

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

In the Matter of)	
)	
St. Louis Mobile Systems Inc.)	File No. EB-02-KC-0549
)	NAL/Acct. No. 200232560023
Owner of Unregistered Antenna Structure Located)	FRN 0005-9463-55
at 38° 17' 31" North Latitude and 91° 41' 50")	
West Longitude, near Belle, Missouri)	
)	
Rolla, Missouri)	

FORFEITURE ORDER

Adopted: June 25, 2003

Released: June 27, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of three thousand dollars (\$3,000) to St. Louis Mobile Systems Inc. (“St. Louis Mobile”), owner of an antenna structure located at geographic coordinates 38° 17’ 31” North Latitude and 91° 41’ 50” West Longitude, near Belle, Missouri, for repeated violation of Section 17.4(a) of the Commission’s Rules (“Rules”).¹ The noted violation involves St. Louis Mobile’s failure to register its Belle antenna structure.

2. On August 20, 2002, the Commission’s Kansas City, Missouri Field Office (“Kansas City Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to St. Louis Mobile for a forfeiture in the amount of three thousand dollars (\$3,000).² St. Louis Mobile filed a response to the *NAL* on September 20, 2002.

II. BACKGROUND

3. On June 18, 2002, an agent from the Kansas City Office inspected an antenna structure located at geographical coordinates 38° 17’ 31” North Latitude and 91° 41’ 50” West Longitude, near Belle, Missouri. The antenna structure was approximately 385 feet in height. The agent observed that there was no Antenna Structure Registration (“ASR”) number posted on or near the antenna structure. The agent subsequently searched the Commission’s ASR database and determined that there was no antenna structure registered at these geographic coordinates. Further investigation revealed that the owner of the Belle tower is St. Louis Mobile. On July 16, 2002, the agent spoke with the president of St. Louis Mobile, William G. Bowles, Jr., who confirmed that the Belle tower is not registered.

¹ 47 C.F.R. § 17.4(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232560023 (Enf. Bur., Kansas City Office, released August 20, 2002).

4. On August 20, 2002, the Kansas City Office issued an *NAL* for a \$3,000 forfeiture to St. Louis Mobile for failure to register its Belle antenna structure in willful and repeated violation of Section 17.4(a) of the Rules. In its response to the *NAL*, St. Louis Mobile requests cancellation of the proposed forfeiture. St. Louis Mobile asserts that the forfeiture should be cancelled because it made good faith efforts to register the structure by filing a paper FCC Form 854 in 1996 and by filing electronically a couple of times in 1999. St. Louis Mobile asserts that these attempts to register the Belle tower were unsuccessful either because it was unable to provide certain information that was not in its possession or because the 1981 FAA study for the Belle tower was not in the Commission's database.³ St. Louis Mobile also asserts that at no time was the Belle tower a hazard to air navigation. Finally, St. Louis Mobile claims that it is unable to pay the proposed \$3,000 forfeiture and provides balance sheets for 1999, 2000 and 2001 in support of this claim.

III. DISCUSSION

5. The 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*"). In examining St. Louis Mobile's response, Section 503(b) of the Act requires that the Commission 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

6. Section 17.4(a) of the Rules provides that, effective July 1, 1996, the owner of any proposed or existing antenna structure that requires notification to the FAA must register the structure with the Commission.⁷ The Belle tower required FAA notification because it exceeds 200 feet in height.⁸

³ St. Louis Mobile states that when it submitted the paper Form 854 in 1996, it responded "unknown" to Item 26, which requested the date on which the application for an FAA study was submitted to the FAA. St. Louis Mobile maintains that it did not know the FAA study application date because the FAA study had been requested by the prior owner of the tower and the FAA was unable to provide the application date. St. Louis Mobile states that when it attempted to register the Belle tower electronically in 1999, the registration application was initially rejected because it did not provide the FAA study application date and because the FAA study was not in the Commission database. St. Louis Mobile maintains that it attempted to register the tower again in 1999 after the Commission's former Antenna Survey Branch advised it that it could provide the FAA study issue date in lieu of the application date, but the registration was again rejected because the FAA study was not in the Commission database.

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ We note that ASR applications for existing antenna structures in Missouri were required to be filed during a 30-day filing window from October 1 to October 31, 1996. *Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking and Lighting of Antenna Structures*, 11 FCC Rcd 4272, 4279 (1995).

⁸ See 47 C.F.R. § 17.7(a).

St. Louis Mobile does not dispute that the Belle tower was not registered from 1996 until July 2002. Accordingly, we find that St. Louis Mobile repeatedly⁹ violated Section 17.4(a) of the Rules.¹⁰

7. St. Louis Mobile asserts that the forfeiture should be cancelled because it made good faith efforts to register the tower in 1996 and again in 1999. While it does appear that St. Louis Mobile made some efforts to register the tower several years ago, we are not persuaded that these minimal efforts warrant mitigation of the forfeiture amount. If St. Louis Mobile was unable to provide certain information regarding the 1981 FAA study requested by the prior owner of the Belle tower, St. Louis Mobile could simply have requested that the FAA conduct a new study on the tower. That is precisely what other similarly situated tower owners have done. Moreover, contrary to St. Louis Mobile's claim that it was unable to obtain a copy of the 1981 FAA study, the 1981 FAA study has always been available from the FAA. Indeed, after the Kansas City Office contacted St. Louis Mobile about the unregistered tower in July 2002, St. Louis Mobile obtained a copy of the 1981 FAA study from the FAA, provided this study to the Commission, and registered the tower. In addition, we note that, significantly, St. Louis Mobile made no efforts to register since 1999 even though it knew its tower had not been successfully registered.

8. St. Louis Mobile also asserts that at no time was the Belle tower a hazard to air navigation. However, this factor does not entitle St. Louis Mobile to a reduction of the proposed forfeiture under the Commission's downward adjustment criteria for forfeitures.¹¹ We already treat failure to register a tower as a more minor class of tower safety violation than, for example, failure to light or paint a tower.

9. Finally, St. Louis Mobile asserts that it is unable to pay the forfeiture. St. Louis Mobile claims that it has not had a large measure of success in obtaining tenants for the Belle tower¹² and provides balance sheets for 1999, 2000 and 2001 in support of this claim. The Commission has repeatedly held that a company's gross revenues are the best indicator of its ability to pay a forfeiture.¹³ We are unable to evaluate fully St. Louis Mobile's ability to pay the \$3,000 forfeiture based on the balance sheets which it provided. These balance sheets list only the rental income and expenses for the Belle tower. However, according to Commission records, St. Louis Mobile is the licensee of two paging and radiotelephone service stations, which are authorized under call signs KNKL966 and KNKJ413. St. Louis Mobile did not provide any financial information concerning its paging and radiotelephone

⁹ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

¹⁰ Because we have determined that the violation was repeated, we need not make a determination as to whether the violation was willful. In this regard, Section 503(b)(1) of the Act provides that a forfeiture penalty may be imposed if the violation is *either* willful *or* repeated. 47 U.S.C. § 503(b)(1).

¹¹ *Policy Statement*, 12 FCC Rcd at 17113; 47 C.F.R. § 1.80(b), Note to paragraph b(4): *Section II.-Adjustment Criteria for Section 503 Forfeitures*.

¹² Commission records indicate that there are at least two Commission licensees on the Belle tower, Mid-Missouri Mobilfone and Ozark Beepers, Inc. Both licensees hold numerous paging and radiotelephone licenses and are owned by William G. Bowles, Jr., the principal owner of St. Louis Mobile.

¹³ See *Long Distance Direct, Inc.*, 15 FCC Rcd 3297, 3305 (2000); *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1991).

operations and therefore we do not have a sufficient basis upon which to evaluate its ability to pay the forfeiture.

10. We have examined St. Louis Mobile's 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 St. Louis Mobile repeatedly violated Section 17.4(a) of the Rules, and we find no basis for cancellation or reduction of the forfeiture proposed for this violation.

IV. ORDERING CLAUSES

11. Accordingly, **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,¹⁴ St. Louis Mobile Systems Inc. **IS LIABLE** for a monetary forfeiture in the amount of three thousand dollars (\$3,000) for repeated violation of Section 17.4(a) of the Rules.

12. 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.¹⁵ 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 note NAL/Acct. No. 200232560023 and FRN 0005-9463-55. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁶

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail return receipt requested to St. Louis Mobile Systems Inc., P.O. Box 405, Rolla, Missouri 65402-0405.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

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

¹⁵ 47 U.S.C. § 504(a).

¹⁶ See 47 C.F.R. § 1.1914.