

Federal Communications Commission

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

In the Matter of)	
)	
KFW Communications LLC)	File No. EB-09-HU-0077
dba Almega Cable, Inc.)	
)	NAL/Acct. No. 201032540003
Former Owner of Cable Television System)	
Yorktown, Texas)	FRN 0018266676
Physical System ID # 007761)	
Former Owner of Antenna Structure # 1045666)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: February 4, 2010

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 KFW Communications LLC dba Almega Cable, Inc. (“KFW”), former owner of cable television system and owner of antenna structure number 1045666, in Yorktown, Texas¹ apparently willfully and repeatedly violated Sections 11.35(a), 17.4(g), 17.48, and 17.51(a) of the Commission’s Rules (“Rules”)² by failing to install operational Emergency Alert System (“EAS”) equipment, failing to display the Antenna Structure Registration (“ASR”) number in a conspicuous place so that it is readily visible near the base of the antenna structure, failing to notify the Federal Aviation Administration (“FAA”) immediately of a lighting outage, and failing to exhibit all red obstruction lighting from sunset to sunrise. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),³ that KFW is apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000).

II. BACKGROUND

2. On October 2, 2009, an agent with the Commission’s Houston Office of the Enforcement Bureau (“Houston Office”) inspected antenna structure number 1045666 in Yorktown, Texas. The agent observed that the ASR number was not displayed in a conspicuous place visible near the base of the antenna structure. According to the registration for antenna structure number 1045666, the antenna structure is to display red obstruction lighting from sunset to sunrise. The agent observed at 8:30 PM-CDT that the top-level red obstruction lighting for antenna structure number 1045666 was not operational after sunset.⁴ The inspecting agent called the FAA and determined a Notice to Airmen (“NOTAM”) had not been issued for

¹ KFW sold the cable system in Yorktown effective January 1, 2010. KFW, however, still owns other cable systems in Texas.

² 47 C.F.R. §§ 11.35(a), 17.48, and 17.51(a).

³ 47 U.S.C. § 503(b).

⁴ Local sunset time was 7:00 PM-CDT.

the obstruction light outage on antenna structure number 1045666.⁵

3. On October 5, 2009, an agent with the Houston Office inspected antenna structure number 1045666. The agent observed that the ASR number was not displayed in a conspicuous place visible near the base of the antenna structure. The agent also observed at 8:45 PM-CDT that the top-level red obstruction lighting for antenna structure number 1045666 was not operational after sunset.⁶ On the same day, the agent also inspected the headend for the KFW cable system in Yorktown, Texas and observed that no EAS equipment was installed.

4. On October 6, 2009, an agent with the Houston Office spoke with the dispatching manager for KFW, who is responsible for overseeing the technical department for KFW. The dispatching manager stated he was unaware of antenna structure number 1045666 having any recent obstruction light outages. He also stated that, to his knowledge, KFW was not monitoring antenna structure number 1045666 visually once every 24 hours or by an automated monitoring system.

5. On October 7, 2009, an agent with the Houston Office met with two KFW technicians in Bloomington, Texas. The technicians stated that they were the only two technicians for the KFW cable systems in Texas. The technicians were unaware of any recent obstruction light outages on antenna structure number 1045666. The technicians were then informed of the obstruction light outage and of the need to maintain a NOTAM for the outage. The technicians stated that, to their knowledge, the obstruction lighting for antenna structure number 1045666 was not being monitored visually once every 24 hours. The technicians also stated that, to their knowledge, there was not an automated monitoring system being used to monitor the obstruction lights for antenna structure number 1045666. The technicians were not able to provide any logs for the obstruction lighting. The technicians stated EAS equipment was not installed at the headend for the KFW cable system in Yorktown, Texas. They were unaware of operational EAS equipment being installed at the Yorktown cable system at any time since KFW purchased the system in 2008. The technicians were not able to provide any EAS logs for the KFW cable system in Yorktown, Texas. KFW was not able to provide any evidence that EAS tests were conducted between the time KFW purchased the Yorktown, Texas cable system in 2008 and October 7, 2009.

6. On November 11, 2009, the dispatching manager for KFW stated in an email that KFW still had no EAS equipment in Yorktown, Texas.

III. DISCUSSION

7. 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.⁷ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁸

⁵ The inspecting agent had a NOTAM issued at this time.

⁶ Local sunset time was 7:00 PM-CDT.

⁷ 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).

⁸ 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

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8. The Rules provide that analog and digital cable systems are part of the nationwide EAS network and are categorized as a participating national EAS source unless the system affirmatively requests authority to not participate.⁹ The EAS provides the President and state and local governments with the capability to provide immediate and emergency communications and information to the general public.¹⁰ State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from sources such as the National Weather Service or local emergency management officials.¹¹ Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by the participating station.

9. Section 11.35(a) of the Rules requires all cable systems to ensure that EAS encoders, EAS decoders, and attention signal generating and receiving equipment are installed so that the monitoring and transmitting functions are available during the times the systems are in operation. Additionally, cable systems must determine the cause of any failure to receive the required tests or activations specified in § 11.61(a)(1) and (a)(2). Appropriate entries indicating reasons why any tests were not received must be made in the cable system records as specified in §§ 76.1700, 76.1708 and 76.1711. As the nation's emergency warning system, the Emergency Alert System is critical to public safety, and we recognize the vital role that cable systems play in ensuring its success. The Commission takes seriously any violations of the Rules implementing the EAS and expects full compliance from its regulatees. On October 5, 2009, an agent from the Houston Office inspected the headend of the cable system in Yorktown, Texas and observed that there was no EAS equipment installed at the head end. On October 7, 2009, KFW technicians admitted that no EAS equipment was installed at the headend for the KFW system in Yorktown, Texas and that they were unaware of any operational EAS equipment being installed at the Yorktown, Texas cable system since its purchase by KFW in 2008. KFW was not able to provide any records showing that EAS equipment was operational at the Yorktown, Texas headend during any period from the time the system was purchased by KFW in 2008 and the date of the inspection on October 5, 2009. KFW also admitted that, as of November 11, 2009, no EAS equipment was installed at the headend in Yorktown, Texas.

10. Section 17.4(g) of the Rules requires that the ASR number be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. On October 2 and 5, 2009, an agent with the Houston Office observed that the ASR number was not displayed in a location visible near the base of antenna structure number 1045666.

11. Section 17.51(a) of the Rules requires that all red obstruction lighting be exhibited from sunset to sunrise. Section 17.47 of the Rules requires owners of antenna structures to observe structure lights visually once every 24 hours to ensure all lights are functioning properly as required or employ an automatic alarm system designed to detect any failure in the lights.¹² Section 17.48 of the Rules requires that owners of registered antenna structures that have been assigned lighting specifications report immediately by telephone or telegraph to the FAA any observed or otherwise known extinguishment of any flashing obstruction light not corrected within 30 minutes.¹³ On October 2 and 5, 2009, an agent from the Houston Office observed that the top-level red obstruction lighting on antenna structure number 1045666

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commission or omission is continuous, for more than one day.”

⁹ 47 C.F.R. §§ 11.11 and 11.41.

¹⁰ 47 C.F.R. §§ 11.1 and 11.21.

¹¹ 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources.

¹² 47 C.F.R. § 17.47.

¹³ 47 C.F.R. § 17.48(a).

was not operational after sunset. On October 6, 2007, KFW was unaware of the lighting outage and had not notified the FAA of the outage. On October 6, and 7, 2009, KFW technicians stated the obstruction lighting was neither being observed visually once every 24 hours nor monitored by an operational automatic alarm system. KFW's failure to observe visually or monitor with an automatic alarm system the obstruction lighting prevented it from detecting the repeated outage on antenna structure number 1045666 and reporting the outage to the FAA.

12. Based on the evidence before us, we find that KFW apparently willfully and repeatedly violated Sections 11.35(a), 17.4(g), 17.48, and 17.51(a) of the Rules by failing to ensure that EAS equipment was installed and operational, failing to display the ASR number in a conspicuous place so that it is readily visible near the base of the antenna structure, failing to notify the FAA of a light outage, and failing to exhibit all red obstruction lighting from sunset to sunrise.

13. 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 have operational EAS equipment installed is \$8,000 and the base forfeiture for failing to comply with prescribed lighting is \$10,000.¹⁴ Section 1.80 of the Rules does not establish a base forfeiture amount for failure to post the ASR number. The Commission has determined, however, that an appropriate base forfeiture amount for failure to post the ASR number is \$2,000 per violation.¹⁵ 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.¹⁶ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that KFW is apparently liable for a \$20,000 forfeiture.

IV. ORDERING CLAUSES

14. 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, KFW Communications LLC dba Almega Cable, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for violations of Sections 11.35(a), 17.4(g), 17.48, and 17.51(a) of the Rules.¹⁷

15. **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, KFW Communications LLC dba Almega Cable, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

16. 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 TREAS/NYC, and account number 27000001. For payment by credit card,

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

¹⁵ *American Towers Corporation*, Notice of Apparent Liability, 16 FCC Rcd 1282 (2001).

¹⁶ 47 U.S.C. § 503(b)(2)(E).

¹⁷ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 11.35(a), 17.4(g), 17.48, and 17.51(a).

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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. 20554.⁸ 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, KFW will send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

17. 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.

18. 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.

19. **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 KFW Communications LLC dba Almega Cable, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Lee R. Browning
Resident Agent
Houston Office
South Central Region
Enforcement Bureau

⁸ See 47 C.F.R. § 1.1914.