

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

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

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: April 4, 2012

Released: April 4, 2012

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Telava Wireless, Inc. (Telava), owner of antenna structure number 1050186 located in Hulett, Georgia (the Antenna Structure), apparently willfully and repeatedly violated Section 303(q) of the Communications Act of 1934, as amended (Act)1 and Section 17.51(a) of the Commission’s rules (Rules)2 by failing to exhibit all red obstruction lighting on the Antenna Structure from sunset to sunrise. We conclude that Telava is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000). In addition, we direct Telava to submit, no later than thirty (30) calendar days from the date of this NAL, a statement signed under penalty of perjury stating that the lights on the Antenna Structure have been restored.

II. BACKGROUND

2. In response to a complaint regarding a light outage on the Antenna Structure, on the evening of May 31, 2011, an agent from the Enforcement Bureau’s Atlanta Office (Atlanta Office) observed that none of the lighting on the Antenna Structure was lit.3 The agent also observed that there was no movement or activity on the electric meter for the Antenna Structure, which indicated that there was no electricity being used at the Antenna Structure. The agent notified Telava of the outage on June 1, 2011.

3. On June 7, 2011, the Atlanta Office issued a letter of inquiry (LOI) to Telava.4 In the response to the LOI, Telava acknowledged that it owns the Antenna Structure and stated that it first became

1 47 U.S.C. § 303(q).

2 47 C.F.R. § 17.51(a).

3 On May 31, 2011, the agent also contacted the Federal Aviation Administration (FAA) and learned no one had contacted the FAA about a light outage on the Antenna Structure and that a Notice to Airmen (NOTAM) had not been issued for the Antenna Structure. See 47 C.F.R. § 17.48 (requiring owners of registered antenna structures that have been assigned lighting specifications to report immediately to the FAA any observed or otherwise known extinguishment of any flashing obstruction light not corrected within 30 minutes). A NOTAM for the Antenna Structure was issued June 1, 2011 after Telava contacted the FAA.

4 Letter from Douglas G. Miller, District Director, Atlanta Office, to Telava Wireless, Inc., dated June 7, 2011.

aware of the lighting extinguishment on the Antenna Structure on June 1, 2011, when the Commission agent contacted Telava.⁵ Telava also provided copies of electric bills for the Antenna Structure for March 2011 through May 2011 showing that there was no electricity being consumed at the Antenna Structure site to illuminate the lights during those months. Furthermore, a graph of the twelve-month electricity consumption history for the Antenna Structure on the bills showed that there had been no power consumption at the Antenna Structure since at least April 2010.

III. DISCUSSION

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

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

5. 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.¹² Section 17.51(a) of the Rules requires all red obstruction lighting to be exhibited from sunset to sunrise unless otherwise specified.¹³ The

⁵ Letter from Boaz Yung, Executive Vice President, Telava Wireless, Inc., to Douglas G. Miller, District Director, Atlanta Office, dated June 20, 2011. Telava also admitted that it did not notify the FAA of the outage until June 1, 2011.

⁶ 47 U.S.C. § 503(b).

⁷ 47 U.S.C. § 312(f)(1).

⁸ 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 [A]ct (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 . . .”).

⁹ 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).

¹⁰ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹¹ 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.

¹² 47 U.S.C. § 303(q).

¹³ 47 C.F.R. § 17.51(a).

Antenna Structure is 100 meters above ground in overall height and, thus, is required to be painted and lit.¹⁴ An agent from the Atlanta Office observed the Antenna Structure lighting outage on May 31, 2011. According to electricity usage information contained in Telava's electric bills, the Antenna Structure's lights were not lit since at least April 2010. Thus, based on the evidence before us, we find that Telava apparently willfully and repeatedly violated section 303(q) of the Act and section 17.51(a) of the Rules by failing to exhibit required red obstruction lighting on the Antenna Structure after sunset.

B. Proposed Forfeiture Amount and Reporting Requirement

6. 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 lighting and/or marking is \$10,000.¹⁵ 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.¹⁶ Although Telava claims it became aware of the outage on June 1, 2011, Telava knew or should have known that the Antenna Structure lights were not lit because no electricity was consumed at the site for more than a year.¹⁷ Its failure to take any action to correct the Antenna Structure lighting outage or notify the FAA until being notified by the agents from the Atlanta Office renders its actions egregious and deserving of an upward adjustment of \$5,000. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Telava is apparently liable for a total forfeiture in the amount of \$15,000.

7. We direct Telava to submit a written statement, pursuant to Section 1.16 of the Rules,¹⁸ in addition to any statement it might submit pursuant to paragraph 12, signed under penalty of perjury by an officer or director of Telava stating that it is currently monitoring the Antenna Structure's lights on a daily basis¹⁹ and that the lights on the Antenna Structure have been restored. If the lights on the Antenna Structure have not been restored, Telava's statement shall provide a timeframe for lighting restoration. Today, we issued an enforcement action involving another antenna structure owned by Telava for lighting and monitoring violations.²⁰ These two proceedings raise concerns that Telava may have a systemic compliance issue with the Commission's antenna structure lighting and monitoring rules. Accordingly,

¹⁴ See Antenna Structure Registration database for antenna structure number 1050186. See also 47 C.F.R. § 17.21 (requiring antenna structures more than 60.96 meters in height to be painted and lighted).

¹⁵ *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.

¹⁶ 47 U.S.C. § 503(b)(2)(E).

¹⁷ See *infra* note 19.

¹⁸ 47 C.F.R. § 1.16.

¹⁹ Section 17.47(a) of the Rules requires owners of antenna structures that are required to be lighted to make an observation of the antenna structure's lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights. 47 C.F.R. § 17.47(a). Although Telava stated that the Antenna Structure's landowner was responsible for making daily observations of the Antenna Structure lighting, Telava claims it was unaware of the lighting outage until June 1, 2011. The landowner's caretaker, however, stated on June 1, 2011 that she notified Telava of the Antenna Structure outage several times prior to June 1, 2011. Accordingly, there appears to have been a breakdown in Telava's Antenna Structure monitoring procedures. Telava is hereby warned that failure to monitor its antenna structures consistent with section 17.47 of the Rules may subject it to additional enforcement action.

²⁰ *Telava Wireless, Inc.*, Notice of Apparent Liability for Forfeiture and Order, DA 12-535 (Enf. Bur. rel. Apr. 4, 2012).

Telava's statement shall also include: (1) a list of all antenna structures owned by Telava (other than the structures which are the subject of enforcement proceedings); (2) the date of the last observation of the structures' lights; (3) how often the structures' lights are observed visually; (4) whether an automatic light monitoring system is in place; and (5) the current status of the structures' lights. Further, for each of Telava's antenna structures where the lights are not operational, please state: (1) when the lights went dark or malfunctioned; (2) when the FAA was notified; (3) whether an active NOTAM is in place, along with the corresponding NOTAM number; and (4) a timeframe for repair. This statement must be provided to the Atlanta Office at the address listed in paragraph 10 within thirty (30) calendar days of the release date of this NAL.

IV. ORDERING CLAUSES

8. 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, Telava Wireless, 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 Section 17.51(a) of the Commission's rules.²¹

9. **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, Telava Wireless, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. **IT IS FURTHER ORDERED** that Telava Wireless, Inc. **SHALL SUBMIT** a statement as described *supra* in paragraph 7 to the Atlanta Office within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Atlanta Office, 3575 Koger Blvd., Suite 320, Duluth, GA 30096. Telava Wireless, Inc. shall also email the written statement to SCR-Response@fcc.gov.

11. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²² If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Telava will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

12. 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

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

²² See 47 C.F.R. § 1.1914.

to Sections 1.80(f)(3) and 1.16 of the Rules.²³ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Atlanta Office, 3575 Koger Blvd., Suite 320, Duluth, GA 30096 and include the NAL/Acct. No. referenced in the caption. Telava also shall email the written response to SCR-Response@fcc.gov.

13. 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.

14. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Telava Wireless, Inc., 353 Sacramento Street, Suite 1500, San Francisco, CA 94111.

FEDERAL COMMUNICATIONS COMMISSION

Douglas G. Miller
District Director
Atlanta Office
South Central Region
Enforcement Bureau

²³ 47 C.F.R. §§ 1.16, 1.80(f)(3).