

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

In the Matter of	)	
	)	
Morris Communications, Inc.	)	File No. EB-02-AT-217
	)	
Owner of Unregistered Antenna Structure in	)	NAL/Acct. No. 200232480011
Adrian, South Carolina	)	
	)	FRN 0001-8848-57
	)	

**FORFEITURE ORDER**

**Adopted: April 29, 2003**

**Released: May 1, 2003**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of two thousand four hundred dollars (\$2,400) to Morris Communications, Inc. (“*Morris*”), owner of the antenna structure located at coordinates 33° 58’ 12” North latitude and 79° 02’ 03” West longitude in Adrian, South Carolina, for willful violation of Section 17.4(a) of the Commission’s Rules (“*Rules*”).<sup>1</sup> The noted violation involves Morris’s failure to register its antenna structure.

2. On July 8, 2002, the Commission’s Atlanta, Georgia Field Office (“*Atlanta Office*”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Morris for a forfeiture in the amount of three thousand dollars (\$3,000).<sup>2</sup> Morris filed a response to the *NAL* on August 7, 2002,<sup>3</sup> and supplemented its response on August 13, 2002.

**II. BACKGROUND**

3. On May 7, 2002, an agent from the Atlanta Office inspected the tower located at coordinates 33° 58’ 12” North latitude and 79° 02’ 03” West longitude in Adrian, South Carolina. Although the tower was over 200 feet in height, and therefore was required to be registered with the Commission,<sup>4</sup> the agent observed that there was no antenna structure registration (“*ASR*”) number posted

<sup>1</sup> 47 C.F.R. § 17.4(a).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232480011 (Enf. Bur., Atlanta Office, released July 8, 2002).

<sup>3</sup> Morris’s pleading was captioned as a “petition for reconsideration,” rather than a response to the *NAL*. Consistent with Section 1.80(f)(3) of the Rules, 47 C.F.R. § 1.80(f)(3), we will treat this pleading as a response to the *NAL*.

<sup>4</sup> See 47 C.F.R. § 17.7(a).

on or near the base of the tower. A subsequent search of the Commission's ASR database indicated that the tower was not registered.

4. On May 22, 2002, the agent spoke with Trace Morris, president of Morris, and verified that the antenna structure was owned by Morris and was not registered with the Commission. Mr. Morris stated that Morris had previously attempted to register the tower, but that the Commission had returned its application.

5. On May 29, 2002, Morris sent the Atlanta Office a copy of a tower registration application (FCC Form 854) for the Adrian tower that was filed twice in 1999. The application was date stamped "received" by the Commission's Wireless Telecommunications Bureau on January 29, 1999, and again on August 9, 1999. The Commission returned the January 29, 1999 application to Morris with a cover letter dated February 8, 1999, which indicated that the application was being returned because Item 28 on the application, the environmental assessment question, was incomplete. Morris apparently resubmitted the same application form to the Commission on August 9, 1999, as evidenced by the second date stamp. Morris stated that the Commission returned its second submission of the application without explanation. Morris filed a new application to register the tower on May 29, 2002.<sup>5</sup>

6. On July 8, 2002, the Atlanta Office issued an *NAL* to Morris for a \$3,000 forfeiture for failing to register its antenna structure in willful violation of Section 17.4(a) of the Rules. In its response to the *NAL*, Morris admits that its tower was not registered, but argues that the forfeiture should be rescinded because it did not "willfully" violate the rules. Morris asserts that it made two good faith attempts to register the structure in 1999, but the Commission first rejected its application on erroneous grounds and later returned it without explanation. According to Morris, because the Commission returned its application without explanation, it received no guidance from the Commission as to when or if it would have been required to resubmit its application. Morris maintains that its failure to submit the application a third time was inadvertent and argues that the Commission should not impose a forfeiture on it when the Commission failed to provide it with the information it needed to timely and completely resubmit its application. Morris also asserts that it submitted another tower registration application almost immediately after the agent notified it that the tower was not registered. Finally, Morris argues that if the forfeiture is not rescinded, the forfeiture should be reduced because the violation was minor, it displayed good faith after being informed of the violation, and it has a history of compliance with the Commission's rules.

### III. DISCUSSION

7. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, ("Act"),<sup>6</sup> Section 1.80 of the Rules,<sup>7</sup> and *The Commission's*

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<sup>5</sup> On June 3, 2002, the Commission dismissed Morris's tower registration application because the geographic coordinates and elevation height for the antenna structure specified in the application did not match the geographic coordinates and elevation height specified in the FAA study on file with the Commission for that structure. Morris subsequently filed for a new FAA study and resubmitted its registration application. On August 13, 2002, the Commission granted Morris's ASR application and issued a registration number (ASR No. 1235383) for the tower.

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. § 1.80.

*Forfeiture Policy Statement 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) (“*Policy Statement*”). In examining Morris’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.<sup>8</sup>

8. Section 17.4(a) of the Rules provides that, effective July 1, 1996, the owner of any proposed or existing antenna structure that requires notification to the Federal Aviation Administration (“FAA”) must register the structure with the Commission. Section 17.4(a)(2) of the Rules provides that the owner of an antenna structure that had been assigned painting or lighting requirements prior to July 1, 1996 must register the structure prior to July 1, 1998. Morris admits that its Adrian tower was not registered at the time of the inspection on May 7, 2002. Accordingly, we find that Morris violated Section 17.4(a) of the Rules.

9. Morris argues that its violation of Section 17.4(a) was not willful because it made two good faith efforts to register the tower in 1999. We disagree. The term “willful,” as used in Section 503(b) of the Act, does not require a finding that the rule violation was intentional or that the violator was aware that it was committing a rule violation.<sup>9</sup> Rather, the term “willful” simply requires that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission’s rules.<sup>10</sup> Section 17.4(a)(2) required the owner of a tower that had been assigned painting or lighting requirements prior to July 1, 1996 to register the structure prior to July 1, 1998. Morris’s first ASR application for the Adrian tower, filed late on January 29, 1999,<sup>11</sup> was dismissed because Morris did not provide a response to Item 28, the environmental assessment question. Morris asserts that this application was dismissed erroneously because it did provide a response to Item 28 in the application. In support of this assertion, Morris provides a copy of the application date stamped by the Wireless Telecommunications Bureau on January 29, 1999, and again on August 9, 1999, which includes a response to Item 28. However, this copy establishes only that Morris provided a response to Item 28 when it resubmitted the application on August 9, 1999. It does not establish that the original application filed by Morris on January 29, 1999 was complete.<sup>12</sup>

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<sup>8</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>9</sup> 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,’ ... means the conscious and 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 authorized by this Act ....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991) (“*Southern California*”).

<sup>10</sup> See *Southern California*, 6 FCC Rcd at 4387.

<sup>11</sup> We note that ASR applications for existing antenna structures in South Carolina were required to be filed during a 30-day filing window from April 1 to April 30, 1998. *Streamlining the Commission’s Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission’s Rules Concerning Construction, Marking and Lighting of Antenna Structures*, 11 FCC Rcd 4272, 4279 (1995) (“*Streamlining*”).

<sup>12</sup> Indeed, we note that Morris’s response to Item 28 on this copy of the application appears to be in a different handwriting than the rest of the application.

10. Morris maintains that when it resubmitted the application on August 9, 1999, the Commission returned the application without explanation. It is not entirely clear from the record before us why Morris's application was returned a second time.<sup>13</sup> We note, however, that in the cover letter accompanying the returned January 29, 1999 application, the Wireless Telecommunications Bureau stated that Morris must resubmit the application within 60 days of the return date of the letter, February 8, 1999, or its registration would "purge" from the Commission's database. Morris did not resubmit the application until more than six months later. Morris offers no explanation as to why it waited more than six months to resubmit the application. We further note that the geographic coordinates for the antenna structure which Morris provided in the returned application were apparently incorrect. In this regard, Morris indicates that in the Spring of 2000, it contacted a land survey company to obtain certification regarding the specifics of the tower in order to ensure the accuracy of this information in preparation for resubmitting the application to the Commission. The land survey company provided Morris corrected coordinates for the tower in June 2000.<sup>14</sup> Morris states that it inadvertently failed to resubmit the application after it obtained the tower certification from the land survey company. Under these circumstances, particularly given Morris's admission that it failed to resubmit the application after obtaining the corrected tower coordinates from the land survey company, we find unpersuasive Morris's assertion that it did not resubmit its application because the Commission failed to provide it with the information it needed to timely and completely resubmit the application. In addition, although Morris claims that its failure to resubmit the application was inadvertent, Morris offers no evidence that it had prepared an application or that it had made any efforts whatsoever to comply with the registration requirements subsequent to obtaining the tower certification from the land survey company.

11. Morris also asserts that the forfeiture should be rescinded because it submitted another tower registration application almost immediately after the FCC agent notified it that the tower was not registered, and thus acted in good faith. However, Morris's remedial efforts to correct the violation do not warrant either rescission or reduction of the forfeiture amount.<sup>15</sup> Forfeitures may be reduced in appropriate cases for good faith efforts to comply *prior* to FCC detection of the violation, not *subsequent* to FCC detection.

12. Morris further asserts that the forfeiture should be reduced because the violation was minor and it has a history of overall compliance with the Commission's rules. We disagree with Morris's assertion that the violation was minor because it received a "no hazard" determination for the tower from the FAA<sup>16</sup> and complied with the FAA's painting and lighting specifications for the tower. Although we

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<sup>13</sup> Although current Commission records do not indicate why the August 9, 1999 application was returned to Morris, we think it is unlikely that the application was returned without any explanation. However, even assuming *arguendo* that the Commission returned the application to Morris without any explanation, Morris does not explain why it did not even attempt to ascertain why the application was returned.

<sup>14</sup> The returned application listed the geographic coordinates for the tower as 33° 58' 05" North latitude and 79° 02' 00" West longitude. The tower certification provided by the land survey company in June 2000 indicates that the coordinates for the tower are actually 33° 58' 11.5" North latitude and 79° 02' 03" West longitude. The FAA requires a new aeronautical study for corrections in latitude or longitude of one second or more, or a correction in height of one foot or more. In such a case, the tower owner must seek a new FAA determination of "no hazard" prior to registration. See *Streamlining*, 11 FCC Rcd at 4287.

<sup>15</sup> See e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *Station KGV L, Inc.*, 42 FCC 2d 258, 259 (1973).

<sup>16</sup> We note that Morris's 1984 "no hazard" determination from the FAA was no longer valid because that

recognize that failure to register a tower is relatively minor in comparison to other tower violations, such as failure to comply with prescribed tower painting and lighting requirements, that factor has already been taken into account in setting the base forfeiture amount for failure to register an antenna structure at \$3,000.<sup>17</sup> Furthermore, we have previously rejected the argument that a tower owner's failure to post an ASR number on or near the base of an antenna structure is a minor violation, citing the potential impact on public safety that an ASR posting violation might have.<sup>18</sup> We similarly believe that failure to register an antenna structure, which is a more serious violation than failure to post an ASR number, is not a minor violation due to the potential impact on public safety.<sup>19</sup> Nevertheless, we agree that reduction of the forfeiture amount from \$3,000 to \$2,400 is warranted based on Morris's history of overall compliance with the Commission's rules.

13. We have examined Morris's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Morris willfully violated Section 17.4(a) of the Rules, but we reduce the \$3,000 forfeiture proposed for this violation to \$2,400 in light of Morris's history of compliance with the Commission's rules.

#### IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503 of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>20</sup> Morris Communications Group, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two thousand four hundred dollars (\$2,400) for willful violation of Section 17.4(a) of the Rules.

15. 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.<sup>21</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,

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determination was based on incorrect geographic coordinates. *See supra* n. 14.

<sup>17</sup> We note that the base forfeiture amount for failure to comply with tower painting or lighting requirements is \$10,000. *See* 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section I. Base Amounts for Section 503 Forfeitures; *Forfeiture Policy Statement*, 12 FCC Rcd at 17114, Appendix A, Section I.

<sup>18</sup> *See AT&T Wireless Services, Inc.*, 16 FCC Rcd 6805, 6806 (Enf. Bur. 2001).

<sup>19</sup> In support of its assertion that the violation was minor, Morris cites *Motorola, Inc.*, 12 FCC Rcd 15268 (Comp. & Inf. Bur. 1997) ("*Motorola*"), a case in which the former Compliance and Information Bureau ("Bureau") reduced a forfeiture issued to a tower owner for a tower lighting violation from \$10,000 to \$5,000. Contrary to Morris's suggestion, the Bureau did not reduce the forfeiture in *Motorola* because it determined that the light outage was a minor violation. Rather, the Bureau reduced the forfeiture in that case because Motorola presented evidence that it had notified the FAA of the light outage *prior* to the inspection by the FCC agents and stayed in contact with the FAA until the light outage was corrected. Thus, unlike the instant case, the Bureau found that Motorola's correction of the light outage "stemmed from Motorola's own efforts and not a hasty attempt to comply due to the FCC inspection." 12 FCC Rcd at 15269.

<sup>20</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>21</sup> 47 U.S.C. § 504(a).

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Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232480011 and FRN 0001-8848-57. 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>22</sup>

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to Morris Communications, Inc., P.O. Box 16419, Greenville, South Carolina 29606, and to its counsel, Frederick M. Joyce, Esq., Alston & Bird, L.L.P., 601 Pennsylvania Avenue, N.W., North Building, 10th Floor, Washington, D.C. 20004-2601.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>22</sup> See 47 C.F.R. § 1.1914.