

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

In the Matter of	)	
	)	
SpectraSite Communications, Inc.	)	File No. EB-01-TP-157
	)	
Cary, North Carolina	)	NAL/Acct. No. 200132700006
	)	
	)	

**FORFEITURE ORDER**

**Adopted: October 1, 2001**

**Released: October 3, 2001**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) against SpectraSite Communications, Inc. (“SpectraSite”) for willful violation of Section 17.51(a) of the Commission’s Rules (“Rules”).<sup>1</sup> The violation involved SpectraSite’s failure to exhibit red obstruction lighting from sunset to sunrise, in accordance with Section 17.51(a) of the Rules.

**II. BACKGROUND**

2. On April 5, 2001, at approximately 8:30 p.m., two agents from the Commission's Tampa, Florida Field Office (“Tampa Office”) observed an unlighted tower on Interstate 75 near Ocala, Florida. Further investigation revealed that the tower was required to be lighted and that it was owned by SpectraSite. On April 25, 2001, the Tampa Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to SpectraSite for \$10,000.<sup>2</sup> On May 24, 2001, SpectraSite filed a response to the NAL. In its response, SpectraSite requests reduction of the forfeiture amount. SpectraSite does not dispute that the violation occurred, but argues that the violation was not willful or repeated.<sup>3</sup> SpectraSite explains that it monitors the lighting of the Ocala tower through its contractor, a monitoring service. SpectraSite further explains that its monitoring service had received approximately six periodic indications of an obstruction light outage in the several days prior to April 5, 2001. In each instance, there were subsequent indications

<sup>1</sup> 47 C.F.R. § 17.51(a).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200132700006 (Enf. Bur., Tampa Office, released April 25, 2001).

<sup>3</sup> The NAL did not state that SpectraSite's violation was repeated. Therefore, the issue of whether the violation was repeated will not be addressed here.

that the obstruction lighting was functioning properly. SpectraSite acknowledges that this type of signal pattern indicated a potential for malfunctioning equipment, but asserts that its monitoring service did not interpret the pattern as an obstruction lighting outage. Further, SpectraSite contends that it corrected the outage within two days of receiving the *NAL*.

### III. DISCUSSION

3. Section 17.51(a) of the Rules requires that all red obstruction lighting be exhibited from sunset to sunrise unless otherwise specified. When the red obstruction lighting on SpectraSite's tower was not exhibited at 8:30 p.m. on April 5, 2001, this was a violation of Section 17.51(a) of the Rules.

4. Section 17.47 of the Rules<sup>4</sup> provides that owners of antenna structures which are registered with the Commission and which have been assigned lighting specifications shall make a visual observation every 24 hours of the antenna structure's lights, or observe an automatic properly maintained indicator designed to register any failure of such lights, to insure that all such lights are functioning properly. Alternatively, antenna structure owners may 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. SpectraSite chose to employ a monitoring service which would monitor its tower lighting and notify it of any outages, which is permissible under the Rules. SpectraSite states that the electronic monitoring device utilized by its monitoring service indicated approximately six periodic light outages in the several days prior to April 5, 2001, the date the agents observed the light outage. As SpectraSite concedes, this signal pattern indicated a potential for malfunctioning equipment. SpectraSite's violation of Section 17.51(a) of the Rules was willful<sup>5</sup> because, even though its monitoring service had approximately six indications of obstruction light outages, its monitoring service failed to visually inspect the tower lights to insure that they were functioning properly. The Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors.<sup>6</sup> Thus, SpectraSite is responsible for the acts and omissions of its monitoring service. Finally, although SpectraSite took expedient measures to correct the violation, its remedial actions, while commendable, are not a mitigating factor.<sup>7</sup>

### IV. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>8</sup> and Sections 0.111, 0.311 and 1.80(f)(4) of the

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<sup>4</sup> 47 C.F.R. § 17.47.

<sup>5</sup> 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 ...." 47 U.S.C. § 312(f)(1). 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).

<sup>6</sup> *See, e.g., Netcom Technologies, Inc.*, 16 FCC Rcd 9524, 9526 (Enf. Bur. 2001); *MTD, Inc.*, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, 35 FCC 2d 361 (1972).

<sup>7</sup> *E.g., Puerto Rico Tower Co., Inc.*, 16 FCC Rcd 271, 273 (Enf. Bur. 2001); *Crown Communications, Inc.*, 15 FCC Rcd 21937, 21939 (Enf. Bur. 2000) (both citing *Station KGV L, Inc.*, 42 FCC 2d 258, 259 (1973)).

<sup>8</sup> 47 U.S.C. § 503(b).

Rules,<sup>9</sup> SpectraSite Communications, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violating Section 17.51(a) of the Rules by failing to exhibit red obstruction lighting from sunset to sunrise on April 5, 2001.

6. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules,<sup>10</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>11</sup> 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. 200132700006. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>12</sup>

7. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by Certified Mail, Return Receipt Requested to SpectraSite Communications, Inc., 100 Regency Forest Drive, Cary, North Carolina 27511, and its counsel M. Anne Swanson, Esq. at Dow Lohnes & Albertson, 1200 New Hampshire Avenue, Suite 800, Washington, DC 20036.

**FEDERAL COMMUNICATIONS COMMISSION**

David H. Solomon  
Chief, Enforcement Bureau

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<sup>9</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>10</sup> 47 C.F.R. § 1.80.

<sup>11</sup> 47 U.S.C. § 504(a).

<sup>12</sup> See 47 C.F.R. § 1.1914.