

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

In the Matter of)	
)	
Three Angels Corp.)	File No. EB-02-SJ-057
Owner of Antenna Structure number 1235917)	
St. Thomas, United States Virgin islands)	NAL/Acct. No. 200332680001
)	
)	FRN 0007-4419-26

FORFEITURE ORDER

Adopted: March 15, 2004

Released: March 17, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of thirteen thousand dollars (\$13,000) to Three Angels Corporation (“Three Angels”), licensee of station WGOD-FM, St. Thomas, Virgin Islands, for willful and repeated violation of Sections 17.4(a) and 17.21(a) of the Commission’s Rules (“Rules”).¹ The noted violations involve Three Angels’ failure to register and paint the antenna structure for station WGOD-FM.

2. On October 22, 2002, the Commission’s San Juan, Puerto Rico, Resident Agent Office (“San Juan Office”) released a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Three Angels for a forfeiture in the amount of thirteen thousand dollars (\$13,000).² Three Angels filed its response to the *NAL* on February 12, 2003, and supplemented that response on March 6, 2003.

II. BACKGROUND

3. Three Angels is the owner of the WGOD-FM antenna structure. On September 10, 2002, an agent from the San Juan Office observed that Three Angels’ antenna structure was not painted and that there was no Antenna Structure Registration (“ASR”) number observable at or near the base of the antenna structure. The agent’s check of the Commission’s ASR data base showed that there was no antenna structure registered at or near the location of Three Angels’ antenna structure.

4. On September 11, 2002, the agent inspected radio station WGOD-FM and its antenna structure and again observed that the antenna was unpainted. Three Angels could not produce any evidence that the antenna structure was registered, but did provide the agent with Federal Aviation Administration (“FAA”) Study No. 00-ASO-6223-OE, dated August 28, 2000, which indicates that Three

¹ 47 C.F.R. § 17.21(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332680001 (Enf. Bur., San Juan Office, released October 22, 2002).

Angels' antenna structure has painting and lighting requirements.³ The ASR data base indicates that Three Angels registered its antenna structure on September 17, 2002.

5. On October 22, 2002, the San Juan Office issued a *NAL* for a forfeiture in the amount of \$13,000 to Three Angels for willful and repeated violation of Sections 17.4(a) and 17.21(a) of the Rules. In its response, Three Angels seeks cancellation of the proposed monetary forfeiture. Three Angels states that, based on the conclusion of its consulting engineer, it believed that its tower did not require painting and lighting because it is less than 200 feet above ground level. Additionally, Three Angels asserts that it relied upon its consulting engineer to take care of the tower registration. Three Angels also states that it is struggling economically and submits, in a supplementary response, a copy its 2001 federal income tax return and partial copies of its 1999 and 2000 federal income tax returns.

6. Three Angels further asserts in its response to the *NAL* that it will submit a supplementary response concerning compliance with the painting requirement. However, to date, we have not received such a supplementary response. We did receive correspondence from Three Angels on February 13, 2004, but that correspondence simply transmits a copy of Three Angels' earlier response to the *NAL*.

III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁴ Section 1.80 of the Rules,⁵ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). Section 503(b) of the Act requires that the Commission, in examining Three Angels' response, 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.⁶

8. Section 17.21(a) of the Rules requires antenna structures to be painted and lighted when they exceed 200 feet in height above the ground or when they require a special aeronautical study. In this instance, Three Angels' tower required a special aeronautical study because of its proximity to an airport. The October 28, 2000, study (FAA Study No. 00-ASO-6223-OE) specifies that Three Angels' antenna structure must be painted and lighted. Three Angels concedes that its tower was not painted but claims that it relied on the conclusion of its consulting engineer that painting was not required. "The Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors and has consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations."⁷ Furthermore, Three Angels had a copy of FAA Study No. 00-ASO-6223-OE, which

³ There is no issue in this case as to Three Angels' compliance with the lighting requirement.

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863-64 (2002) (internal quotation marks omitted)

specified the tower's painting requirements. Therefore, it had actual notice of the painting requirement. We find that Three Angels willfully⁸ and repeatedly⁹ violated Section 17.21(a) of the Rules.

9. Section 17.4(a) of the Rules requires the registration of antenna structures which require notice to the Federal Aviation Administration. Since a special FAA aeronautical study was required for Three Angels' tower, it is clear that FAA notification was required for that tower. Three Angels concedes that its tower, which was constructed March 31, 1996, was not registered but asserts that it relied on its consulting engineer to register its tower. As pointed out above, Commission regulatees are responsible for the acts and omissions of their employees and independent contractors. Accordingly, we find that Three Angels willfully and repeatedly violated Section 17.4(a).

10. Three Angels contends that it is struggling economically and that payment of the proposed forfeiture amount would create "an unfair burden." In support of its financial hardship claim, Three Angels submits a copy its 2001 federal income tax return and partial copies of its 1999 and 2000 federal income tax returns. The Commission has determined that, in general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.¹⁰ After reviewing the financial data submitted, we find no evidence in Three Angels' response that would support cancellation of the forfeiture or a reduction based upon financial hardship.¹¹

11. Three Angels has provided no information indicating that it has painted its tower and is now in compliance with Section 17.21(a) of the Rules. Accordingly, we will require, pursuant to Section 308(b) of the Act,¹² that Three Angels report to the Enforcement Bureau no more than thirty (30) days following the release of this order how it plans to achieve compliance with Section 17.21(a). Three Angels' report must be submitted in the form of an affidavit or declaration signed by an officer or director.

and cases cited therein.

⁸ 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,' ... 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).

⁹ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

¹⁰ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992).

¹¹ *Id.* at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Afton Communications Corp.*, 7 FCC Rcd 6741 (Com. Car. Bur. 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).

¹² 47 U.S.C. § 308(b).

12. We have examined Three Angels' response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Three Angels willfully and repeatedly violated Sections 17.4(a) and 17.21(a) of the Rules and that cancellation or reduction of the proposed \$13,000 monetary forfeiture is not warranted.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹³ Three Angels **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of thirteen thousand dollars (\$13,000) for failure to register and paint its antenna structure, in willful and repeated violation of Sections 17.4(a) and 17.21(a) of the Rules.

14. **IT IS FURTHER ORDERED** that, pursuant to Section 308(b) of the Act, Three Angels must submit the report described in Paragraph 11, above, no more than thirty (30) days following the release of this order, to the Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Room 7-A820, Washington, D.C. 20554, Attention: Thomas D. Fitz-Gibbon, Esq.

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁴ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. NAL/Acct. No. 200332680001 and FRN 0007-4419-26. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁵

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Three Angels Corporation, 22 Estate Dorothea, St. Thomas, U.S. Virgin Islands 00803, and to its counsel, M. Scott Johnson, Esq., Gardner, Carton & Douglas, 1301 K Street, N.W., Suite 900, East Tower, Washington, D.C. 20005-3317.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹³ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁴ 47 U.S.C. § 504(a).

¹⁵ See 47 C.F.R. § 1.1914.