

Federal Communications Commission

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

In the Matter of
Waldec Enterprises, Inc.
Registrant of ASR #1253674
Anchorage, Alaska
File No: EB-09-AN-0011
NAL/Acct. No.: 201032780001
FRN: 0015110877

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 21, 2009

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 Waldec Enterprises, Inc. ("Waldec") registrant of antenna structure number 1253674, in Anchorage, Alaska, apparently willfully and repeatedly violated Section 17.23 of the Commission's Rules ("Rules") by failing to conform to the FAA's painting and lighting recommendations as set forth on the structure's FAA determination of "no hazard." We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), that Waldec Enterprises, Inc. is apparently liable for forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. Antenna structure 1253674 is 48.7 meters in height above ground and, due to its proximity to airfields, according to its antenna structure registration ("ASR"), is required to have lighting in accordance with specific Chapters of the FAA Advisory Circular for Obstruction Marking and Lighting. Specifically, the Chapters detail that the antenna structure is required to have top mounted lighting and, in particular, Chapter 5 requires structures exceeding 150 feet (46m) AGL to have at least one red flashing (L-864) beacon installed in a manner to ensure an unobstructed view of one or more lights by a pilot. Further review of the Commission's ASR records reveals that the ASR for antenna structure number 1253674 reflects a height above ground of 48.7 meters and a construction completion date of July 9, 2007.

3. On May 14, 2009, agents from the Anchorage Resident Agent Office inspected antenna structure number 1253674, located near the intersection of Boniface Parkway and DeBarr Road in Anchorage, Alaska. The agent's located ASR number 1253674 posted at the site. The agents observed and documented that the top mounted lighting on the antenna structure consisted of one steady burning red light.

147 C.F.R. § 17.23.

247 U.S.C. § 503(b).

3 FAA Circular Number 70/7460-1K, Chapters 4, 5, and 12.

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4. Prior to that inspection, on August 10, 2007, Anchorage agents inspected antenna structure number 1253674. The agents observed and documented that the top mounted lighting on the antenna structure consisted of one side-by-side red light.

5. On August 30, 2007, an agent from the Anchorage Resident Agent Office issued a Notice of Violation (“NOV”) to Waldec. The NOV specified that antenna structure number 1253674 was in violation of Section 17.23 of the Commission’s Rules, which requires that antenna structures must conform to the FAA’s painting and lighting recommendations set forth on the structures’ FAA determination of “no hazard,” as referenced in the relevant FAA Advisory Circulars.⁵ The recommendations for antenna structure number 1253674 are found in FAA Study 2006-AAL-72-OE, which requires that antenna structure number 1253674 have top mounted lighting consisting of a flashing red beacon.⁶

6. On September 24, 2007, the Anchorage Resident Agent Office received a written response to the NOV issued to Waldec.⁷ The Waldec NOV response states that it was aware of the FAA Chapter 5 lighting requirement which required a L-864 type red flashing beacon, but that they were advised by employees of a communications company who they believed had expert experience and knowledge of the FCC and FAA rules, that a L-810 type side-by-side solid red (non-flashing) light would be sufficient, and requested the Anchorage Office grant a waiver or variance to the required L-864 red flashing light requirement and allow the existing L-810 type lighting to remain until such time that the overall height of the structure is increased.

7. On September 26, 2007, an Anchorage resident agent discussed the NOV response with a Waldec representative. The Anchorage agent advised that the Anchorage Office cannot issue waivers or variances, that compliance with the lighting specifications in the antenna structure’s ASR and FAA Study is required, that if the record is in error then the registrant must bring the error to the FAA to correct or rework the Obstruction Evaluation (OE), and that Waldec keep the Anchorage office informed of progress toward coming into compliance. No further communications were received from Waldec.

8. On April 10, 2008, Anchorage agents from the Anchorage Resident Agent Office inspected antenna structure number 1253674. The agents observed and documented that the top mounted lighting on the antenna structure consisted of one steady burning red light.

III. DISCUSSION

9. 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) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁸ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁹

⁵ See Notice of Violation (Corrected Copy), File No. EB-07-AN-039, NOV No: V20073278005, released August 30, 2007.

⁶ FAA Circular Number 70/7460-1K, Chapters 4, 5, and 12.

⁷ See Letter from Waldec Enterprises, Inc., to the Anchorage Resident Agent Office dated September 19, 2007 (“Response”).

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', 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

10. Section 17.23 of the Rules requires that each new or altered antenna structure to be registered on or after January 1, 1996, must conform to the FAA's painting and lighting recommendations set forth on the structures' FAA determination of "no hazard," as referenced in the following FAA Advisory Circulars: AC 70/7460-1J "Obstruction Marking and Lighting," effective January 1, 1996, and AC 150/5345-43E, "Specification for Obstruction Lighting Equipment," dated October 19, 1995.¹⁰ On August 30, 2007, the Anchorage Office notified Waldec that the lighting on antenna structure number 1253674 did not comply with the FAA lighting recommendations for the structure. On April 10, 2008, and May 14, 2009, Anchorage agents observed that the lighting on antenna structure number 1253674 failed to comply with the FAA's lighting recommendations for the structure.

11. Waldec failed to bring the lighting on antenna structure number 1253674 into compliance with the FAA recommendations, despite receiving a NOV concerning the violation from the Anchorage Office. Therefore, Waldec's violation of Section 17.23 is willful. The violation occurred on more than one day, therefore, it is repeated. Based on the evidence before us, we find that Waldec willfully and repeatedly violated Section 17.23 of the Rules by failing to conform the lighting on antenna structure number 1253674 with the FAA recommendations for the antenna structure.

12. 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 failure to comply with prescribed lighting specifications is \$10,000.¹¹ 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.¹² Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that the structure is partially in compliance by having some form of red obstruction lighting at its top and, therefore, we find Waldec is apparently liable for a \$4,000 forfeiture.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Waldec Enterprises, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand dollars (\$4,000) for violation of Section 17.23 of the Rules.¹³

14. **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, Waldec

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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).

⁹Section 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."

¹⁰47 C.F.R. § 17.23.

¹¹12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹²47 U.S.C. § 503(b)(2)(E).

¹³47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80, 17.23.

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

15. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/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 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. 20554.¹⁴ Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

16. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Anchorage Resident Agent Office, P.O. Box 221849, Anchorage, Alaska 99522-1849 and must include the NAL/Acct. No. referenced in the caption.

17. 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.

18. **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 Waldec Enterprises, Inc., at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁴ See 47 C.F.R. § 1.1914.