

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

In the matter of)	
)	File No. EB-02-BF-338
North Country Repeaters)	
Owner of Antenna Structure # 1009975)	NAL/Acct. No. 200332280008
On Rand Hill)	
Beekmantown, New York)	FRN: 0004-1349-61

FORFEITURE ORDER

Adopted: November 9, 2004

Released: November 12, 2004

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of two thousand dollars (\$2,000) to North Country Repeaters (“North Country”), the owner of Antenna Structure Registration (“ASR”) No. 1009975, for willful and repeated violation of Sections 17.4(g) and 17.50 of the Commission’s Rules (“Rules”).¹ The noted violations involve North Country’s failure to display the ASR number at the base of the tower and failure to maintain the required painting to ensure good visibility of the tower.

2. On March 4, 2003, the Commission’s Buffalo, New York Office (“Buffalo Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to North Country for a forfeiture in the amount of fifteen thousand dollars (\$15,000).² North Country filed a response to the *NAL* on April 7, 2003.

II. BACKGROUND

3. On August 28, 2002, an agent from the Buffalo Office inspected the antenna structure on Rand Hill, in Beekmantown, New York. The agent found that the tower’s paint was chipped and faded, that no ASR number was posted, and that the measured coordinates of the tower did not match the coordinates of any registered with the Commission. On September 9, 2002, the Buffalo Office issued a

¹ 47 C.F.R. §§ 17.4(g) and 17.50.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332280008 (Enf. Bur., Buffalo Office, released March 4, 2003).

Notice of Violation (“NOV”) citing violations of Sections 17.4(a),³ 17.4(g), and 17.50 of the Rules. North Country responded on September 18, 2002, stating that steps had been taken to correct each of the violations. The tower had been repainted, the ASR number was posted at the base of the tower, and correction of the tower’s coordinates with the FAA and Commission was in process.⁴

4. On March 12, 2003, the Buffalo Office issued the subject *NAL* to North Country for fifteen thousand dollars (\$15,000) for apparent willful and repeated violation of Sections 17.4(a), 17.4(g), and 17.50 of the Rules. North Country responded to the *NAL* on April 7, 2003. North Country argues that its violation of the Rules was not willful. With regard to the alleged violation of Section 17.4(a) of the Rules, North Country stated that the tower’s original coordinates, dating from the 1980’s, were calculated with a topographical map prior to the availability of handheld GPS devices. When North Country filed its proposed construction application with the FAA to increase the height of the tower in April 1992, it used those original coordinates. When the Commission began requiring tower registration applications, North Country filed the required documentation, again using the original coordinates.

5. North Country also argues that it painted the tower as required when it was initially constructed and registered with the FAA. It does not comment on its failure to post the registration number.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, (“Act”),⁵ Section 1.80 of the Rules,⁶ 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 North Country’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 such other matters as justice may require.⁷

7. Section 17.4(a) of the Rules requires that the owner of any proposed or existing antenna structure that requires notice of proposed construction to the FAA must register the structure with the Commission and, among other things, include the coordinates of the tower. North Country duly registered its tower, ASR No. 1009975, as required by Section 17.4(a)(2) of the Rules.⁸ It is undisputed, however, the coordinates registered by North Country for its tower were approximately two-tenths of a

³ 47 C.F.R. § 17.4(a).

⁴ The Buffalo Office agent followed up with North Country on December 16, 2002 regarding the tower’s coordinates, and received a faxed copy of the correction.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 U.S.C. § 17.4(a)(2).

mile away from the actual tower location.⁹

8. It is well established that a mistake resulting in a rule violation is considered a willful violation.¹⁰ In this case, however, given the circumstances, we hereby cancel the portion of the proposed forfeiture pertaining to violation of Section 17.4(a) of the Rules, in the amount of three thousand dollars (\$3000).

9. Section 17.4(g) of the rules requires the ASR number to be displayed in a conspicuous place so as to be readily visible near the base of the antenna structure. The Buffalo Office agent found that the tower did not have this identification and North Country does not dispute that the ASR number was not so posted. Accordingly, we find that North Country willfully¹¹ and repeatedly¹² violated Section 17.4(g) of the Rules.

10. Section 17.50 of the Rules requires that antenna structures be cleaned and repainted as often as necessary to maintain good visibility. North Country states that it painted the tower as required when it was initially constructed. At the time of inspection, the Buffalo Office agent found that the paint on North Country's antenna structure was badly chipped and faded. Section 17.6(a) of the Rules explicitly states that the antenna structure owner is responsible for maintaining the painting and lighting required by the rules.¹³ Moreover, licensees are expected to know and comply with the Commission's rules.¹⁴ Thus, North Country, as the antenna structure owner, was responsible for knowing whether the tower was properly painted in compliance with Section 17.50.¹⁵ The Commission has consistently held that there is a significant public safety concern with regard to antenna structure registration requirements, including painting to maintain the tower's visibility to aircraft.¹⁶ Moreover, remedial action taken to

⁹ A check of Commission records verifies that North Country has corrected the error in its antenna registration records with the FAA and the Commission.

¹⁰ A violation resulting from an inadvertent mistake or a failure to become familiar with the FCC's requirements is considered a willful violation. See *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).

¹¹ 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" *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹² As provided by 47 U.S.C. § 312(f)(2), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, 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. 97th Cong. 2d Sess. 51 (1982). *Southern California Broadcasting Co., supra*.

¹³ 47 C.F.R. § 17.6(a).

¹⁴ See *Econopage of Cleveland, Inc.*, 16 FCC Rcd 2989, 2990 (Enf. Bur. 2001).

¹⁵ See *Madison Broadcasting Group, Inc.*, 17 FCC Rcd 16081, 10683 (Enf. Bur. 2002).

¹⁶ *SpectraSite Communications, Inc.* 17 FCC Rcd. 7884, 7888 (2002); *AT&T Wireless Services, Inc.* 17 FCC Rcd. 21866, 21871 (2002).

correct the violations, while commendable, is not a mitigating factor.¹⁷ Accordingly, we find that North Country willfully and repeatedly violated Section 17.50 of the Rules.

11. North Country requests cancellation or reduction of the forfeiture based on its small business status and on its inability to pay. We have reviewed the financial information provided by North Country and we find that this information provides a basis for reduction of the forfeiture to two thousand (\$2,000) dollars.¹⁸

12. We have examined North Country'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 North Country willfully and repeatedly violated Sections 17.4(g) and 17.50 of the Rules, and we find that, although cancellation of the proposed monetary forfeiture for violation of these rule sections is not warranted, reduction of the forfeiture amount is appropriate as indicated above.

IV. ORDERING CLAUSES

13. 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,¹⁹ North Country Repeaters, owner of ASR number 1009975, on Rand Hill, Beekmantown, New York, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two thousand dollars (\$2,000) for its violation of Sections 17.4(g) and 17.50 of the Rules.

14. 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.²⁰ 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. 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. 20554.²¹

¹⁷ See, e.g., *AT&T Wireless Services, Inc.*, supra; *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973).

¹⁸ The Commission has determined that, in general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Afton Communications Corp.*, 7 FCC Rcd 6741 (Com. Car. Bur. 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).

¹⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

²⁰ 47 U.S.C. § 504(a).

²¹ See 47 C.F.R. § 1.1914.

15. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Mr. Erling Svendsen, North Country Repeaters, 994 Military Turnpike, Suite 103, Plattsburgh, New York 12901.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau