

Federal Communications Commission

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

In the Matter of )  
 )  
ERF Wireless, Inc. ) File No. EB-08-HU-0128  
 )  
Owner of Antenna Structure ) NAL/Acct. No. 200932540001  
Number 1052967 )  
Monaville, Texas ) FRN 0017732520

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 27, 2009

By the Resident Agent, Houston Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that ERF Wireless, Inc. (“ERF Wireless”), owner of antenna structure number 1052967, near Monaville, Texas, apparently willfully and repeatedly violated Sections 17.51(b) and 17.57 of the Commission's Rules (“Rules”)<sup>1</sup> by failing to continuously exhibit the medium intensity lighting on its antenna structure and failing to update the ownership information for its antenna structure. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>2</sup> that ERF Wireless is apparently liable for a forfeiture in the amount of thirteen thousand dollars (\$13,000).

II. BACKGROUND

2. On December 22, 2008, in response to a complaint of an unlit and improperly registered antenna structure, an agent from the Commission’s Houston Office of the Enforcement Bureau (“Houston Office”) reviewed the Commission’s Antenna Structure Registration (“ASR”) database. The database listed Bishop Tower Company as the owner of antenna structure number 1052967, near Monaville, Texas. The complaint alleged that ERF Wireless acquired the antenna structure over two years ago. The Commission’s ASR database listed this structure as requiring a medium intensity obstruction light that is to be exhibited continuously. Later that same day, the agent drove out to the antenna structure site and observed that the medium intensity obstruction light on the top of the structure was not functioning.

3. On December 29, 2008, an agent from the Houston Office observed antenna structure number 1052967 in Monaville, Texas, both prior to and after local sunset. The medium intensity obstruction light was not functioning. The agent then called the Federal Aviation Administration (“FAA”) to determine if the structure owner had notified the FAA of the outage and whether a Notice to Airmen (“NOTAM”) had been issued. The FAA reported that there was no current NOTAM for this structure, so the agent informed the FAA of the lighting outage.

<sup>1</sup> 47 C.F.R. § 17.51(b) and 17.57.

<sup>2</sup> 47 U.S.C. § 503(b).

4. On March 2, 2009, an agent from the Houston Office observed antenna structure number 1052967 near Monaville, Texas, both prior to and after local sunset. The medium intensity obstruction light on the structure was not functioning. The agent then called the FAA to determine if the owner had notified the FAA about the outage and whether a NOTAM had been issued. The FAA reported that there was no current NOTAM for this structure, so the agent informed the FAA of the outage.

5. On March 5, 2009, an agent from the Houston Office interviewed an employee of ERF Wireless about antenna structure number 1052967. The employee stated that ERF Wireless had purchased this antenna structure from Bishop Tower Company at least one year ago and he had no knowledge as to why it would not have been properly registered with the Commission. He also stated that ERF Wireless does not visually check the lights once every 24 hours and had not observed the structure lights for about 6 months. He said that ERF Wireless was not using an automatic alarm system to monitor the lights and that they were in the process of looking for a monitoring system. Later that same day, the agent accompanied by two employees of ERF Wireless inspected antenna structure number 1052967 and observed that the medium intensity obstruction light was not functioning. A visual inspection of the lighting equipment installed at the site revealed it was not functioning. As of March 26, 2009, the ASR database still listed Bishop Tower Company as the owner of antenna structure number 1052967.

### **III. DISCUSSION**

6. Section 503(b) of the 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. The term “willful” as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>3</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>4</sup>

7. Section 17.51(b) of the Rules states that all high intensity and medium intensity obstruction lighting shall be exhibited continuously unless otherwise specified. Antenna structure number 1052967 is required to exhibit continuously a medium intensity obstruction light. An agent from the Houston Office observed that the medium intensity strobe light on antenna structure number 1052967 was not functioning on December 22 and 29, 2008, and on March 2 and 5, 2009. ERF Wireless admitted that it had not observed the structure lights at least once every 24 hours and did not maintain a properly working automatic alarm system to detect the failure of the structure lights.<sup>5</sup> Moreover, ERF Wireless failed to notify the FAA about the lighting outage.<sup>6</sup>

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<sup>3</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>4</sup> 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.”

<sup>5</sup> Section 17.47(a) of the Rules states that the owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications ... shall 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, to insure that all such lights are functioning properly as required; or alternatively, 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. 47 C.F.R. § 17.47(a).

<sup>6</sup> The owner of an antenna structure is required to “report immediately by telephone or telegraph to the nearest Flight Service Station or office of the FAA any observed or otherwise known extinguishment or

8. Section 17.57 of the Rules states that the owner of an antenna structure which is registered with the Commission must notify immediately the Commission upon any change in ownership information. ERF Wireless purchased antenna structure number 1052967 at least as early as March 2008. ERF Wireless was informed that it was not listed as the structure owner in the ASR database on March 2, 2009. However, as of March 24, 2009, the previous owner of the structure was still listed as the structure owner in the ASR database.

9. Based on the evidence before us, we find that ERF Wireless apparently willfully and repeatedly violated Sections 17.51(b) and 17.57 of the Rules by failing to exhibit continuously the medium intensity lighting on its antenna structure and failing to notify immediately the Commission of the ownership change for this structure.

10. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base forfeiture amount for failing to comply with prescribed lighting is \$10,000 and for failing to file required forms is \$3,000.<sup>7</sup> 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, and history of prior offenses, ability to pay, and other such matters as justice may require.<sup>8</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that ERF Wireless is apparently liable for a \$13,000 forfeiture.

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, ERF Wireless, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of thirteen thousand dollars (\$13,000) for violations of Sections 17.51(b) and 17.57 of the Rules.<sup>9</sup>

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, ERF 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.

13. 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 Number 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 Federal Reserve Bank of New York, 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

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improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes." 47 C.F.R. § 17.48.

<sup>7</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

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

<sup>9</sup> 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 17.51(b), 17.57.

**Federal Communications Commission**

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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.<sup>8</sup> If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, ERF Wireless, Inc will send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Houston Office, 9597 Jones Road, #362, Houston, Texas, 77065 and must include the NAL/Acct. No. referenced in the caption.

15. 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.

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to ERF Wireless, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Stephen P. Lee  
Resident Agent,  
Houston Office  
South Central Region  
Enforcement Bureau

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<sup>8</sup> See 47 C.F.R. § 1.1914.