

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

|                   |   |                            |
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| In the Matter of  | ) |                            |
|                   | ) |                            |
| Sutro Corporation | ) | File No. EB-02-PO-136      |
|                   | ) |                            |
|                   | ) | NAL/Acct. No. 200232920001 |
|                   | ) |                            |
| Payette, Idaho    | ) | FRN 0003-2822-39           |

**FORFEITURE ORDER**

**Adopted: October 9, 2003**

**Released: October 14, 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 (\$2,400) to Sutro Corporation (“Sutro”), for repeated violation of Section 17.4(a) of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violation involves Sutro’s failure to register an antenna structure.

2. On July 31, 2002, the Commission’s Portland, Oregon, Resident Agent Office (“Portland Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Sutro for a forfeiture in the amount of three thousand dollars (\$3,000).<sup>2</sup> Sutro filed its response to the *NAL* on August 16, 2002.

**II. BACKGROUND**

3. Sutro is the owner of a 405 foot antenna structure located in Payette, Idaho, at the coordinates 40-03-44 North Latitude, 116-54-22 West Longitude (“the Payette tower”). Sutro rents space on the Payette tower to various communications users, including broadcast stations. On May 23, 2002, following his investigation of an interference problem involving the Payette tower, an agent at the Portland Office searched the Commission’s antenna registration records and determined that the Payette tower was not registered.

4. The agent determined from property records that Sutro owns the Payette tower. On June 11, 2002, the agent contacted Sutro’s president, John H. Runkle, and advised Mr. Runkle that the Payette tower must be registered. On July 30, 2002, the agent again searched the Commission’s antenna registration records and again found that the Payette tower was not registered.

<sup>1</sup> 47 C.F.R. § 17.4(a).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232920001 (Enf. Bur., Portland Office, released July 31, 2002).

5. On July 31, 2002, the Portland Office issued a *NAL* for a forfeiture in the amount of \$3,000 to Sutro for failure to register the Payette tower, in willful and repeated violation of Section 17.4(a) of the Rules. In its response to the *NAL*, Sutro admits that the Payette tower was unregistered. Sutro asserts that it made several unsuccessful attempts to register the Payette tower before eventually registering it on August 27, 2002.<sup>3</sup> Sutro seeks cancellation or reduction of the proposed monetary forfeiture, arguing that its attempts to register the tower and a history of overall compliance mitigate the violations. Sutro also contends that, if a forfeiture is imposed, it should be no more than \$500.

### III. DISCUSSION

6. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and *The Commission’s 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 Sutro’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>6</sup>

7. Section 17.4(a) of the Rules required the owners of existing antenna structures that were assigned painting or lighting requirements before July 1, 1996, to register those antenna structures no later than July 1, 1998. The Payette tower was subject to this requirement.<sup>7</sup> The FCC agent’s investigation and Sutro’s statements establish that the Payette tower was unregistered from July 1, 1998, until August 27, 2002. We conclude that Sutro repeatedly violated Section 17.4(a) of the Rules.<sup>8</sup>

8. Section 503(b) of the Act gives the Commission authority to assess a forfeiture penalty against any person if the Commission determines that the person has “willfully or repeatedly” failed to comply with the provisions of the Act or with any rule, regulation or order issued by the Commission. In light of our determination that Sutro’s violations were repeated, it is not necessary to determine whether they were also willful.<sup>9</sup>

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<sup>3</sup> A search of the Commission’s tower registration data base indicates that the Payette tower was registered on August 27, 2002, with antenna structure registration number 1235627.

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> The Commission’s TOWPUB tower data base indicates that the Payette tower was assigned painting or lighting requirements before July 1, 1996.

<sup>8</sup> As provided by 47 U.S.C. § 312(f)(2), a continuous violation is “repeated” if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>9</sup> *Koke, Inc.*, 23 FCC 2d 191 (1970).

9. Sutro's unsuccessful attempts to register the Payette tower do not mitigate its violations of Section 17.4(a). Sutro filed its first application (FCC Form 854) to register the Payette tower on June 26, 1998.<sup>10</sup> The Commission dismissed that application because it provided coordinates which differed from the coordinates indicated in the Federal Aviation Administration ("FAA") clearance for the Payette tower. The August 3, 1998, letter dismissing Sutro's first registration application instructed Sutro to check the accuracy of the coordinates it provided and, if the coordinates were accurate, file Form 7460-1 with the FAA (to obtain a new clearance with the correct coordinates) and also a new FCC Form 854 within 90 days (by November 1, 1998). Sutro, however, did not file FAA Form 7460-1 until February 24, 1999, and did not file FCC Form 854 until January 28, 2000, nearly 15 months late. The Commission returned Sutro's second registration application on February 8, 2000, because Sutro submitted it on an outdated form. Sutro did not file its third registration application until August 8, 2002 -- 2 ½ years after the dismissal of its second application and 64 days after Sutro's president agreed to register the tower immediately. Sutro explains this delay by asserting that it expected to file its third registration application after receiving a new FAA clearance but did not learn of the new clearance until it contacted the FAA following the issuance of the *NAL*.<sup>11</sup> This explanation is completely inadequate because of the extreme length of the delay and because, as explained in the August 3, 1998, dismissal letter, Sutro did not need to wait for a new FAA clearance before filing its registration application. We find that the lengthy delays in filing Sutro's second and third registration applications evince a lack of diligence and that Sutro's attempts to register its tower do not mitigate its violation.

10. No mitigation is warranted on the basis of Sutro's correction of the violation. As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."<sup>12</sup>

11. If a forfeiture is imposed, Sutro requests that its amount be reduced to no more than \$500. Sutro cites *C.W.H. Broadcasting, Inc.*, 17 FCC Rcd 14324 (Enf. Bur. 2002), in which a monetary forfeiture imposed for violation of Sections 17.4(a), 17.51(a) [tower lighting]<sup>13</sup> and 73.49 [fencing]<sup>14</sup> of the Rules was reduced to \$500. *C.W.H. Broadcasting, Inc.*, is inapposite. The reduction in *C.W.H. Broadcasting, Inc.*, was primarily based on financial hardship, which is not present in this case.

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<sup>10</sup> We note that ASR applications for existing antenna structures in Idaho were required to be filed during a 30 day filing window from February 1 to February 28, 1998. See *Streamlining the Commission's Antenna Structure Clearance Procedure*, 11 FCC Rcd. 4272, 4302 (1995). Therefore, contrary to Sutro's response, the application was not timely.

<sup>11</sup> The FAA issued a new clearance on February 28, 2000.

<sup>12</sup> See also *Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22629 (2002); *Radio Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966).

<sup>13</sup> 47 C.F.R. § 17.51(a).

<sup>14</sup> 47 C.F.R. § 73.49.

12. We do, however, find that Sutro has a history of overall compliance and, accordingly, reduce the forfeiture amount to \$2,400.<sup>15</sup>

13. We have examined Sutro'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 Sutro repeatedly violated Section 17.4(a) of the Rules and we find that, although cancellation of the proposed monetary forfeiture is not warranted, reduction of the forfeiture amount to \$2,400 is appropriate.

#### IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>16</sup> Sutro **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two thousand four hundred dollars (\$2,400) for failure to register its antenna structure, in repeated 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>17</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 reference NAL/Acct. No. 200232920001 and FRN 0003-2822-39. 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>18</sup>

16. **IT IS FURTHER ORDERED** that copies of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Sutro Broadcasting Corporation., c/o John H. Runkle, P.O. Box 1826, Boise, Idaho 83701, and to its counsel, Matthew H. McCormick, Esq., Reddy, Begley & McCormick, LLP, 2175 K Street, N.W., Suite 350, Washington, D.C. 20037-1845.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>15</sup> In prior cases, we have indicated that the length of a violation could negate any credit for history of overall compliance. *See, TV 45 Productions, Inc.*, 17 FCC Rcd 11259, 11261 (Enf. Bur. 2002); *Commercial Radio Service Corp.*, 16 FCC Rcd 3543, 3545 (Enf. Bur., Tech. & Pub. Safety Div. 2001). We now conclude that this principle should be applied only in egregious cases. Accordingly, in this case, in the absence of an egregious violation, we provide a reduction for history of overall compliance.

<sup>16</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>17</sup> 47 U.S.C. § 504(a).

<sup>18</sup> *See* 47 C.F.R. § 1.1914.