

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

In the Matter of)
)
American InfoAge, LLC) File No. EB-01-TP-073
)
Antenna Structure Registration # 1202433) NAL/Acct. No. 200132700007
Clearwater, FL)

FORFEITURE ORDER

Adopted: August 30, 2001

Released: September 4, 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 American InfoAge, LLC (“InfoAge”) for willful violation of Section 17.51(b) of the Commission’s Rules (“Rules”) relating to the lighting of communications towers.¹ The noted violation involves InfoAge’s failure to exhibit the required obstruction lighting on its Clearwater, Florida antenna structure.

2. On April 25, 2001, the Commission’s Tampa, Florida Field Office (“Tampa Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to InfoAge for a forfeiture in the amount of ten thousand dollars (\$10,000).² InfoAge filed a response to the NAL on June 25, 2001.

II. BACKGROUND

3. On February 15, 2001, the Commission’s Tampa Office received a complaint regarding an antenna structure in Clearwater, Florida. The complainant alleged that the white strobe light at the top of the antenna structure had been out for over a month. The same day, agents from the Tampa Office drove to the antenna structure site to investigate the allegation. The agents observed that there were no lights illuminated on the antenna structure. The agents further observed that the antenna structure registration (“ASR”) number was not posted either on the base of the antenna structure or on the fence surrounding the antenna structure. While there was a sign on the fence with a space indicated for the ASR number, the number was not posted on the sign.

4. On February 15, 2001, following the inspection, an agent from the Tampa Office checked with the Federal Aviation Administration’s (“FAA”) St. Petersburg Flight Service Station (“St.

¹ 47 C.F.R. § 17.51(b).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200132700007 (Enf. Bur., Tampa Office, released April 25, 2001).

Petersburg FSS") and confirmed that there was no Notice to Airmen ("NOTAM")³ in effect for the Clearwater tower. The agent then contacted InfoAge and spoke with its Chief Operating Officer, Jim Bondurant. Mr. Bondurant told the agent that, due to a switching malfunction, the tower's blinking red (nighttime) light was not automatically coming on until it was very dark outside, leaving the white strobe light used for daytime lighting on longer than intended. He stated that the white strobe light had been turned off because InfoAge had received complaints about the white strobe light blinding nighttime traffic on a nearby highway. The agent advised Mr. Bondurant to contact the St. Petersburg FSS and get a NOTAM issued for the tower. The agent also informed Mr. Bondurant that the ASR number was not posted at the site. Mr. Bondurant provided the ASR number and stated that he would have it posted at the site as soon as possible.

5. On April 25, 2001, the Tampa Office issued an *NAL* for a forfeiture in the amount of \$10,000 to InfoAge for failing to exhibit the required medium intensity obstruction lighting on the Clearwater antenna structure in willful violation of Section 17.51(b) of the Rules. InfoAge filed a response to the *NAL* on June 25, 2001. In this response, InfoAge asserts that a \$10,000 forfeiture is unwarranted because it did not willfully violate the rules and that the violation in this case, if any, was minor. First, InfoAge argues that the statement in the *NAL* that "no lights were illuminated on the tower structure" is incorrect. Instead, InfoAge asserts that, due to the switching malfunction, there was a blinking red light on the tower, rather than a white strobe light. In addition, InfoAge claims that it never "intentionally disconnected" the white strobe light on the tower as stated in the *NAL*. Rather, InfoAge states it simply complied with a request by the City of Clearwater to switch the lighting from the daytime mode to the nighttime mode until the switching malfunction could be repaired so that the white strobe light would not create a traffic hazard for nighttime drivers. InfoAge also asserts that area residents have been openly hostile towards the construction and operation of the tower and that the switching malfunction was probably the result of vandalism. Moreover, InfoAge states that it immediately called the St. Petersburg FSS to get a NOTAM issued for the tower after being contacted by the FCC, that it acted promptly to repair the switching malfunction, and that it has no history of prior violations. Finally, InfoAge disputes the statement in the *NAL* that the ASR number was not posted at the tower site. According to InfoAge, the number was posted at the base of the tower, but the agent's view of the number may have been obstructed by tenant cabling. InfoAge also claims that there was a sign on the fence with space for the ASR number, but the number had been printed incorrectly and InfoAge was waiting for a replacement number at the time of the inspection.

III. DISCUSSION

6. The forfeiture amount in this case was assessed in accordance with Section 503 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*

³ Tower owners are required to report any obstruction lighting outages to the nearest Flight Service Station or FAA office immediately if the outage is not corrected within 30 minutes. See 47 C.F.R. § 17.48(a). The FAA then issues a NOTAM, a written advisory to aircraft pilots regarding a hazard or potential hazard of which they should be aware. A NOTAM expires automatically after 15 days, unless the tower owner calls the FAA to extend the NOTAM.

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

Guidelines, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Policy Statement*”). In examining InfoAge’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

7. Section 17.51(b) of the Rules provides that all high and medium intensity obstruction lighting on antenna structures must be exhibited continuously unless otherwise specified in the ASR. InfoAge asserts that it did not willfully violate Section 17.51(b). We disagree. Section 312(f)(1) of the 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”⁷ 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). Moreover, 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). InfoAge willfully violated Section 17.51(b) because it consciously and deliberately switched the lighting from the daytime mode (white strobe) to the nighttime mode (blinking red) at a time when the daytime lighting was required to be on.

8. InfoAge argues that the statement in the *NAL* that “no lights were illuminated on the tower structure” is incorrect because a blinking red light was operating on the tower. However, at the time of the inspection, the FCC agents observed no lights, either blinking red or white strobe, illuminated on the tower. In any event, even assuming that there was a blinking red light operating on the tower, InfoAge was still in violation of Section 17.51(b), which requires operation of the tower’s white strobe light during daytime hours. Moreover, it is immaterial whether InfoAge “intentionally disconnected” the white strobe light or simply switched the tower’s lighting from daytime to nighttime mode. It is undisputed that at the time of the inspection the tower’s daytime lighting was not operating as required by Section 17.51(b). Further, while InfoAge asserts that the switching malfunction was probably the result of vandalism from area residents, the fact remains that InfoAge did not properly light the tower based on its decision to switch to a blinking red light instead of the required white strobe.

9. We also disagree with InfoAge’s assertion that the violation in this case was minor. The Commission considers tower lighting violations to be very serious due to the danger posed to aircraft. We note, in this regard, that InfoAge’s tower is located approximately two miles from the Clearwater Airpark. The FAA has determined that the use of a white strobe light on the tower during the daytime is the minimum lighting that will produce an acceptable level of safety to air navigation. The use of a red blinking light during daytime hours greatly reduces the tower’s visibility and may impair aviation safety. Thus, InfoAge’s violation caused a risk to safety. Additionally, we note that InfoAge’s remedial actions to correct the violation, while commendable, are not a mitigating factor. *See Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973). However, after considering InfoAge’s overall history of compliance with the Commission’s rules, we conclude that it is appropriate to reduce the forfeiture from \$10,000 to \$8,000.

10. Finally, although InfoAge’s failure to post the ASR number was not a basis for the forfeiture proposed in the *NAL*, we note that photographs taken at the time of the inspection clearly show

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 U.S.C. § 312(f)(1).

that the ASR number was not posted either on the base of the tower or on the sign attached to the fence surrounding the tower.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,⁸ and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,⁹ American InfoAge, LLC, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for willful violation of Section 17.51(b) 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.¹⁰ 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 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. 20554.¹¹

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to American InfoAge, LLC, 2727 Ulmerton Road, Suite 230, Clearwater Florida 33762, Attn: Jim Bondurant, and to its counsel, Darryl R. Richards, Esq., Johnson, Blakely, Pope, Bokor, Ruppel & Burns, P.A., P.O. Box 1100, Tampa, Florida 33601.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁸ 47 U.S.C. § 503(b).

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

¹⁰ 47 U.S.C. § 504(a).

¹¹ See 47 C.F.R. § 1.1914.