

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Johnson Towers Corporation) File No.: EB-11-TP-0038
Owner of Antenna Structure Nos.) NAL/Acct. No.: 201432700002
1060088 and 1060089) FRN: 0007783525
Former Owner of Antenna Structure 1060090)
Pinellas Park, Florida)

ORDER

Adopted: November 2, 2015

Released: November 3, 2015

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission has entered into a Consent Decree to resolve its investigation into whether Johnson Towers Corporation (JTC) failed to install lights on two antenna structures and update registration information with the Commission to reflect the dismantlement of a third antenna structure. The Commission’s antenna structure painting, lighting, and registration requirements operate in concert with Federal Aviation Administration (FAA) regulations to ensure that antenna structures do not present hazards to air navigation. Critically, conformance with the lighting requirements imposed by the Commission and the FAA ensures that antenna structures do not pose a public safety risk to passing aircraft. To settle this matter, JTC admits that it violated the antenna structure rules, will implement a compliance plan, and will pay \$3,000 in civil penalties. However, JTC will pay an additional \$231,000 civil penalty if the Commission finds that it failed to comply with the antenna structure rules during the next three years or misled the Commission regarding its current financial status.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and resolving the Notice of Apparent Liability for Forfeiture (NAL)¹ against JTC regarding its compliance with its antenna structure lighting and registration obligations under Section 303(q) of the Communications Act of 1934, as amended (Act), and Sections 17.21(a), 17.23, and 17.57 of the Commission’s rules (Rules).²

3. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether JTC possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

4. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), and 503(b) of the Act³ and the authority delegated by Sections 0.111 and 0.311 of the Rules,⁴ the attached Consent Decree IS ADOPTED and its terms incorporated by reference.

1 Johnson Towers Corp., Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 15273 (2013) (NAL).

2 47 U.S.C. § 303(q); 47 C.F.R. §§ 17.21(a), 17.23, 17.57.

3 47 U.S.C. §§ 154(i), 503(b).

4 47 C.F.R. §§ 0.111, 0.311.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED** and the NAL **IS CANCELED**.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Johnson Towers Corporation at 9661 82nd Avenue North, Seminole, FL 33777-2736.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

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Johnson Towers Corporation)	File No.: EB-11-TP-0038
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Pinellas Park, Florida)	

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Johnson Towers Corporation (JTC), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether JTC violated 303(q) of the Communications Act of 1934, as amended, and Sections 17.21(a), 17.23, and 17.57 of the Commission's rules by failing to install lights on two antenna structures and update registration information with the Commission to reflect the dismantlement of a third antenna structure.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended.¹
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Antenna Structure Rules" means Section 303(q) of the Act; Sections 17.21(a), 17.23, and 17.57 of the Rules; and other provisions of the Act, the Rules, and Commission orders related to the lighting and registration of antenna structures.²
 - (d) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (e) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which JTC is subject by virtue of its business activities, including but not limited to the Antenna Structure Rules.
 - (g) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 11.
 - (h) "Effective Date" means the date by which both the Bureau and JTC have signed the Consent Decree.
 - (i) "FAA" means the Federal Aviation Administration.
 - (j) "Investigation" means the investigation commenced by the Bureau in File No. EB-

¹ 47 U.S.C. § 151 *et seq.*

² 47 U.S.C. § 303(q); 47 C.F.R. §§ 17.21(a), 17.23, 17.57.

11-TP-0038 regarding whether JTC violated the Antenna Structure Rules, which culminated in the issuance of the NAL.

- (k) “JTC” means Johnson Towers Corporation and its affiliates, subsidiaries, and predecessors-in-interest.
- (l) “NAL” means the Notice of Apparent Liability for Forfeiture and Order issued to JTC on November 1, 2013 proposing a \$234,000 forfeiture for apparent violations of the Antenna Structure Rules.³
- (m) “Parties” means JTC and the Bureau, each of which is a “Party.”
- (n) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. The Commission’s antenna structure painting, lighting, and registration requirements operate in concert with FAA regulations to ensure that antenna structures do not present hazards to air navigation.⁴ 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.⁵ Section 17.21(a) of the Rules requires antenna structures to be lighted when they exceed 60.96 meters in height above the ground or require special aeronautical study.⁶ Section 17.23 of the Rules states that an antenna structure’s lighting must conform to the FAA’s recommendations set forth on its “no hazard” determination for the antenna structure.⁷ Conformance with the lighting requirements imposed by the Commission and the FAA ensures that antenna structures do not pose a public safety risk to passing aircraft.⁸ In addition, Section 17.57 of the Rules states that the owner of a registered antenna structure must notify the Commission within 24 hours of dismantling the antenna structure.⁹ Accuracy of information in the Commission’s antenna structure database is critical because the database is used by the Commission agents to ensure compliance with the Commission’s antenna structure rules and the FAA’s painting and lighting requirements.¹⁰

4. JTC is an owner-operated company with no employees. JTC owned antenna structure numbers 1060088, 1060089, and 1060090 in Pinellas Park, Florida. On November 1, 2013, the Commission issued the NAL proposing a \$234,000 penalty against JTC for apparently failing to light antenna structures 1060088 and 1060090 as required and notify the Commission of the dismantlement of antenna structure 1060089.¹¹ In response to the NAL, JTC asserted that insufficient finances and lawsuits hindered its ability to install lighting systems on antenna structures 1060088 and 1060090, acknowledged that it did not notify the Commission about the dismantlement of antenna structure 1060089, and stated it would come into compliance as quickly as possible.¹² JTC submitted a dismantlement notification for antenna structure 1060089 in November 2013. JTC installed a lighting system on antenna structure

³ *Johnson Towers Corp.*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 15273 (2013) (NAL).

⁴ See 47 C.F.R. §§ 17.1–17.58.

⁵ 47 U.S.C. § 303(q).

⁶ 47 C.F.R. § 17.21(a).

⁷ 47 C.F.R. § 17.23.

⁸ NAL, 28 FCC Rcd at 15277, para. 13.

⁹ 47 C.F.R. § 17.57.

¹⁰ NAL, 28 FCC Rcd at 15273, para. 2.

¹¹ *Id.* at 15274, paras. 4–6. The NAL includes a more complete recitation of the facts and history of this case and is incorporated herein by reference.

¹² Letter from Dan L. Johnson, President, Johnston Towers Corporation, to Tampa Office, South Central Region, Enforcement Bureau at 2–5 (received Apr. 9, 2014) (on file in EB-11-TP-0038).

1060088 in January 2014 and reduced the height of antenna structure 1060090 so that it no longer required lighting.¹³

III. TERMS OF AGREEMENT

5. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

6. **Jurisdiction.** JTC agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, JTC agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against JTC concerning the matters that were the subject of the Investigation.

9. **Admission of Liability.** JTC admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 8 herein, that its actions referenced in paragraph 4 herein and the NAL violated the Antenna Structure Rules.

10. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, JTC shall designate its owner/president to serve as a Compliance Officer and to discharge the duties set forth below. The Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that JTC complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Antenna Structure Rules prior to assuming his duties.

11. **Compliance Plan.** For purposes of settling the matters set forth herein, JTC agrees that it shall, within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws, including the Antenna Structure Rules, and with the terms and conditions of this Consent Decree.

12. **Reporting Noncompliance.** JTC shall report any noncompliance with the Antenna Structure Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that JTC has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that JTC has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Federal Communications Commission, Enforcement Bureau, South Central Region, Tampa Office, 4010 W Boy Scout Blvd., Suite 425, Tampa, FL 33607, with a copy submitted electronically to SCR-Response@fcc.gov.

13. **Compliance Reports.** JTC shall file compliance reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

¹³ JTC sold antenna structure number 1060090 in November 2013.

- (a) Each Compliance Report shall include a detailed description of JTC's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Antenna Structure Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of JTC, stating that the Compliance Officer has personal knowledge that JTC: (i) has established and implemented the Compliance Plan; and (ii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 12 of this Consent Decree.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.¹⁴
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of JTC, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that JTC has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that JTC has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to Federal Communications Commission, Enforcement Bureau, South Central Region, Tampa Office, 4010 W Boy Scout Blvd., Suite 425, Tampa, FL 33607, with a copy submitted electronically to SCR-Response@fcc.gov.

14. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 10 through 13 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

15. **Civil Penalty.** In light of JTC's demonstrated financial hardship and subject to the provisions of paragraph 16 below, JTC will pay a civil penalty to the United States Treasury in the amount of three thousand dollars (\$3,000) (Civil Penalty). Such payment shall be made in three (3) installments (each, an Installment Payment). The first Installment Payment in the amount of one thousand dollars (\$1,000) is due within thirty (30) calendar days of the Effective Date. Thereafter, Installment Payments in the amount of one thousand dollars (\$1,000) are due and payable monthly on the 15th of the month starting December 15, 2015 with the final Installment Payment on January 15, 2016. JTC acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty and each Installment Payment shall become a "Claim" or "Debt" as defined in Section 3701(b)(1) of the Debt Collection Improvement Act of 1996 (DCIA).¹⁵ JTC further agrees that, upon an Event of Default (as described below in paragraph 16), it will pay a further civil penalty to the United States Treasury in the amount of two hundred thirty one thousand dollars (\$231,000) (Additional Civil Penalty). JTC acknowledges and agrees that upon an Event of Default, the Additional Civil Penalty shall also become a "Claim" or "Debt" as defined in Section 3701(b)(1) of the DCIA,¹⁶ and all procedures for collection of the Additional Civil Penalty may, at the Commission's discretion, be initiated against JTC or its transferees. JTC or its transferees shall send electronic notification of payment to SCR-Response@fcc.gov on the date 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

¹⁴ 47 C.F.R. § 1.16.

¹⁵ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996) (DCIA).

¹⁶ *Id.*

submitted.¹⁷ 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). Below are additional instructions that should be followed based on the form of payment selected:

- 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.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

16. **Event of Default.** JTC agrees that an Event of Default shall occur upon (1) the failure to pay the Civil Penalties or any Installment Payments to the U.S. Treasury on or before the dates specified in Paragraph 15; (2) the release of an order within three years of the Effective Date by the Commission, such as a Notice of Apparent Liability for Forfeiture that is uncontested or a Forfeiture Order, finding that JTC or any other entity owned, operated, or controlled by, or under common control with JTC violated the Antenna Structure Rules; or (3) the release of an order by the Commission finding that JTC materially misstated its financial condition in the documents it produced to support its claim of inability to pay. Upon an Event of Default, all procedures for collection permitted by the DCIA and other provisions of law¹⁸ may, at the Commission’s discretion, be initiated and the following shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by JTC: (A) in the case of an Event of Default referred to in (1) above, (a) any unpaid Civil Penalties or Installment Payments referenced in Paragraph 15, which shall accrue interest at a rate of the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent per annum from the date of the Event of Default until payment in full; (b) any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717; and (c) any administrative charge(s), including the costs of collection, litigation, and attorneys’ fees; (B) in the case of an Event of Default referred to in (2) or (3) above, (a) the Additional Civil Penalty referenced in Paragraph 15, which shall accrue interest at a rate of the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent per annum from the date of the Event of Default until payment in full; (b) any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717; and (c) any administrative charge(s), including the costs of collection, litigation, and attorneys’ fees.

17. **Waivers.** As of the Effective Date, JTC waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. JTC shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the

¹⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁸ See 31 C.F.R. Part 900, *et seq.*

United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither JTC nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and JTC shall waive any statutory right to a trial *de novo*. JTC hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act¹⁹ relating to the matters addressed in this Consent Decree.

18. **Severability**. The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

19. **Invalidity**. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

20. **Subsequent Rule or Order**. The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which JTC does not expressly consent) that provision will be superseded by such Rule or Order.

21. **Successors and Assigns**. Unless stated otherwise, JTC agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees in which Dan L. Johnson has an ownership interest, holds any official title, or has any employment or contractual relationship for the provision of services.

22. **Final Settlement**. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

23. **Modifications**. This Consent Decree cannot be modified without the advance written consent of both Parties.

24. **Paragraph Headings**. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

25. **Authorized Representative**. Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

¹⁹ See 5 U.S.C. § 504; 47 C.F.R. §§ 1.1501–1.1530.

26. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

Travis LeBlanc
Chief
Enforcement Bureau

Date

Dan L. Johnson
President
Johnson Towers Corporation

Date