

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

In the Matter of	)	
	)	
USA Tower, Inc.	)	File No. EB-01-NF-069
ASR 1008468	)	
Elizabeth City, North Carolina	)	NAL/Acct. No. 20013264004

**FORFEITURE ORDER**

**Adopted: July 3, 2001**

**Released: July 6, 2001**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to USA Tower, Inc. (“USA Tower”) for willful violation of Section 17.51(a) of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violation involves USA Tower’s failure to exhibit red obstruction lighting on its Elizabeth City, North Carolina antenna structure. We also found that USA Tower failed to notify the Federal Aviation Administration (“FAA”) of the lighting outage.

2. On May 11, 2001, the Commission’s Norfolk, Virginia Office (“Norfolk Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of ten thousand dollars (\$10,000) to USA Tower for the noted violation.<sup>2</sup> USA Tower filed a response to the NAL dated May 22, 2001, and filed a supplement to its response dated June 1, 2001.

**II. BACKGROUND**

3. USA Tower owns an antenna structure located in Elizabeth City, North Carolina, with antenna structure registration (“ASR”) number 1008468. The ASR for the Elizabeth City structure indicates that red obstruction lighting is required. On February 9, 2001 at about 7:00 PM, an agent from the Norfolk Office inspected the Elizabeth City structure and observed that the structure’s red obstruction lighting was not operating. A Commission agent then called the person listed as the contact for USA Tower on FCC Form 854, “FCC Application for Antenna Structure”. The Commission agent left a message requesting that USA Tower repair the light, and also requested that USA Tower contact the FAA’s Raleigh Automated Flight Service Station (“Raleigh AFSS”) to have a Notice to Airmen (“NOTAM”) issued. The Commission agent then called the Raleigh AFSS to report the lighting outage, and to have a NOTAM issued. On February 27, 2001, the Norfolk Office was notified that the NOTAM had been cancelled.

---

<sup>1</sup> 47 C.F.R. § 17.51(a).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 20013264004 (Enf. Bur., Norfolk Office, released May 11, 2001).

4. On March 8, 2001, an agent from the Norfolk Office spoke with Mr. Charles L. Whitehead, Marketing Manager of USA Tower, to find out whether the light had been repaired, as the Norfolk Office had received notification of the NOTAM cancellation. Mr. Whitehead indicated that he was unaware of any lighting problems, but would find out if the light was operating. Also on March 8, 2001, pursuant to a request from the Norfolk Office, the Pasquotank County, North Carolina Sheriff's Department observed the structure and determined that the light was operating. On March 12, 2001, USA Tower notified the Norfolk Office that on December 11, 2000, and February 22, 2001, the light was working and that the alarm company had no record of an outage alarm for the Elizabeth City location. On March 30, 2001, the Norfolk Office issued a *Notice of Violation (NOV)* to USA Tower. On April 24, 2001, the Norfolk Office received USA Tower's response to the *NOV*. In its response, USA Tower stated that it had been unaware of the lighting outage at the tower and acknowledged that USA Tower had not notified the FAA.

5. On May 11, 2001, the Norfolk Office issued an *NAL* in the amount of \$10,000 to USA Tower for failure to exhibit the required red obstruction lighting on the Elizabeth City structure in willful violation of Section 17.51(a) of the Rules. In its response to the *NAL*, USA Tower requests reduction or cancellation of the proposed forfeiture. USA Tower claims that it was not aware of the failure of lighting on its structure because its alarm system failed to signal USA Tower or its contractor for providing alarm systems services, Hi-Tech Enterprises ("Hi-Tech"), indicating a loss of lighting. USA Tower includes a statement from Hi-Tech indicating that no signals were received from the USA Tower antenna from December 1, 2000, through March 9, 2001. USA Tower states that because of Hi-Tech's apparently faulty system, USA Tower is contracting with another company to provide alarm systems services. According to USA Tower, it did not notify the FAA of the extinguished lighting because it was unaware of the loss of lights.

6. USA Tower also argues that the forfeiture should be cancelled because the violation was not willful. Specifically, USA Tower states that an "unexpected and unpreventable failure of a circuit breaker in the tower's electrical system" caused the loss of lighting. According to USA Tower, the failure of the circuit breaker is an unforeseeable event, and the defective part was replaced immediately upon discovering that it was defective. If the Commission declines to cancel the proposed forfeiture, argues USA Tower, it would be appropriate to reduce the proposed forfeiture because the violation was the result of an unexpected event and not under the control of USA Tower. USA Tower contends that it was unforeseeable that a circuit breaker in the panel box for the tower would fail, and it did not choose to install a defective circuit breaker.

7. In its supplement to the response to the *NAL*, USA Tower states that it has installed a new alarm system at the Elizabeth City location in an effort to prevent the recurrence of the situation that gave rise to the *NAL*. Also, USA Tower reports that it has retained a new contractor to provide twenty-four hour monitoring services for its tower. USA Tower maintains that it has acted in good faith in all respects regarding the incident that underlies the *NAL*, and thus, the forfeiture should be cancelled.

### III. DISCUSSION

8. As the *NAL* states, the forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>3</sup> Section 1.80 of the Rules,<sup>4</sup> and *The Commission's Forfeiture Policy Statement*

---

<sup>3</sup> 47 U.S.C. § 503(b)(2)(D).

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). In examining USA Tower's response, and supplement thereto, 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.<sup>5</sup>

9. Section 17.51(a) of the Rules provides that all red obstruction lighting must be exhibited from sunset to sunrise unless otherwise specified in the ASR. USA Tower does not dispute our finding that it violated Section 17.51(a) of the Rules by failing to exhibit red obstruction lighting. USA Tower argues, however, that the lighting outage was the result of an unexpected and unforeseeable event, and therefore, was not "willful". We disagree. The fact that a licensee's violation occurred through inadvertence does not prevent it from being willful. *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992). Section 17.47 of the Rules requires antenna structure owners registered with the Commission and subject to lighting specifications to make an observation of the antenna structure's lights at least once every 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights, to insure the proper functioning of the antenna structure's lights.<sup>6</sup> Alternatively, antenna structure owners are required to "provide and properly maintain an automatic alarm system designed to detect any failure of such lights and to provide indication of such failure to the owner".<sup>7</sup> It does not appear from the record before us that USA Tower made daily observations of its Elizabeth City tower, nor does USA Tower present any evidence that it had properly inspected or maintained its automatic alarm systems, which would have led it to discover the lighting violations. Thus, USA Tower's lighting violations were willful.<sup>8</sup>

10. Moreover, we do not believe that USA Tower's reliance on its contractor warrants mitigation of the forfeiture amount. See *MTD, Inc.*, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, 35 FCC 2d 361 (1972). Furthermore, USA Tower's remedial efforts to correct the violation are not a mitigating factor. See *Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973).

11. Finally, USA Tower argues that we should consider its history of overall compliance with the Rules. We will do so and reduce the \$10,000 forfeiture to \$8,000.

#### IV. ORDERING CLAUSES

12. 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> USA Tower IS

---

<sup>4</sup> 47 C.F.R. § 1.80.

<sup>5</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>6</sup> 47 C.F.R. § 17.47(a)(1).

<sup>7</sup> 47 C.F.R. § 17.47(a)(2).

<sup>8</sup> *TeleCorp Communications Inc.*, 16 FCC Rcd 5270 (2001).

<sup>9</sup> 47 U.S.C. § 503(b).

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

---

LIABLE FOR A MONETARY FORFEITURE in the amount of eight thousand dollars (\$8,000) for failure to exhibit red obstruction lighting on its antenna structure in willful violation of Section 17.51(a) of the Rules.<sup>11</sup>

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules<sup>12</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>13</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>14</sup>

14. IT IS FURTHER ORDERED that, a copy of this *Order* shall be sent by Certified Mail, Return Receipt Requested, to USA Tower, Inc., 310 U. S. 13-17 South, Windsor, North Carolina 27983-9120, and to its counsel, Lars P. Simonsen, Esq., Pritchett & Burch, PLLC, 203 Dundee Street, Post Office Drawer 100, Windsor, NC 27983.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

---

<sup>11</sup> 47 C.F.R. § 17.51(a).

<sup>12</sup> 47 C.F.R. § 1.80.

<sup>13</sup> 47 U.S.C. § 504(a).

<sup>14</sup> See 47 C.F.R. § 1.1914.