

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

In the Matter of)
GCI Communication Corp.) File No.: EB-FIELDWR-12-00004576
Registrant of Antenna Structure No. 1265246) NAL/Acct. No.: 201332780001
Fairbanks, Alaska) FRN: 0001568880

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 10, 2013

Released: September 11, 2013

By the Resident Agent, Anchorage Resident Agent Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that General Communication, Inc., d/b/a GCI Communication Corp. (GCI), registrant of antenna structure number 1265246 (the Antenna Structure), located near Fairbanks, Alaska, apparently willfully and repeatedly violated Section 303(q) of the Communications Act of 1934, as amended (Act),¹ and Sections 17.47, 17.48, and 17.51(b) of the Commission’s rules (Rules),² by failing to (1) monitor obstruction lighting on a daily basis or maintain a functioning alarm system, (2) exhibit required daytime medium intensity obstruction lighting, and (3) notify the Federal Aviation Administration (FAA) of a known lighting outage. We conclude that GCI is apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000).

II. BACKGROUND

2. The Antenna Structure is 55.8 meters in overall height above ground level and is required to be lighted.³ Specifically, the Antenna Structure is required to have dual lighting, i.e., red lights at nighttime and medium intensity flashing white lights during the daytime and at twilight.

3. On September 12 and September 13, 2012, an agent from the Enforcement Bureau’s Anchorage Office (Anchorage Office) observed that the Antenna Structure was unlit during daytime hours. The agent contacted the FAA and learned that no Notice to Airmen (NOTAM) had been issued for

¹ 47 U.S.C. § 303(q).

² 47 C.F.R. § 17.47, 17.48, 17.51(b).

³ See Antenna Structure Registration database for antenna structure number 1265246. See also 47 C.F.R. § 17.23 (antenna structures requiring notice to the FAA must comply with the FAA’s painting and lighting recommendations). The relevant FAA recommendations for the Antenna Structure include Chapters 4, 8, and 12 of FAA Circular Number 70/7460-1K. Chapter 8 requires a dual lighting system, red lighting for nighttime, and flashing white lights for daytime operations. Chapter 8 also allows the omission of other types of marking when medium intensity white lights are operated on structures 153 meters above ground level or less during daytime or twilight.

the Antenna Structure.⁴ Later on September 13, 2012, the agent contacted GCI personnel and advised them of the light outage and the issuance of the NOTAM.⁵

4. On November 1, 2012, the Anchorage Office issued a Notice of Violation (NOV) to GCI concerning the extinguished light and failure to notify the FAA and initiate a NOTAM.⁶ In the NOV Response,⁷ GCI acknowledged the violation and determined that the light outage was caused by a failing capacitor on the control board which it replaced on October 30, 2012.⁸ GCI also stated that they installed and tested a remote monitoring and alarm system for the Antenna Structure.⁹

III. DISCUSSION

5. 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.¹⁰ 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.¹¹ 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,¹² and the Commission has so interpreted the term in the Section 503(b) context.¹³ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁴ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁵

⁴ See 47 C.F.R. § 17.48 (requiring antenna structure owners to notify the FAA immediately of any known outages of tower lighting lasting more than 30 minutes). The agent informed the FAA of the lighting outage and the FAA issued a NOTAM for the Antenna Structure on September 13, 2012.

⁵ The agent also monitored the structure at nighttime and observed that the red obstruction lighting was functioning properly.

⁶ See *GCI Communications Corp.*, Notice of Violation, V201332780001 (Nov. 1, 2012) (NOV).

⁷ See Response to Notice of Violation of GCI Communications Corp. (Nov. 27, 2012) (on file in EB-FIELDWR-12-00004576) (NOV Response).

⁸ See *id.* at 1.

⁹ *Id.*

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 U.S.C. § 312(f)(1).

¹² 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 act (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”).

¹³ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹⁴ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁵ 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

(continued....)

A. Failure to Exhibit Required Obstruction Lighting on the Antenna Structure, Failure to Monitor Antenna Structure Lighting, and Failure to Notify the FAA

6. The evidence in this case is sufficient to establish that GCI violated Section 303(q) of the Act and Sections 17.47, 17.48, and 17.51(b) 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.¹⁶ Section 17.47(a) of the Rules requires antenna structure owners to observe the lights on antenna structures visually once every 24 hours or alternatively to install 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.¹⁷ Section 17.47(b) of the Rules also requires owners employing automatic alarm systems to “inspect at intervals not to exceed 3 months . . . all . . . alarm systems associated with the antenna structure lighting to insure that such apparatus is functioning properly.”¹⁸ Section 17.48(a) of the Rules states that owners of antenna structures “shall report immediately by telephone or telegraph to the nearest Flight Service Station or office of the Federal Aviation Administration any observed or otherwise known extinguishment or 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”¹⁹ Section 17.51(b) of the Rules requires all high intensity and medium intensity obstruction lighting to be exhibited continuously unless otherwise specified.²⁰

7. The Antenna Structure is 55.8 meters above ground in overall height and is required to be lighted with medium intensity flashing white lights during the daytime and at twilight, and with red lighting at nighttime.²¹ On September 12 and September 13, 2012, an agent from the Anchorage Office observed that the Antenna Structure was not lighted during daylight hours, and determined that GCI had failed to notify the FAA of the outage. As discussed above, GCI acknowledged that the medium intensity flashing white lights were extinguished during the day and that the lighting system was repaired on October 30, 2012. GCI did not appear to have a functioning monitoring system in place at the time of the agent’s inspection, and subsequently installed and tested a remote monitoring and alarm system for the Antenna Structure. Therefore, based on the evidence before us, we find that GCI apparently willfully and repeatedly violated Section 303(q) of the Act and Sections 17.47, 17.48, and 17.51(b) of the Rules by failing to monitor the lighting on the Antenna Structure or maintain a properly functioning automatic alarm system, failing to exhibit required daytime medium intensity obstruction lighting on the Antenna Structure, and failing to notify the FAA of the outage.

B. Proposed Forfeiture Amount

8. 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 monitoring requirements, and

(...continued from previous page)

commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, para. 9.

¹⁶ 47 U.S.C. § 303(q).

¹⁷ 47 C.F.R. § 17.47(a).

¹⁸ 47 C.F.R. § 17.47(b).

¹⁹ 47 C.F.R. § 17.48(a).

²⁰ 47 C.F.R. § 17.51(b).

²¹ See Antenna Structure Registration database for antenna structure number 1265246.

notification of extinguished lights is \$10,000.²² 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.²³

9. Given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, we conclude that an upward adjustment of the base forfeiture is warranted. GCI, a Tier III carrier, is a publicly-held corporation serving most of Alaska, with annual revenues in the hundreds of millions of dollars.²⁴ To ensure that forfeiture liability is a deterrent and not simply a cost of doing business, the Commission has determined that large companies such as GCI should expect the assessment of higher forfeitures for violations.²⁵ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we therefore conclude that GCI is apparently liable for a total forfeiture in the amount of \$20,000.

IV. ORDERING CLAUSES

10. 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, GCI Communication Corp. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for violations of Section 303(q) of the Act and Sections 17.47, 17.48, and 17.51(b) of the Rules.²⁶

11. **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, GCI Communication Corp. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

²² *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.

²³ 47 U.S.C. § 503(b)(2)(E).

²⁴ General Communication, Inc., d/b/a Alaska DigiTel, Alaska Wireless, and GCI (GCI), a Tier III carrier, is a publicly-held corporation serving most of Alaska. Based on its 10-K SEC filing (Mar. 8, 2013), GCI had annual revenues of \$710,181,000 in 2012. Based on the most recent quarterly report filed Aug. 2, 2013, GCI's revenues for the six months ending July 30, 2013, were \$375,877,000. See <http://yahoo.brand.edgar-online.com/default.aspx?companyid=7302>.

²⁵ See, e.g., *Forfeiture Policy Statement*, 12 FCC Rcd at 17099-100, paras. 23-24 (cautioning all entities and individuals that, independent from the uniform base forfeiture amounts, the Commission will take into account the subject violator's ability to pay in determining the amount of a forfeiture to guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business, and noting that such large or highly profitable entities should expect that the forfeiture amount set out in a Notice of Apparent Liability against them may in many cases be above, or even well above, the relevant base amount); *Google Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4012 (Enf. Bur. 2012) (upwardly adjusting the base forfeiture due to the deliberate nature of the violation and the company's gross revenues); *America Movil, S.A.B. de C.V., Parent of Puerto Rico Telephone Company, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8672 (Enf. Bur. 2011) (doubling the base forfeiture due to the company's size and gross revenues); *Fox Television Stations Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 7074 (Enf. Bur. 2010) (upwardly adjusting the base forfeiture based on the egregiousness of the violation and the company's substantial revenues).

²⁶ 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 17.47, 17.48, 17.51(b).

12. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. GCI shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁷ 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.

13. 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. 20554.²⁸ 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.

14. 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 to Sections 1.16 and 1.80(f)(3) of the Rules.²⁹ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Western Region, Anchorage Resident Agent Office, P.O. Box 231949, Anchorage, Alaska 99523-1949, and include the NAL/Account number referenced in the caption. GCI Communications Corp. also shall e-mail the written response to WR-Response@fcc.gov.

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.

²⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁸ See 47 C.F.R. § 1.1914.

²⁹ 47 C.F.R. §§ 1.16, 1.80(f)(3).

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and first class mail to GCI Communication Corp., at 2550 Denali Street, Suite 1000, Anchorage, Alaska 99503-2751.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Windel
Resident Agent
Anchorage Resident Agent Office
Western Region
Enforcement Bureau