

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

In the Matter of	)	
	)	
Exosphere Broadcasting, LLC	)	File No. EB-03-TP-178
Owner of Antenna Structure Registration	)	NAL/Acct. No.: 200432700009
Number 1027312	)	FRN: 0003-4746-40
Saint Augustine, Florida	)	

**FORFEITURE ORDER**

**Adopted: December 1, 2004****Released: December 3, 2004**

By the Assistant Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Exosphere Broadcasting, LLC (“Exosphere”), owner of antenna structure registration number (ASR # 1027312) in Saint Augustine, Florida, for willful and repeated violation of Sections 17.50 and 17.51 of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violations involve failure to maintain good visibility of the required antenna structure and failure to exhibit obstruction lighting from sunset to sunrise.

2. In a February 4, 2004 *Notice of Apparent Liability for Forfeiture* (“*NAL*”),<sup>2</sup> the District Director-Tampa Office proposed a monetary forfeiture of \$10,000 to Exosphere for apparent willful and repeated violations of Sections 17.50 and 17.51 of the Rules. Exosphere filed a response to the *Order* on March 5, 2004. Based on the information before us, we affirm the forfeiture.

**II. DISCUSSION**

3. In its March 5, 2004, response to the *NAL*, Exosphere does not contest the subject violations. Rather, Exosphere seeks a reduction or cancellation of the proposed forfeiture based on the circumstances at the time of the April 3, 2003 inspection by agents from the Tampa field office, and the good faith steps it took to comply with the Rules. Exosphere asserts that it has two tenants on its tower and that on March 30, 2003, Mr. Smith, a consulting engineer for one of the tenants, was informed by the other tenant that there was a lighting outage on the tower. Exosphere avers that it first learned of the lighting outage on April 4, 2003, and promptly contacted Mr. Smith, who arranged to complete the repair by April 7, 2003.

4. When the Commission revised the antenna structure rules in 1995, it clearly asserted that antenna structure owners have the primary responsibility for maintaining the prescribed lighting on their

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<sup>1</sup> 47 C.F.R. §§ 17.50, 17.51.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200432700009 (Enf. Bur., Tampa Office, rel. Feb. 4, 2004).

antenna structures and are not permitted to circumvent that responsibility.<sup>3</sup> Accordingly, at the time of the violation Exosphere was responsible to maintain good visibility and proper lighting. Exosphere states that the antenna structure was repainted in September of 2003. Exosphere does not contest the fact that, as noted in the *NAL*, it failed to exhibit the required lights on its antenna structure from at least March 30, 2003 to April 3, 2003.<sup>4</sup> That it was not aware of the lighting outage and did not learn of it until being notified by the FCC agent on April 4, 2003 does not exonerate Exosphere from its responsibility to continuously exhibit the required lights. Finally, in addition to curing the lighting violation, Exosphere asserts that it has taken steps to ensure that light outages and maintenance of the antenna structure “will be dealt with quickly and properly in the future.” We note that the Commission has repeatedly stated that remedial actions taken to correct a violation are not mitigating factors warranting reduction of a forfeiture.<sup>5</sup> As a result of our review, we conclude that Exosphere willfully<sup>6</sup> and repeatedly<sup>7</sup> violated Sections 17.50 and 17.51 of the Rules. We affirm that a forfeiture in the amount of \$10,000 is appropriate.

### III. ORDERING CLAUSES

5. 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>8</sup> Exosphere Broadcasting, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$10,000 for willfully and repeatedly violating Sections 17.50 and 17.51 of the Rules.

6. 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>9</sup> 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

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<sup>3</sup> See *Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking and Lighting Antenna Structures*, 11 FCC Rcd 4272, 4294-96 (1995); see also 47 C.F.R. § 17.2(c) (tower owner ultimately responsible for compliance with the tower lighting requirements).

<sup>4</sup> At the time of the April 3, 2003 antenna structure inspection, Commission staff (“agents”) noted that the top red beacon was not illuminated in accordance with the assigned lighting specifications. The agents also found that no Notice to Airmen (“NOTAM”) had been filed with the Federal Aviation Administration (“FAA”). A NOTAM is a written advisory to aircraft pilots regarding a hazard or potential hazard of which they should be aware. On the same day that the lighting violation was noted, an agent requested and obtained a NOTAM from the FAA (NOTAM # ST.AUG D04/003).

<sup>5</sup> See, e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994); *Station KGVN, Inc.*, 42 FCC 2d 258, 259 (1973).

<sup>6</sup> The term “willful”, as used in Section 503(b) of the Communications Act of 1934, as amended (“Act”), means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate the Commission’s Rules. 47 U.S.C. § 312(f)(2).

<sup>7</sup> A violation is “repeated” within the meaning of Section 503(b) of the Act if it occurs more than once or continues for more than one day. 47 U.S.C. § 312(f)(2).

<sup>8</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>9</sup> 47 U.S.C. § 504(a).

Bank One, and account number 1165259. 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>10</sup>

7. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Howard M. Liberman, Drinker Biddle & Reath, LLP, 1500 K Street, N.W., Suite 1100, Washington, DC, 20005-1209, counsel for Exosphere.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon  
Assistant Chief, Enforcement Bureau

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<sup>10</sup> See 47 C.F.R. § 1.1914.