

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

In the Matter of)	
)	
Telava Wireless, Inc.)	File Nos.: EB-09-CG-0236;
)	EB-FIELDNER-12-00004395
Owner of Antenna Structure No.: 1050174)	NAL/Acct. No.: 201232320003
Fordsville, Kentucky)	FRN: 0015598162

FORFEITURE ORDER

Adopted: August 28, 2014

Released: August 28, 2014

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$7,500 against Telava Wireless, Inc. (Telava) for failing to monitor its antenna structure lighting as required and repair unlit antenna structure lighting as soon as practicable. Telava does not dispute the violations, but requests cancellation of the forfeiture based on an alleged inability to pay. For the reasons stated below, we find insufficient basis to cancel the forfeiture, but reduce the forfeiture based on the financial documentation provided by Telava. However, we caution Telava that future violations may result in substantial forfeitures, regardless of its financial condition.

2. Specifically, we issue a monetary forfeiture to Telava, owner of antenna structure number 1050174 in Fordsville, Kentucky (the Antenna Structure), for willfully and repeatedly violating Section 303(q) of the Communications Act of 1934, as amended (Act),¹ and Sections 17.47 and 17.56(a) of the Commission's rules (Rules).²

II. BACKGROUND

3. On April 4, 2012, the Enforcement Bureau's Chicago Office issued a Notice of Apparent Liability for Forfeiture and Order (*NAL*) to Telava proposing a \$17,000 forfeiture against it for apparently failing to monitor the Antenna Structure's lighting as required and repair unlit Antenna Structure lighting as soon as practicable.³ In its *NAL Response*, Telava did not dispute the findings in the *NAL*, but requested cancellation of the proposed forfeiture because "the economic climate has left Telava in serious funding constraints resulting to minimal allocated budgets."⁴ Telava also certified that it hired a maintenance vendor to repair the antenna structure lighting during the week of April 30, 2012.⁵

¹ 47 U.S.C. § 303(q).

² 47 C.F.R. §§ 17.47, 17.56(a).

³ *Telava Wireless, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 3246 (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.

⁴ Letter from Boaz Yung, Executive Vice President, Telava Wireless, Inc., to Chicago Office, Northeast Region, FCC Enforcement Bureau, at 1 (May 7, 2012) (on file in EB-FIELDNER-12-00004395) (*NAL Response*).

⁵ *Id.* at 2.

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ and the *Forfeiture Policy Statement*.⁸ In examining Telava'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.⁹ As discussed below, we have considered Telava's *NAL Response* in light of these statutory factors, and we find that a reduction of the forfeiture is warranted.

5. As Telava does not deny any of the facts stated in the *NAL*, we affirm the *NAL*'s findings and conclude that Telava willfully and repeatedly violated Section 303(q) of the Act and Sections 17.47 and 17.56(a) of the Rules by failing to monitor the Antenna Structure's lighting as required and repair unlit Antenna Structure lighting as soon as practicable.¹⁰

6. Although Telava does not deny the violations, it requests cancellation of the proposed forfeiture based on an inability to pay.¹¹ 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.¹² Based on a review of the financial documentation provided by Telava, we do not find sufficient grounds to cancel the proposed forfeiture, but we do find that a reduction of the forfeiture amount to \$7,500 is warranted.¹³ However, we caution Telava that a party's inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.¹⁴ We have previously rejected inability to pay claims in cases of repeated or otherwise egregious violations.¹⁵ Therefore, future violations may result in significantly higher forfeitures that may not be reduced due to Telava's financial circumstances.

IV. ORDERING CLAUSES

7. 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, Telava Wireless, Inc. **IS LIABLE FOR A**

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ *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*).

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ *See NAL*, *supra* note 3.

¹¹ *NAL Response* at 1.

¹² *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).

¹³ The forfeiture amount imposed falls within the percentage range that the Commission has previously found acceptable. *See supra* note 12. If Telava still believes paying this amount presents financial difficulties, it should request an installment payment plan to lessen the immediate impact of the forfeiture. *See infra* para. 9.

¹⁴ *See* 47 U.S.C. § 503(b)(2)(E); *Mattoon Broad. Co.*, Forfeiture Order, 29 FCC Rcd 2925 (Enf. Bur. 2014); *Juan R. Nieves, Jr.*, Forfeiture Order, 29 FCC Rcd 430 (Enf. Bur. 2014).

¹⁵ *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur. 2011) (holding that violator's repeated acts of malicious and intentional interference outweighed evidence concerning his ability to pay), *aff'd*, Memorandum Opinion and Order, 28 FCC Rcd 1170 (Enf. Bur. 2013); *Hodson Broad. 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).

MONETARY FORFEITURE in the amount of seven thousand five hundred dollars (\$7,500) for violations of Section 303(q) of the Act and Sections 17.47 and 17.56(a) of the Rules.¹⁶

8. 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.¹⁷ 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.¹⁸ Telava Wireless, Inc. shall send electronic notification of payment to NER-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.¹⁹ 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.

9. 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. 20554.²⁰ 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.

¹⁶ 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 17.47, 17.56(a).

¹⁷ 47 C.F.R. § 1.80.

¹⁸ 47 U.S.C. § 504(a).

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

²⁰ See 47 C.F.R. § 1.1914.

10. **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

G. Michael Moffitt
Regional Director
Northeast Region
Enforcement Bureau