

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

In the Matter of	)	
	)	File No. EB-02-PL-157
Northern Electric Cooperative	)	
Antenna Structure at Approximately	)	NAL/Acct. No. 200332420001
N 45° 27' 41", W 98° 20' 15",	)	
Bath, South Dakota	)	FRN: 0002-4325-40

**FORFEITURE ORDER**

**Adopted: October 13, 2004**

**Released: October 15, 2004**

By the Assistant Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of three thousand dollars (\$3,000) to Northern Electric Cooperative (“Northern”), the owner of an antenna structure located at approximately N 45° 27' 41”, W 98° 20' 15”, in Bath, South Dakota, for willful and repeated violation of Section 17.4(a) of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violation involves Northern’s failure to register its antenna structure.

2. On April 18, 2003, the Commission’s St. Paul District Office (“St. Paul Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Northern for a forfeiture in the amount of three thousand dollars (\$3,000).<sup>2</sup> Northern filed a response to the *NAL* on May 1, 2003.

**II. BACKGROUND**

3. On December 3 and 4, 2002, an agent from the St. Paul Office inspected a painted and lighted antenna structure located at the rear of Northern’s building on Route 12, Bath, South Dakota. The agent measured the coordinates of the structure using a Global Positioning System (GPS) receiver. The agent found no Commission records that the antenna structure had been registered.

4. On January 24, 2003, the St. Paul Office issued a Letter of Inquiry (*LOI*) to Northern, asking, *inter alia*, for information pertaining to the apparently unregistered tower at the rear of Northern’s building. Northern responded on March 13, 2003, stating that the antenna structure had a height of 192’ above ground level, but that in October 2002 an antenna was added to the structure that increased its height to 211’ above ground level.

5. On April 18, 2003, the St. Paul Office issued an *NAL* to Northern for three thousand dollars (\$3,000) for willful and repeated violation of Section 17.4(a) of the Commission’s Rules (“Rules”). Northern responded to the *NAL* on May 1, 2003.

<sup>1</sup> 47 C.F.R. § 17.4(a).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332420001 (released April 18, 2003).

6. Northern states that it believed that the antenna structure was exempt from the Commission's registration requirement because the structure itself was less than 200 feet in height. Northern permits Station WB0TPF<sup>3</sup> to use the antenna structure, and states that it was Station WB0TPF that added the antenna that increased the height of the structure to 211 feet. Northern asserts that after the St. Paul Office agent's inspection, it became aware that the antenna structure required registration with the Federal Aviation Administration ("FAA") and the Commission. Northern indicates that air safety was not viewed as a problem with regard to the 211 foot tower because of the other large guyed towers in the area.

7. Northern argues that it expected Station WB0TPF to notify Northern if the height of the antenna structure necessitated registration. Northern contends that the Commission erred in identifying its actions as willful and repeated, and that the fine was unjustly assessed.<sup>4</sup> Northern, apparently believing that the proposed forfeiture would be owed by Station WB0TPF, argues that Station WB0TPF should not be assessed a fine for putting up an antenna that benefits the community, and asks that the forfeiture be cancelled. Northern states that it will register the tower.

### III. DISCUSSION

8. The *NAL* assessed the proposed forfeiture amount in this case in accordance with Section 503(b) of the Act,<sup>5</sup> Section 1.80 of the Rules,<sup>6</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 Northern's response to the *NAL*, 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 such other matters as justice may require.<sup>7</sup>

9. Section 503 of the Communications Act of 1934, as amended ("Act"),<sup>8</sup> authorizes the Commission to impose forfeitures for "willful" and/or "repeated" violations of applicable statutory or regulatory requirements. Specifically, Sections 503(b)(1)(A) and (B) of the Act provide that any party who "willfully" and/or "repeatedly" violates any term or condition of a Commission issued license, permit, certification, or other authorization, or any provision of the Act, or any of the Commission's Rules, shall be liable for a forfeiture penalty.

10. The Act defines "willful" as "the conscious and deliberate commission or omission of an act, irrespective of any intent to violate" the law. Consistent with Congressional intent, the Commission has interpreted "willful" in forfeiture proceedings to mean actions or omissions that are committed knowingly (*i.e.*, that a violator intended to commit the act or omission that was found to have violated a statutory and/or regulatory provision).<sup>9</sup>

11. The Act defines "repeated" as "the commission or omission of such act more than once

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<sup>3</sup> Station WB0TPF is the Ham Radio Club that uses the antenna structure for the SKYWARN weather storm warning system.

<sup>4</sup> Northern Response at 2.

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>8</sup> 47 U.S.C. § 503.

<sup>9</sup> See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4388 ¶ 5 (1991) *recon. denied*, 7 FCC Rcd 3454 (1992).

or, if such commission or omission is continuous, for more than one day.”<sup>10</sup>

12. Section 17.4(a) of the Rules states that the owner of an antenna structure that requires notice of proposed construction to the Federal Aviation Administration (“FAA”), must also register the structure with the Commission.<sup>11</sup> Northern concedes that it is the owner of this antenna structure. Northern’s antenna structure height exceeded 200 feet after Northern’s permittee added an antenna. Accordingly, Northern was required to give notice to the FAA, and register the structure with the Commission. We note that in its response, Northern states that it was aware that the addition of an antenna made the antenna structure taller than 200 feet.

13. The Commission holds the owner of an antenna structure primarily responsible for awareness of and compliance with its Rules.<sup>12</sup> In this case, it appears that Northern erroneously assumed that its permittee was responsible for any tower registration matters. In fact, Northern, as the owner of the tower, is the responsible party. It is well established that mistake or inadvertence resulting in a rule violation does not exonerate the tower owner and the violation is considered to be willful.<sup>13</sup> Accordingly, we conclude that it was Northern’s responsibility to register the antenna structure when its permittee added an antenna that increased the structure’s height to exceed 200 feet. Northern’s failure to register the tower is significant; the Commission has repeatedly found that registration of towers is of utmost importance in the interests of public safety.<sup>14</sup>

14. Section 303(q) of the Act requires the tower owner to maintain painting and lighting of the tower as the Commission prescribes. The Commission’s requirement of tower registration is integral to its oversight of all tower owners’ compliance with painting and lighting specifications. Northern concedes that its antenna structure was unregistered from the time that its permittee added an antenna. Commission records indicate that to date, and notwithstanding its promise to do so, Northern still has not registered the 211 foot antenna structure. In view of this ongoing failure on Northern’s part, we require that it provide a report to the Enforcement Bureau showing that its structure located at approximately N 45° 27’ 41”, W 98° 20’ 15”, is in compliance with the Commission’s Rules and further showing its plan for maintaining future compliance. This report shall be submitted within 30 days of the release date of this *Order*.

15. We have examined Northern’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 Northern willfully and repeatedly violated Section 17.4 of the Rules, and we find no basis for rescinding or reducing the \$3,000 forfeiture for this violation.

#### IV. ORDERING CLAUSES

16. 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>15</sup> Northern Electric Cooperative, owner of the antenna structure

<sup>10</sup> *Id.*

<sup>11</sup> 47 C.F.R. § 17.7(a).

<sup>12</sup> *See, e.g. Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863-64 ¶¶ 6-7 (2002).

<sup>13</sup> *Southern California Broadcasting Company*, 6 FCC Rcd. 4387 (1991)(citing *Vernon Broadcasting, Inc.*, 60 RR2d 1275, 1277 (1986); *Fay Neel Eggleston*, 19 FCC2d 829 (1969)). *See also 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).

<sup>14</sup> *AT&T Wireless Services, Inc.* 16 FCC Rcd. 814, 815 (Enf. Bur. 2001), 17 FCC Rcd. 7891, 7896 (2002); *SpectraSite Communications, Inc.* 17 FCC Rcd. 7884, 7888 (2002).

<sup>15</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

located at approximately N 45° 27' 41", W 98° 20' 15", in Bath, South Dakota, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand dollars (\$3,000) for its violation of Section 17.4(a) of the Rules.

17. **IT IS FURTHER ORDERED** that, pursuant to Section 303(q) of the Act, Northern must submit the reports described in paragraph 14 no later than thirty (30) days from the release date of this *Forfeiture Order* to: Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, Attention: Susan Magnotti.

18. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

19. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Northern Electric Cooperative, West Highway 12, Bath, South Dakota 57427.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon  
Assistant Chief, Enforcement Bureau