules)² by failing to (1) exhibit red obstruction lighting from sunset until sunrise, and (2) monitor obstruction lighting on a daily basis. We conclude that Cornerstone is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. The Antenna Structure has an overall height above ground level of 85.4 meters and was required to conform to the painting and lighting requirements of FCC Paragraphs 1, 3, 11 and 21.³ These requirements specify that the Antenna Structure must be painted and must display two steady burning red obstruction lights at the mid level and a red beacon at the top level.⁴

3. On March 13, 2012, the Commission received a complaint that the top-level obstruction light on the Antenna Structure was extinguished.⁵ An agent from the Enforcement Bureau's Philadelphia Office (Philadelphia Office) contacted the Federal Aviation Administration (FAA) and found that a

¹ We note that, although Cornerstone still owns the antenna structure in Brookville, Pennsylvania, it notified the FCC that, on August 29, 2012, it had reduced the height above ground of the Antenna Structure to below 60.96 meters. An antenna structure requires notification to the Federal Aviation Administration, and registration with the FCC, when its height above ground exceeds 60.96 meters. *See* 47 C.F.R. §§ 17.4, 17.7; *see also* 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).

² 47 U.S.C. § 303(q); 47 C.F.R. § 17.47(a) and 17.51(a).

³ *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 1053126.

⁴ *Id.*

⁵ *See* Complaint (March 13, 2012) (on file in EB-FIELDNER-12-00002081).

Notice to Airmen (NOTAM) had not been issued for the Antenna Structure's light outage. At the agent's request, a NOTAM was issued that same day.

4. On March 20, 2012, at 11:07 p.m., agents from the Philadelphia Office inspected the Antenna Structure and confirmed that the red obstruction lighting was extinguished. The inspection was conducted with the owners of the property where the Antenna Structure is located. According to the property owners, the top light had been out since January 18, 2011. The property owners also stated that they had notified Cornerstone of the light outage several times.

5. On March 21, 2012, an agent spoke with Cornerstone's Chief Engineer, who reported that he believed the top light on the Antenna Structure had been out for several months, but not since January 18, 2011, as claimed by the property owners. He further stated that he had notified the FAA the month before.⁶ The Chief Engineer also reported that the Antenna Structure lights were monitored by a local resident with whom Cornerstone had a verbal agreement to monitor the lights and perform routine maintenance at the Antenna Structure site.

6. After speaking with the Chief Engineer on March 21, 2012, the agent also spoke with the local resident Cornerstone claimed was responsible for monitoring the Antenna Structure lights. The local resident reported to the agent that he did not make daily observations of the Antenna Structure lights and he did not keep records of any known light outages. He further reported that he was last at the site on March 1, 2012, but could not provide any information regarding the status of the Antenna Structure lights on that day. He stated that his visit prior to that date was in November 2011, at which time he did observe an Antenna Structure light outage, which he then reported to Cornerstone. He also told the agent that he is now retired and resides in the State of Georgia but that his son has taken over his responsibilities for the Antenna Structure. The agent followed up with the son, who reported that, although Cornerstone requested that he notify them of any light outage, he was not asked to make daily observations.

7. On March 28, 2012, Cornerstone's Chief Engineer reported to the agent during a telephone conversation that the lights were repaired on March 23, 2012. He also confirmed that Cornerstone had never formally instructed the local residents (father or son) to monitor the lights or maintain logs of observed light outages. The Chief Engineer further reported that the son has now been instructed to monitor the lights on a daily basis and to report any outages to Cornerstone.

8. As a follow-up to the inspection, the Philadelphia Office issued a letter of inquiry (LOI) to Cornerstone on May 8, 2012.⁷ On May 29, 2012, Cornerstone filed a response to the LOI.⁸ Cornerstone reported that it first became aware of the light outage on August 1, 2011, and that, although it had ordered replacement bulbs on August 5, 2011, the lights were not fixed until March 23, 2012.⁹ Cornerstone also submitted documentation showing that it had notified the FAA on August 1, 2011.¹⁰ Cornerstone stated that it believed it had subsequently notified the FAA at least two other times, but was unable to provide supporting documentation for these other times. Cornerstone also stated that it believed

⁶ The agent confirmed with the FAA that a NOTAM had been issued with regard to the Antenna Structure on January 31, 2012. That NOTAM expired on February 15, 2012.

⁷ Letter from Kevin Doyle, Acting District Director, Philadelphia Office, Northeast Region, FCC Enforcement Bureau, to Cornerstone TeleVision, Inc. (May 8, 2012) (on file in EB-FIELDNER-12-00002081).

⁸ Response from Thomas A. Scott, Chief Financial Officer, Cornerstone TeleVision, Inc., to Philadelphia Office, FCC Enforcement Bureau (May 25, 2012) (on file in EB-FIELDNER-12-00002081) (*LOI Response*).

⁹ Cornerstone reported that it had tried in August 2011 to engage a volunteer iron worker it had previously used to complete the lighting repairs, but the iron worker was not available. *LOI Response* at 2.

¹⁰ See *LOI Response* at 4.

the local residents with whom it had a verbal agreement were conducting daily observations of the Antenna Structure lighting. Cornerstone further stated that it did not learn that the local resident's son had taken over responsibility of the Antenna Structure until late 2011.

III. DISCUSSION

9. Section 503(b) of 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.¹¹ 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.¹² 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,¹³ and the Commission has so interpreted the term in the Section 503(b) context.¹⁴ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁵ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁶

A. Failure to Monitor and Exhibit Required Obstruction Lighting on the Antenna Structure

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.¹⁷ Section 17.51(a) of the Rules states that “[a]ll red obstruction lighting shall be exhibited from sunset until sunrise unless otherwise specified.”¹⁸ 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 of such failure to the owner.”¹⁹

¹¹ 47 U.S.C. § 503(b).

¹² 47 U.S.C. § 312(f)(1).

¹³ 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”).

¹⁴ 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).

¹⁵ 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).

¹⁶ 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.

¹⁷ 47 U.S.C. § 303(q).

¹⁸ 47 C.F.R. § 17.51(a).

¹⁹ 47 C.F.R. § 17.47(a).

11. The evidence in this case is sufficient to establish that Cornerstone violated Section 303(q) of the Act and Sections 17.51(a) and 17.47(a) of the Rules. On March 20, 2012, agents from the Philadelphia Office observed that the required red obstruction lighting on the Antenna Structure was extinguished after sunset and that a current NOTAM was not in place. In its *LOI Response*, Cornerstone admitted that the light outage had existed from August 1, 2011, when it claims it first became aware of the light outage, until March 23, 2012, when the lights were repaired after the agents' inspection on March 20, 2012. Although Cornerstone believed a local resident was conducting daily observations of the Antenna Structure lights, the agents' investigation revealed that the local residents were not conducting daily monitoring. Cornerstone is responsible for monitoring the Antenna Structure lights and is liable for any violations resulting from the failures or omissions of its employees.²⁰ Therefore, based on the evidence before us, we find that Cornerstone apparently willfully and repeatedly violated Section 303(q) of the Act and Sections 17.51(a) and 17.47(a) of the Rules by failing to (1) exhibit all required red obstruction lighting from sunset to sunrise on the Antenna Structure, and (2) monitor the Antenna Structure's lights on a daily basis.

B. Proposed Forfeiture Amount

12. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for failure to comply with prescribed antenna structure lighting and marking is \$10,000.²¹ 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.²² Given the duration of the extinguishment and the potential public safety hazard caused by such an outage, we find that an upward adjustment to the base forfeiture in the amount of \$5,000 is warranted. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Cornerstone is apparently liable for a total forfeiture in the amount of \$15,000.²³

IV. ORDERING CLAUSES

13. 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, Cornerstone TeleVision, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for violations of Section 303(q) of the Act and Sections 17.51(a) and 17.47(a) of the Rules.²⁴

²⁰ See, e.g., *Tidewater Communications, LLC*, Order on Review, 25 FCC Rcd 1675 (2010) (finding that a violator can be held liable for violations resulting from mistakes of its employees), citing *North Country Repeaters*, Forfeiture Order, 19 FCC Rcd 22139 (Enf. Bur. 2004); *PBJ Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1988); and *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986).

²¹ *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.

²² 47 U.S.C. § 503(b)(2)(E).

²³ See, e.g., *Ramco Broadband Services*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 255 (proposing \$15,000 forfeiture for antenna structure light outage that was not timely repaired).

²⁴ 47 U.S.C. §§ 303(q) and 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 17.51(a) and 17.47(a).

14. **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, Cornerstone TeleVision, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. 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. Cornerstone TeleVision, Inc. shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁵ 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.

16. 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. 20554.²⁶ 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.

17. 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.²⁷ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047, and include the NAL/Acct. No. referenced in the caption. Cornerstone TeleVision, Inc. also shall e-mail the written response to NER-Response@fcc.gov.

18. 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.

²⁵ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁶ See 47 C.F.R. § 1.1914.

²⁷ 47 C.F.R. §§ 1.16, 1.80(f)(3).

Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

19. **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 Cornerstone TeleVision, Inc., One Signal Hill Drive, Wall, Pennsylvania 15148.

FEDERAL COMMUNICATIONS COMMISSION

David C. Dombrowski
District Director
Philadelphia Office
Northeast Region
Enforcement Bureau