

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

In the Matter of)	
)	
SpectraSite Communications, Inc.)	File No. EB-00-SF-672
)	
Cary, North Carolina)	NAL/Acct.No. 20013276002

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 11, 2001

Released: January 16, 2001

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find SpectraSite Communications, Inc. (“SpectraSite”), Cary, NC, apparently liable for a forfeiture in the amount of seventeen thousand dollars (\$17,000) for violations of Section 17.57 and Section 17.4(g), of the Commission’s rules relating to registration of antenna structures.¹ Respectively, these sections require that radio antenna structure owners report ownership changes and properly post antenna structure registration (ASR) numbers. We find that during the period of July 21, 2000 through October 27, 2000 SpectraSite failed to comply with the requirement to 1) change ownership information in three instances; and 2) post Antenna Structure Registration Numbers in four instances. A list of the specific violations is attached. *See* Attachment 1.

II. BACKGROUND

2. The Commission’s antenna structure painting, lighting and registration requirements operate in concert with Federal Aviation Administration (“FAA”) regulations to ensure that antenna structures do not present hazards to air navigation. Generally, our rules require that antenna structures located close to airports or that are greater than 200 feet in height comply with painting and lighting specifications designed to ensure air safety. We require antenna structure owners to register antenna structures with the Commission and post ASR numbers at the base of antenna structures to allow for easy contact if problems arise. The Commission’s Rules requiring antenna structure registration for all antenna structures that may pose a hazard to air navigation have been in effect since July 1, 1998.² We have repeatedly advised antenna structure owners that all existing, unregistered antenna structures subject to our rules must be registered *immediately* or

¹ 47 C.F.R. §§ 17.57 and 17.4(g).

² 47 C.F.R. § 17.4(a)(2).

the owners face a monetary forfeiture or other enforcement action.³

3. Because of the significant public safety concern related to antenna structure registration, Enforcement Bureau field agents regularly inspect antenna structures to determine compliance with the Commission's registration and antenna structure painting and lighting requirements. During routine inspections of antenna structures owned by SpectraSite from July 21, 2000 to October 27, 2000, Bureau field agents discovered four antenna structures that did not have the ASR numbers posted and three antenna structures with incorrect ownership information on file with the FCC. These violations are listed by FCC case number, date of violation, rules violated, structure location and ASR number in Attachment 1.

III. DISCUSSION

4. Based on the evidence before us, we find that SpectraSite Communications, Inc. apparently willfully and repeatedly⁴ violated Section 17.4(g) and Section 17.57 of the Commission's Rules⁵ by its failure to comply with the Commission's Rules regarding the registration of antenna structures and posting of antenna structure registration numbers.

5. Section 503(b) of the Act authorizes the Commission to assess a forfeiture of up to \$11,000 for each violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.⁶ In exercising such authority, we are to 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 such other matters as justice may require."⁷

³ Antenna structure owners were required to register existing antenna structures as of July 1, 1998 and to register new antenna structures prior to construction. *Streamlining the Commission's Antenna Structure Clearance Procedure*, 11 FCC Rcd 4272 (1995). Subsequent to the expiration of the filing period, the Commission issued a Public Notice warning antenna structure owners to register any unregistered antenna structures subject to our requirements immediately or face possible monetary forfeitures or other enforcement action. *Public Notice, "No-Tolerance Policy Adopted for Unregistered Antenna Structures*, 1999 WL 10060 (WTB 1999).

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). The term "repeated" is the commission or omission of an act more than once. 47 U.S.C. § 312(f)(2).

⁵ 47 C.F.R. §§ 17.4(g) and 17.57.

⁶ Section 503(b)(2)(B) provides for forfeitures up to \$10,000 for each violation. See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80. The Commission amended its Rules by adding a new subsection to its monetary forfeiture provisions that incorporates by reference the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, Sec. 31001, 110 Stat. 1321), enacted on April 26, 1996. Thus, the statutory maximum pursuant to Section 503(b)(2)(B) increased from \$10,000 to \$11,000. See amendment of Section 1.80 of the Commission's Rules, 12 FCC Rcd 1038 (1997).

⁷ 47 U.S.C. § 503(b)(2)(D); Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the

6. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*"), the base amount is \$3,000 for each of SpectraSite's three failures to file required forms or information (*i.e.*, failure to file ownership change information). The Commission's Forfeiture Policy Statement does not establish a base forfeiture amount for failure to post the antenna structure registration number.⁸ The Commission has determined that an appropriate base amount is \$2,000 per violation.⁹ Application of the base amounts to each of the seven violations leads to a proposed forfeiture of \$17,000. We find no basis for making any adjustments to this amount.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,¹⁰ Section 1.80 of the Commission's Rules,¹¹ and the authority delegated in Sections 0.111 and 0.311 of the Commission's Rules,¹² SpectraSite Communications, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of seventeen thousand dollars (\$17,000) for violating Section 17.4(g) and Section 17.57 of the Commission's Rules.¹³

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules,¹⁴ within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, SpectraSite Communications, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection

Rules to Incorporate the Forfeiture Guidelines, Report and Order, 12 FCC Rcd at 17087, 17100-01, para. 27 (1997).

⁸ The fact that the Guidelines do not specify a base amount does not indicate that no forfeiture should be imposed. The Guidelines state that "... any omission of a specific rule violation from the . . . [forfeiture guidelines] . . . should not signal that the Commission considers any unlisted violation as nonexistent or unimportant. *Forfeiture Guidelines*, at 17,099, para. 22. The Commission retains the discretion, moreover, to depart from the Guidelines and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in section 503 of the Act. *Id.*

⁹ *American Tower Corporation*, FCC 01-9 (released: January 16, 2001).

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 C.F.R. § 1.80.

¹² 47 C.F.R. §§ 0.111, 0.311.

¹³ 47 C.F.R. §§ 17.4(g) and 17.57.

¹⁴ 47 C.F.R. § 1.80.

Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 20013276002 referenced above.

10. The response if any must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Technical and Public Safety Division and must include the NAL/Acct. No. 20013276002.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.¹⁵

13. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Maria Gabriel, Manager, FAA/FCC Compliance, SpectraSite Communications, Inc., 100 Regency Forest Drive, Suite 400, Cary, NC 27511.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁵ See 47 C.F.R. § 1.1914.

Attachment #1

Notices of Violation (NOVs) issued to SpectraSite from July 21, 2000 to October 27, 2000

Case Number	Violation Date	Rule Violated	Tower City Registration Number	Comment
EB-00-AT-1308	10/27/00	17.57	Forsyth, GA 1028029	Failed to change ownership
EB-00-AT-1297	10/23/00	17.57	Fairburn, GA 1021656	Failed to change ownership
EB-00-DT-775	9/27/00	17.4(g)	Washington Court House, OH 1210479	Failed to post registration number
EB-00-OR-135	8/21/00	17.4(g)	Collinsville, MS 1214339	Failed to post registration number
EB-00-DT-584	8/16/00	17.4(g)	Conover, OH 1209107	Failed to post registration number
EB-00-DV-413	7/21/00	17.4(g) 17.57	Bernalillo, NM 1063675	Failed to post registration number; Failed to change ownership