

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

In the Matter of	)	
	)	
Telava Wireless, Inc.	)	File No.: EB-11-AT-0055
	)	NAL/Acct. No.: 201232480004
Owner of Antenna Structure No.: 1050186	)	FRN: 0015598162
Hulett, GA	)	
	)	
	)	

**FORFEITURE ORDER**

**Adopted: January 17, 2014**

**Released: January 17, 2014**

By the Regional Director, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of seven thousand five hundred dollars (\$7,500) to Telava Wireless, Inc. (Telava), owner of antenna structure number 1050186, located in Hulett, Georgia (the Antenna Structure), for its willful and repeated violation of Section 303(q) of the Communications Act of 1934, as amended (Act)<sup>1</sup> and Section 17.51(a) of the Commission's rules (Rules).<sup>2</sup> The noted violations involved Telava's failure to exhibit all red obstruction lighting on the Antenna Structure from sunset to sunrise.

**II. BACKGROUND**

2. On April 4, 2012, the Enforcement Bureau's Atlanta Office (Atlanta Office) issued a Notice of Apparent Liability for Forfeiture and Order (NAL)<sup>3</sup> to Telava for violations of Section 303(q) of the Act and Section 17.51(a) of the Rules. Telava submitted a response to the NAL requesting cancellation of the proposed forfeiture, because "the economic climate has left Telava in serious funding constraints resulting to minimal allocated budgets."<sup>4</sup> Telava also certified that it had secured a maintenance vendor to repair the antenna structure lighting during the week of April 30, 2012.<sup>5</sup> Telava subsequently stated that the lights on the Antenna Structure have been repaired.<sup>6</sup>

---

<sup>1</sup> 47 U.S.C. § 303(q).

<sup>2</sup> 47 C.F.R. § 17.51(a).

<sup>3</sup> *Telava Wireless, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 3239 (Enf. Bur. 2012). A comprehensive recitation of the facts and history of this case can be found in the NAL and is incorporated herein by reference.

<sup>4</sup> Letter from Boaz Yung, Executive Vice President, Telava Wireless, Inc., to Douglas Miller, District Director, Atlanta Office, South Central Region, Enforcement Bureau, at 1 (May 3, 2012) (on file in EB-11-AT-0055) (*NAL Response*).

<sup>5</sup> *NAL Response* at 2.

<sup>6</sup> Letter from Boaz Yung, Executive Vice President, Telava Wireless, Inc., to Douglas Miller, District Director, Atlanta Office, South Central Region, Enforcement Bureau, at 1 (Aug. 30, 2012) (on file in EB-11-AT-0055).

### III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>7</sup> Section 1.80 of the Rules,<sup>8</sup> and the *Forfeiture Policy Statement*.<sup>9</sup> In examining Telava's response, Section 503(b)(2)(E) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation 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>10</sup> As discussed below, we have considered Telava's response in light of these statutory factors, and find that a reduction of the forfeiture to \$7,500 based on inability to pay is warranted.

4. First, we affirm the *NAL*'s finding that Telava violated Section 303(q) of the Act and Section 17.51(a) of the Rules. 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 requires all red obstruction lighting to be exhibited from sunset to sunrise unless otherwise specified.<sup>12</sup> As discussed in the *NAL*, an agent from the Atlanta Office observed a light outage on the Antenna Structure on May 31, 2011, and later discovered from electricity usage information contained in Telava's electric bills that the outage had been ongoing since at least April 2010<sup>13</sup> until it was repaired on or around August 30, 2012.<sup>14</sup> Thus, based on the undisputed evidence before us, we find that Telava willfully and repeatedly failed to exhibit required red obstruction lighting on the Antenna Structure in violation of Section 303(q) of the Act and Section 17.51(a) of the Rules.<sup>15</sup>

5. Although Telava does not deny the violations, it nevertheless requests cancellation of the proposed forfeiture based on its inability to pay. With regard to an individual or entity's inability to pay claim, the Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.<sup>16</sup> Based on a review of the financial documentation provided by Telava, we do not find sufficient grounds to cancel the proposed forfeiture, but we reduce it to \$7,500. However, we caution Telava that a party's inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.<sup>17</sup> We have previously rejected inability to pay claims in cases of repeated or otherwise

---

<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. § 1.80.

<sup>9</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) (*Forfeiture Policy Statement*).

<sup>10</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>11</sup> 47 U.S.C. § 303(q).

<sup>12</sup> 47 C.F.R. § 17.51(a).

<sup>13</sup> *NAL*, 27 FCC Rcd at 3241.

<sup>14</sup> *See supra* note 6.

<sup>15</sup> 47 U.S.C. § 303(q); 47 C.F.R. § 17.51(a).

<sup>16</sup> *See PJB Communications of Virginia, Inc.*, Forfeiture Order, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, Forfeiture Order, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, Forfeiture Order, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

<sup>17</sup> *See* 47 U.S.C. § 503(b)(2)(E) (requiring Commission to take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require).

egregious violations.<sup>18</sup> Therefore, future violations of this kind may result in significantly higher forfeitures that may not be reduced due to Telava's financial circumstances.

#### 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(f)(4) of the Commission's rules, Telava Wireless, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seven thousand five hundred dollars (\$7,500) for violations of Section 303(q) of the Act and Section 17.51(a) of the Commission's rules.<sup>19</sup>

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.<sup>20</sup> If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.<sup>21</sup> Telava Wireless, Inc. shall send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>22</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.

---

<sup>18</sup> *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur., Western Region 2011) (holding that violator's repeated acts of malicious and intentional interference outweigh evidence concerning his ability to pay) (petition for reconsideration pending); *Hodson Broadcasting Corp.*, Forfeiture Order, 24 FCC Rcd 13699 (Enf. Bur. 2009) (holding that permittee's continued operation at variance with its construction permit constituted an intentional and continuous violation, which outweighed permittee's evidence concerning its ability to pay the proposed forfeitures).

<sup>19</sup> 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 17.51(a).

<sup>20</sup> 47 C.F.R. § 1.80.

<sup>21</sup> 47 U.S.C. § 504(a).

<sup>22</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

8. Any request for making full payment over time 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>23</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.

9. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class Mail and Certified Mail, Return Receipt Requested, to Telava Wireless, Inc. at 353 Sacramento Street, Suite 1500, San Francisco, CA 94111.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton  
Regional Director  
South Central Region  
Enforcement Bureau

---

<sup>23</sup> See 47 C.F.R. § 1.1914.