

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

In the Matter of)	File No. EB-02-KC-301
)	
Midwest Tower Partners, LLC)	NAL/Acct. No. 20023256007
)	
Owner of Antenna Structure 1045073)	FRN #0006-1628-53
)	
Milwaukee, Wisconsin)	

MEMORANDUM OPINION AND ORDER

Adopted: June 30, 2003

Released: July 2, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we cancel the proposed monetary forfeiture in the amount of ten thousand dollars (\$10,000), issued to Midwest Tower Partners, LLC (“Midwest”) for its apparent willful violation of Section 17.50 of the Commission’s Rules (“Rules”).¹ The alleged violation involved Midwest’s failure to clean or repaint its antenna structure as often as necessary to maintain good visibility.

2. On June 4, 2002, the District Director of the Commission’s Kansas City, Missouri Field Office (“Kansas City Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”)² to Midwest for \$10,000. On June 28, 2002, Midwest filed a response to the *NAL*.

II. BACKGROUND

3. On May 1, 2002, an agent from the Kansas City Office inspected Midwest’s antenna structure with registration number 1045073 located at 41° 42’ 20” N latitude & 091° 28’ 08” W longitude, 1.24 miles east of Iowa City, Iowa. The agent observed black, unpainted coaxial cable on all three legs of the structure and over its entire length. The agent determined that the coaxial cables obscured the tower’s paint, to the degree that it reduced its visibility in violation of Section 17.50 of the Rules.

4. On June 4, 2002, the Kansas City Office issued a *NAL* to Midwest for its failure to maintain good visibility of its tower in apparent willful violation of Section 17.50 of the Rules. On June 28, 2002, Midwest filed a response to the *NAL* seeking cancellation or reduction of the proposed forfeiture. In its response, Midwest denies that the coaxial cables referred to in the *NAL* compromised the good visibility of the antenna structure in violation of Section 17.50. In support

¹ 47 C.F.R. § 17.50.

² *Notice of Apparent Liability for Forfeiture*, NAL Acct. No. 200232560007 (Enf. Bur., Kansas City Office, rel. June 4, 2002).

of this position, Midwest submitted photographs with its response from various angles and distances evincing the good visibility of the antenna structure. Furthermore, Midwest asserts that Chapter 3 of the Federal Aviation Administration's ("FAA's") Advisory Circular AC70/7460-1K on Obstruction Marking and Lighting ("Advisory Circular") states that the purpose of the marking guidelines is, "to make certain structures conspicuous to pilots during daylight hours"³ and that Midwest's tower complies with these guidelines because the coaxial cable is narrower than the legs of the structure and thus does not impair the visibility of the paint such that it is harmful to aircraft. Midwest further states that the painted surface on the structure does not show signs of scaling, oxidation, chipping, layers of contamination, or other defects that would require repainting under Section 17.50 of the Rules or the Advisory Circular. Finally, Midwest cites its history of overall compliance in requesting a cancellation or reduction of the proposed forfeiture.

III. DISCUSSION

5. The forfeiture amount in this case was proposed 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*.⁶ In examining Midwest'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.⁷

6. Section 17.50 of the Rules states that "[a]ntenna structures requiring painting under this part shall be cleaned or repainted as often as necessary to maintain good visibility."⁸ After reviewing the record in this case, including the photographs submitted by Midwest, we conclude that the evidence does not support a finding that the black, unpainted coaxial cables attached to Midwest's antenna structure obstructed the good visibility of the structure in violation of Section 17.50 of the Rules.⁹ We therefore, cancel the *NAL*.

³ FAA Advisory Circular AC 70/7460-1k, Obstruction Marking and Lighting, Chapter 3. Marking Guidelines, Paragraph 30.

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 C.F.R. § 17.50.

⁹ Separate from our finding above, and in response to Midwest's assertion that it is in compliance with the Advisory Circular because the unpainted coaxial cables are narrower than the legs of the structure, we note that the Advisory Circular explicitly states that "[a]lternate bands of aviation orange and white are normally displayed on... [c]oaxial cable, conduits, and other cables attached to the face of the tower." FAA Advisory Circular AC 70/7460-1K, Obstruction Marking and Lighting, Chapter 3. Marking Guidelines, Paragraph 33(d). Thus, compliance with the Advisory Circular would additionally require any cables attached to the face of the tower to also be painted. See *Pinnacle Towers Inc.*, 18 FCC Rcd. 6419 (Enf. Bur. 2003).

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 504(b) of the Act,¹⁰ and Section 1.80(f)(4) of the Rules,¹¹ the *NAL*, NAL/Acct. No. 200232560007 issued to Midwest Tower Partners, LLC **IS CANCELLED**.

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to Midwest Tower Partners, LLC, 12323 W. Fairview Avenue, Milwaukee, Wisconsin 53226 and to its counsel, B. Lynn F. Ratnavale, Esq., at Lukas, Nace, Gutierrez & Sachs, Chartered, 1111 19th Street, N.W., Suite 1200, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁰ 47 U.S.C. § 504(b).

¹¹ 47 C.F.R. § 1.80(f)(4).