

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

In the Matter of	)	
	)	
NetCom Technologies, Inc.	)	File No. EB-00-SJ-094
	)	
Condominio Castillo del Mar, PMB-1222	)	NAL/Acct. No. 200132680001
#4633 Isla Verde Ave.	)	
Carolina, Puerto Rico 00979-53000	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: May 7, 2001**

**Released: May 9, 2001**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order* (“*Order*”), we grant in part a petition for reconsideration filed by NetCom Technologies, Inc. (“NetCom”)<sup>1</sup> of a *Forfeiture* Order which issued a monetary forfeiture in the amount of thirteen thousand dollars (\$13,000) to Netcom for willful and repeated violations of Sections 17.4(a)(1) and 17.51(b) of the Commission’s Rules (“Rules”).<sup>2</sup> The noted violations involved NetCom’s failure to register its Juana Diaz, Puerto Rico antenna structure and its failure to exhibit medium intensity obstruction lighting on its Juana Diaz, Puerto Rico antenna structure. For the reasons that follow, we reduce the forfeiture amount to ten thousand five hundred dollars (\$10,500).

**II. BACKGROUND**

2. On September 21, 2000, an agent from the Commission’s San Juan, Puerto Rico Resident Agent Office (“San Juan Office”) inspected a communications tower in Juana Diaz, Puerto Rico at the approximate coordinates 18°02’02” North latitude and 066°28’27” West longitude at 8:00 a.m. AST. Although the tower was more than 200 feet in height above ground level, the agent observed that there were no medium intensity obstruction lights in operation on the tower.

3. On September 29, 2000, the agent inspected the Juana Diaz tower at 8:00 a.m. and again at 5:15 p.m. AST. Both times, the agent observed that the tower had no medium intensity obstruction lighting in operation. The agent searched Commission and industry databases and found no antenna structure registration for this tower.

---

<sup>1</sup> NetCom Technologies, Inc. is now known as VelociTel, Inc. However, for convenience, we will continue to refer to the entity as “NetCom,” the name used at the time the violations occurred.

<sup>2</sup> 47 C.F.R. §§ 17.4(a)(1) and 17.51(b).

4. On October 2, 2000, the agent contacted the Federal Aviation Administration's San Juan Flight Service Station ("San Juan FSS") to find out whether there was a Notice to Airmen ("NOTAM") in effect for the Juana Diaz tower. Section 17.48(a) of the Rules requires that tower owners immediately report to the nearest FAA Flight Service Station or office any extinguished or improperly functioning obstruction lights not corrected within 30 minutes.<sup>3</sup> The FAA then issues a NOTAM for a period of 15 days advising aircraft pilots that there is an antenna structure at a specific location with a temporary light outage. The San Juan FSS informed the agent that there was no NOTAM in effect for the Juana Diaz tower.

5. On October 3, 2000, after obtaining contact information for the Juana Diaz tower from the owner of a neighboring tower, the agent contacted Mr. Luis Sanchez, the construction manager for NetCom. The agent advised Mr. Sanchez that the medium obstruction lighting on the Juana Diaz tower was not in operation and that there was no NOTAM in effect for the tower. The agent also advised Mr. Sanchez that there was no antenna structure registration for the tower in the Commission's database and requested that Mr. Sanchez provide evidence of the structure's registration with the Commission. Mr. Sanchez informed the agent that the lighting problems on the Juana Diaz tower had been ongoing for about two weeks. Mr. Sanchez also told the agent that he would get a NOTAM issued for the tower and that he would contact NetCom's headquarters in California to get the antenna structure registration number for the tower and fax this information to the agent. On October 10, 2000, the agent still had not received this information and again contacted Mr. Sanchez to request evidence of the tower's registration. Mr. Sanchez told the agent that he would have NetCom's San Juan office fax the agent whatever information they had. As of October 13, 2000, the agent still had not received from NetCom any evidence that the Juana Diaz tower was registered with the Commission.

6. On October 19, 2000, the San Juan Office issued a *Notice of Apparent Liability for a Forfeiture* ("NAL") to NetCom in the amount of \$13,000 for failing to register the Juana Diaz tower in violation of Section 17.4(a)(1) of the Rules and failing to exhibit medium intensity obstruction lighting on the tower in violation of Section 17.51(b) of the Rules. NetCom did not respond to the NAL. On February 9, 2001, the Enforcement Bureau issued a *Forfeiture Order* affirming the forfeiture. NetCom filed a petition for reconsideration of the *Forfeiture Order* on March 9, 2001. In this petition, NetCom requests that we reduce the forfeiture amount from \$13,000 to \$1,000. NetCom asserts that the forfeiture should be reduced because it was aware of the lighting outage and was already taking action to correct the problem prior to being notified by the FCC about the outage. In addition, NetCom argues that its failure to register the tower was not a "willful" violation because it filed an antenna structure registration application electronically for the tower in June 2000 but did not realize that the electronic filing had not been effective. Finally, NetCom asserts that this is the first time it has been cited by the FCC for a violation.

### III. DISCUSSION

7. In its petition for reconsideration, NetCom argues that the forfeiture should be reduced because it was aware of the lighting outage on the Juana Diaz tower and was already taking action to correct the problem when the FCC first contacted it about the outage. NetCom states that it discovered the lighting outage in late September 2000 and repeatedly restored the lighting prior to being notified by the FCC on October 3, 2000 that the lighting was not functioning. NetCom further states that after being

---

<sup>3</sup> 47 C.F.R. § 17.48(a).

notified of the lighting outage by the FCC, it conducted an extensive examination of the tower's lighting mechanism and discovered a latent defect in the lighting mechanism that had interfered with the previous restorations. Citing *Motorola, Inc.*, 12 FCC Rcd 15268 (Compl. & Inf. Bur. 1997) ("*Motorola*"), NetCom asserts that in a similar situation the Commission reduced a forfeiture issued to Motorola where Motorola's attempts to fix a lighting outage "stemmed from Motorola's own efforts and not a hasty attempt to comply due to the FCC inspection." We are not persuaded that NetCom's actions provide a basis for mitigation of the forfeiture amount. In this regard, we believe that the instant case is distinguishable from *Motorola*. As noted above, Section 17.48(a) of the Rules requires that tower owners immediately report to the nearest FAA Flight Service Station or office any extinguished or improperly functioning obstruction lights not corrected within 30 minutes. In *Motorola*, the forfeiture amount was reduced based on a finding that Motorola notified the FAA of the lighting outage prior to the inspection of the tower by the FCC and stayed in contact with the FAA until the lighting outage was corrected. *Id.* In the instant case, although NetCom acknowledges that the lighting on the Juana Diaz tower had been repeatedly malfunctioning for about two weeks, it did not comply with Section 17.48(a) and report the improperly functioning lights to the FAA prior to being contacted by the FCC. We consider prompt notification to the FAA as required by Section 17.48(a) to be essential in ensuring safety to air navigation. Given NetCom's failure to report the repeatedly malfunctioning lights to the FAA, we find that its actions to correct the lighting problem, while commendable, do not warrant reduction of the forfeiture.

8. NetCom also argues that its failure to register the antenna structure was not a "willful" violation because a contractor retained by NetCom filed an antenna structure registration application electronically for the Juana Diaz tower in June 2000, but did not realize that the electronic filing had not been effective. NetCom asserts that the failure of the filing was due to a fault in the Commission's electronic filing system. We disagree with NetCom's argument that its failure to register the antenna structure was not a "willful" violation. Section 312(f)(1) of the Communications Act of 1934, as amended, ("Act") provides that "the term 'willful,' when used with reference to the commission or omission of any act, means the conscious or 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 ...."<sup>4</sup> This definition applies to the term "willful" as used in Section 503(b) of the Act. See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). A violation resulting from an inadvertent mistake or a failure to become familiar with the FCC's requirements is considered a willful violation. See *PBJ Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992); *Standard Communications Corp.*, 1 FCC Rcd 358 (1986); *Triad Broadcasting Co., Inc.*, 96 FCC 2d 1235, 1242 (1984). Furthermore, the Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors. See *MTD, Inc.*, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, 35 FCC 2d 361 (1972).

9. As an initial matter, we note that NetCom offers no evidence or explanation to support its assertion that the failure of the filing was due to a fault in the Commission's electronic filing system, rather than an error made by its contractor. Moreover, we do not see how NetCom could have reasonably believed that the electronic filing had been effective. In *Streamlining the Commission's Antenna Structure Clearance Procedure*, 11 FCC Rcd 4272, 4281-82 (1995), the Commission stated that electronic filing of antenna structure registrations "will enable the owner to register the structure with the Commission and receive a registration number within minutes." In a June 21, 1999, public notice announcing new procedures for antenna structure registration, the Commission indicated that it would

---

<sup>4</sup> 47 U.S.C. § 312(f)(1).

issue a file number upon electronic filing of an antenna structure registration but would not issue a Registration Number until it grants the registration.<sup>5</sup> The Commission further stated that “[b]ecause the new system will process applications immediately, electronic filers will be able to submit their applications and receive a valid Registration Number within minutes if it passes all system edits.”<sup>6</sup> In addition, the on-line help for the electronic antenna structure registration application states “[i]f there are no errors and the application is successfully submitted and autograned, the system will return a message with the file number of your application and your new registration.”<sup>7</sup> Thus, a tower owner which files an antenna structure registration application electronically will know if its application was submitted successfully because it will receive a confirmation message with a file number and, in most instances, a Registration Number within minutes. If NetCom’s contractor had filed the electronic application successfully, he would have received a confirmation message with a file number. Failing to receive a confirmation message with a file number, he should have known that the electronic filing was not successfully submitted. As noted above, under longstanding Commission precedent, NetCom is responsible for the acts and omissions of its contractor. Further, although NetCom never received a Registration Number or a paper copy of the Registration,<sup>8</sup> it did not follow through to verify that the application had been received by the Commission. Accordingly, we conclude that NetCom’s failure to register its antenna structure was a willful violation.

10. Finally, NetCom argues that the forfeiture should be reduced because it has no history of prior violations. After considering NetCom’s history of compliance with the Commission’s rules, we conclude that it is appropriate to reduce the forfeiture from \$13,000 to \$10,500.

#### IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>9</sup> and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>10</sup> NetCom Technologies, Inc., IS LIABLE FOR A MONETARY FORFEITURE in the amount of ten thousand five hundred dollars (\$10,500) for failing to register its Juana Diaz, Puerto Rico antenna structure in willful and repeated violation of Section 17.4(a)(1) of the Rules and for failing to exhibit medium intensity obstruction lighting on its Juana Diaz, Puerto Rico antenna structure in willful and repeated violation of Section 17.51(b) of the Rules.

---

<sup>5</sup> Public Notice, “Commission Announces New Procedures for Antenna Structure Registration,” DA 99-1186 (released June 21, 1999).

<sup>6</sup> *Id.*

<sup>7</sup> See <http://wtbwww05.fcc.gov/ULSTower/helpappq.html>.

<sup>8</sup> In the June 21, 1999, public notice announcing new procedures for antenna structure registration, the Commission stated that it will continue to issue a paper Registration (Form 854R) for each antenna structure registration. See Public Notice, “Commission Announces New Procedures for Antenna Structure Registration,” DA 99-1186 (released June 21, 1999).

<sup>9</sup> 47 U.S.C. § 503(b).

<sup>10</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules<sup>11</sup> 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.<sup>12</sup> Payment shall be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, Forfeiture Collection Section, Finance Branch, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. referenced above. 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.<sup>13</sup>

13. IT IS FURTHER ORDERED that, a copy of this *Order* shall be sent by Certified Mail, Return Receipt Requested, to counsel for NetCom Technologies, Inc., Rachael E. Schwartz, Esq., Baker & McKenzie, 815 Connecticut Ave., N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

---

<sup>11</sup> 47 C.F.R. § 1.80.

<sup>12</sup> 47 U.S.C. § 504(a).

<sup>13</sup> See 47 C.F.R. § 1.1914.