

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

In the Matter of	)	
	)	
Alpha & Omega Communications, LLC	)	File No.: EB-11-DV-0102
	)	NAL/Acct. No.: 201232800003
Owner of Antenna Structure No. 1040896	)	FRN: 0005898093
West Valley City, Utah	)	

**FORFEITURE ORDER**

**Adopted: August 4, 2014**

**Released: August 4, 2014**

By the Regional Director, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. We impose a penalty of \$2,400 against Alpha & Omega Communications, LLC (A&O) for failing to notify the Commission about a change in ownership of an antenna structure. Correct and accurate contact information in an antenna structure registration is necessary to ensure that the Commission can contact the structure's owners in case of emergencies. A&O does not dispute the violation, but requests cancellation of the forfeiture alleging that the violation was minor and based on its purported inability to pay the forfeiture and history of compliance with the Commission's rules. For the reasons stated below, we decline to cancel the forfeiture, but reduce it based on A&O's history of compliance.

2. Specifically, we issue a monetary forfeiture to A&O, owner of antenna structure number 1040896 in West Valley City, Utah (Antenna Structure), for willfully and repeatedly violating Section 17.57 of the Commission's rules (Rules).<sup>1</sup>

**II. BACKGROUND**

3. On July 11, 2012, the Enforcement Bureau's Denver Office (Denver Office) issued a Notice of Apparent Liability for Forfeiture (*NAL*) to A&O proposing a \$3,000 forfeiture against it for failing to notify the Commission of a change in ownership of the Antenna Structure.<sup>2</sup> In its *NAL Response*, A&O does not deny the violations, but requests cancellation of the forfeiture alleging that the violation was minor and based on its purported inability to pay the forfeiture and history of compliance with the Rules.<sup>3</sup>

---

<sup>1</sup> 47 C.F.R. § 17.57.

<sup>2</sup> *Alpha & Omega Communications, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 7616 (Enf. Bur. 2012) (*NAL*). A comprehensive recitation of the facts and history of this case can be found in the *NAL* and is incorporated herein by reference.

<sup>3</sup> See Response from Alpha & Omega Communications, to Denver Office, Western Region, Enforcement Bureau (Aug. 24, 2012) (on file in EB-11-DV-0102) (*NAL Response*). Although A&O captions its *NAL Response* as a "Petition for Reconsideration and Reinstatement," we are treating it as a response to the *NAL* because the *NAL* was not a final Enforcement Bureau decision, but rather a notice of apparent liability for forfeiture. See 47 C.F.R. § 1.106 (stating that an aggrieved party may file a Petition for Reconsideration of only "final actions taken pursuant to delegated authority . . ."); see also 47 C.F.R. § 1.80(f)(3) (setting forth the *NAL* response process); *NAL*, 27 FCC Rcd at 7618, para. 7 (providing A&O with 30 days to respond to the *NAL*).

### III. DISCUSSION

4. As A&O does not deny any of the facts stated in the *NAL*, we affirm the *NAL*'s findings and conclude that A&O willfully and repeatedly violated Section 17.57 of the Rules by failing to notify the Commission of a change in ownership of the Antenna Structure.<sup>4</sup>

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and the *Forfeiture Policy Statement*.<sup>7</sup> In examining A&O's *NAL 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>8</sup> As discussed below, we have considered A&O's *NAL Response* in light of these statutory factors and find that reduction of the forfeiture is warranted.

6. In response to the *NAL*, A&O requests cancellation of the \$3,000 forfeiture, asserting that there was no actual "gravity" to the violation as some personnel involved in the prior owner of the Antenna Structure were also part of A&O.<sup>9</sup> We note that controlling interests in A&O differ from that of the prior owner and the contact information for the Antenna Structure's registration changed when A&O updated its registration in response to the Letter of Inquiry issued by the Denver Office.<sup>10</sup> Indeed, a Denver Office agent left several messages at the phone number listed on the Antenna Structure's registration before being advised that the ownership of the Antenna Structure had changed. The Commission has determined that correct and accurate contact information in an antenna structure registration is necessary to ensure the Commission can contact the structure's owners in case of emergencies.<sup>11</sup> As a result, we disagree with A&O that its violation was sufficiently minor to warrant cancellation of the proposed forfeiture.

7. A&O also contends that it is unable to pay the forfeiture due to its history of financial difficulties and submitted financial documentation to support this claim.<sup>12</sup> With regard to an individual's or entity's inability to pay claim, the Commission has determined that, in general, gross income or revenues

---

<sup>4</sup> See *NAL*, *supra* note 2.

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</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>8</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>9</sup> See *NAL Response* at 4.

<sup>10</sup> See File No. BAL-20070629AEH, granted Aug. 15, 2007 (assigning Station KMRI(AM), which uses the Antenna Structure for broadcast, from KMRI Radio, LLC to A&O).

<sup>11</sup> See, e.g., *Am. Tower Corp.*, Notice of Apparent Liability, 16 FCC Rcd 1282, 1284–85, para. 9 (2001) ("The purpose of the posting requirement is to allow for expedited identification of and contact with the antenna structure owner in the event of a safety problem with the structure (e.g., an unlit tower)."), Order and Consent Decree, 16 FCC Rcd 14937 (2001) (resolving forfeiture proceeding and other potential antenna structure rule violation cases); see also *P&Y Broad. Corp.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 14444 (Enf. Bur. 2011) ("It is required that antenna structure owners maintain current antenna structure registration information with the Commission and post ASR numbers at the base of antenna structures to allow for easy contact if problems arise.") (forfeiture paid).

<sup>12</sup> See *NAL Response* at 1–4. A&O requested confidential treatment of the financial documents it submitted. See *id.* at 5–7. We will defer action on the confidentiality request, as we need not disclose potentially sensitive information in this Forfeiture Order. See 47 C.F.R. § 0.459(d)(3).

are the best indicator of an ability to pay a forfeiture.<sup>13</sup> While the Commission has in a few limited cases looked to other factors, including profits and losses, to determine ability to pay, those cases involved licensees in severe financial distress.<sup>14</sup> A&O has failed to demonstrate that it is experiencing a level of financial distress that would qualify it for an exception to our gross revenues policy.<sup>15</sup> Consequently, based on our review of the financial documents provided by A&O, we decline to reduce the forfeiture on inability to pay grounds.<sup>16</sup>

8. Finally, A&O requests cancellation of the forfeiture based on its history of compliance with the Rules.<sup>17</sup> While we do not find that a cancellation is warranted, we do find that reduction of the forfeiture is justified based on A&O's history of compliance and reduce the forfeiture by \$600. Therefore, after consideration of the entire record and the factors listed above, we find that a forfeiture in the amount of \$2,400 is warranted.

#### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Rules, Alpha & Omega Communications, LLC, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two thousand, four hundred dollars (\$2,400) for violations of Section 17.57 of the Rules.<sup>18</sup>

10. 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>19</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>20</sup> Alpha & Omega Communications, LLC, shall send electronic notification of payment to [WR-Response@fcc.gov](mailto:WR-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>21</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

---

<sup>13</sup> See, e.g., *Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues).

<sup>14</sup> See, e.g., *Martin Broad, Inc.*, Forfeiture Order, 28 FCC Rcd 1923 (Enf. Bur. 2013) (three years of an operating loss or no taxable income does not qualify as severe financial distress warranting deviation from gross revenues policy).

<sup>15</sup> A&O asserts that it has been forced to request waivers for the Commission's regulatory fees for FY 2007 to FY 2011, noting that final decisions on its requests for waiver from FY 2008 to the current year are pending further Commission review. *NAL Response* at 2. We note that initial decisions have been issued on A&O's waiver requests for FY 2008 and FY 2009, and both have been denied. See *Fee Decisions of the Managing Director Available to the Public*, Public Notice, 25 FCC Rcd 7952 (OMD 2010) (denying A&O's FY2008 regulatory fee waiver request); Public Notice, 25 FCC Rcd 15274 (OMD 2010) (denying A&O's FY2009 regulatory fee waiver request).

<sup>16</sup> The \$3,000 forfeiture falls within the percentage range that the Commission has previously found acceptable. See *supra* note 13. The \$600 reduction based on history of compliance with the Rules also reduces the financial penalty imposed against A&O. See *infra* para. 8. If A&O finds it financially infeasible to make full payment of the forfeiture amount within 30 days, it can request an installment payment plan. See *infra* para. 11.

<sup>17</sup> See *NAL Response* at 4.

<sup>18</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 17.57.

<sup>19</sup> 47 C.F.R. § 1.80.

<sup>20</sup> 47 U.S.C. § 504(a).

<sup>21</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

11. Any request for 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>22</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).

12. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Alpha & Omega Communications, LLC, 314 S. Redwood Road, Salt Lake City, UT 84104, and to its counsel, Nathaniel J. Hardy, Esquire, Wood, Martin & Hardy, P.C., 3300 Fairfax Drive, Suite 202, Arlington, VA 22201.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau

---

<sup>22</sup> See 47 C.F.R. § 1.1914.