

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

In the Matter of	)	
	)	
Crown Castle GT Company LLC	)	
Owner of Antenna Structure #1037111 in	)	File Number EB-02-AT-397
Blountville, Tennessee	)	
Canonsburg, Pennsylvania	)	NAL/ACCT No. 200332480020
	)	
	)	FRN 0005-7936-82
	)	

**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 Crown Castle GT Company LLC (“Crown Castle”), owner of antenna structure registration (“ASR”) #1037111 located at 36° 34’ 36.4” West Longitude / 82° 18’ 1.5” North Latitude near Blountville, TN for repeated violation of Section 17.51(b) of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violation involves Crown Castle’s failure to exhibit required obstruction lighting during daytime hours.

2. On March 13, 2003, the District Director of the Commission’s Atlanta, Georgia Field Office (“Atlanta Office”) released a *Notice of Apparent Liability for Forfeiture* (“NAL”)<sup>2</sup> proposing a forfeiture in the amount of ten thousand dollars (\$10,000) to Crown Castle for the noted violation. Crown Castle filed a response to the *NAL* on April 11, 2003.

**II. BACKGROUND**

3. On October 29 and 30, 2002, an agent from the Atlanta Office inspected antenna structure registration #1037111 at 1:30 pm and 3:30 pm, respectively, and observed that the unpainted structure had no obstruction lighting in operation.

4. On March 13, 2003, the District Director of the Atlanta Office issued an *NAL* proposing a \$10,000 forfeiture to Crown Castle for failure to exhibit required obstruction lighting on October 29 and 30, 2002 during the day on the antenna structure in willful and repeated violation of Section 17.51(b) of the Rules. Crown Castle filed a response to the *NAL* on April 11, 2003. Crown Castle contests the underlying facts alleged in the *NAL* arguing that there was obstruction lighting, and that the tower was lighted, but, with the evening lighting rather than the daytime lighting. Crown Castle explains that the

<sup>1</sup> 47 C.F.R. § 17.51(b).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332480020 (Enf. Bur., Atlanta Office, released March 13, 2003).

antenna structure has automatic monitoring equipment which notifies it when the lighting goes out. Crown Castle states that the equipment was operational on the dates in question and no alarm was given because the equipment was operating on a lower intensity nighttime power level. Crown Castle asserts that Section 17.51(b) therefore does not apply to the instant situation and that the forfeiture must be withdrawn or cancelled.

5. Crown Castle provides additional arguments why the forfeiture should be canceled. Crown Castle argues that it had inspected the antenna structure on July 31, 2002<sup>3</sup> and was scheduled to inspect it on October 31, 2002. Crown Castle also furnishes advertising information from its equipment manufacturer stating that the equipment meets FAA specifications for daytime operation. Crown Castle argues that it performed periodic inspections and also that the equipment alarm did not indicate any failure. Therefore, Crown Castle contends it should not be assessed a forfeiture. Crown Castle further speculates that there was insufficient light to operate the equipment due to overcast conditions on the dates of the inspections. Crown Castle provides data to establish that the days in question were overcast.

6. Further, Crown Castle cites *Vernon Broadcasting*, 60 RR 2d 1275 (1986) for the proposition that the Commission rejects absolute liability for equipment owners. It also points to its quick response to the Commission's notification of the violation and its prompt adjustment of the photo electric cell by its service technician as grounds for cancellation of the forfeiture.

7. Lastly, Crown Castle argues that its violations should not be found to be repeated because the Commission should have notified it of the tower's condition when the Commission first discovered the violation on October 29, 2002 so Crown Castle could have remedied the violation and avoided a repeated violation.

### III. DISCUSSION

8. The forfeiture amount in this case was proposed 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 Red 17087 (1997), *recon. denied*, 15 FCC Red 303 (1999) ("Policy Statement"). In examining Crown Castle'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.<sup>6</sup>

9. Section 17.51(b) of the Rules provides that all high intensity and medium intensity lighting shall be exhibited continuously unless otherwise specified. According to Crown Castle's ASR, antenna structure #1037111 has specified lighting requirements that include exhibiting medium intensity white lighting during daylight hours. On October 29 and 30, 2002, an agent from the Atlanta Office found that the antenna structure failed to exhibit the required obstruction lighting during the day.

10. Crown Castle acknowledges that the registration for its antenna structure #1037111 requires the structure to meet the medium intensity daytime lighting specifications in Section 17.51(b) and submitted documentation in its response regarding its Honeywell Flash Guard 200B medium intensity

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<sup>3</sup> Crown Castle provides a copy of its inspection record showing an inspection on July 31 and a scheduled inspection on October 31, 2002.

<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).

white lighting system. The system's specifications provide for a much greater luminosity during daytime than at night. Crown Castle argues that the strobes were operating at nighttime luminosity because of a misaligned photocell during daylight hours and that no violation occurred. Crown Castle further argues that it was overcast on the dates of the inspections and that the strobes were operating, albeit at nighttime intensities. We disagree. The agent's observations on two occasions establish that the antenna structure was not lighted with either daytime or nighttime strobes during the daytime resulting in a violation of Section 17.51(b).<sup>7</sup> Moreover, the overcast conditions did not prevent the agent from observing strobe lighting operating on a nearby tower.

11. We disagree with Crown Castle's interpretation of *Vernon* and find that it is inapposite to the instant case. In *Vernon*, although the inspector found the fence to be defective, the fence had been inspected two days before and was found to be in good condition. The damage to the fence in *Vernon*<sup>8</sup> was caused by subsequent vandalism. In the instant case, the lights were out two days in a row approximately three months after Crown Castle's own inspection. Additionally, to the extent that *Vernon* addresses the question of willfulness, as noted in paragraph 13, *infra*, we need not address it herein due to our finding that the violation was repeated.

12. Crown Castle asserts that it should not be assessed a forfeiture because it was not notified of the lighting failure in time to avoid a repeated violation. This argument is without merit. Contrary to Crown Castle's argument, it is well settled that there is no requirement that the Commission provide a violator an opportunity to cure a violation prior to issuance of an *NAL*.<sup>9</sup> Moreover, the Commission expects full compliance with the antenna structure rules because of the potential danger to air navigation.<sup>10</sup>

13. Furthermore, the filing of a *NOTAM* by Crown Castle after notification by the Commission does not rectify the violation because the Commission has repeatedly stated that remedial measures taken to correct a violation are expected and as such are not mitigating factors warranting reduction of forfeiture.<sup>11</sup> Crown Castle's remaining arguments go to the question of willfulness and need not be addressed due to our finding that the violation was repeated.<sup>12</sup>

14. After reviewing the record in this case, we conclude that Crown Castle repeatedly failed to exhibit any obstruction lighting during daytime hours on October 29 and 20, 2002 on its tower in violation of Section 17.51(b) of the Rules. Accordingly, we find that Crown Castle GT Company LLC repeatedly<sup>13</sup> violated Section 17.51(b) of the Rules.

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<sup>7</sup> Section 17.51(b) provides that "All high intensity and medium intensity obstruction lighting shall be exhibited continuously unless otherwise specified."

<sup>8</sup> *Vernon, supra*, contained both a sworn declaration from the operating engineer regarding inspection procedure and inspection logs which established an existing maintenance plan for the antenna structure.

<sup>9</sup> See 47 C.F.R. § 1.89; *AT & T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871 n.20 (2002); and *WOYK, Inc.* 18 FCC Rcd 15181, 15182 n.8 (EB 2003).

<sup>10</sup> See *SpectraSite Communications, Inc.*, 17 FCC Rcd 7884, 7888 (2002) ("...[t]he Commission considers violations of the antenna construction, marking, and lighting rules to be serious safety-related infractions").

<sup>11</sup> See, e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *Station KGVV, Inc.* 42 FCC 2d 258, 259 (1973).

<sup>12</sup> 47 U.S.C. 503(b)(1)(B) provides for a forfeiture for any person who *willfully* or *repeatedly* failed to comply with any of the provisions of the Communications Act of 1934, as amended, or any rule, regulation, or order issued by the Commission.

<sup>13</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 (continued....)

#### IV. ORDERING CLAUSES

15. 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>14</sup> Crown Castle GT Company LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for failure to exhibit required obstruction lighting during daytime hours in repeated violation of Section 17.51(b) of the Rules.

16. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules<sup>15</sup> 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>16</sup> Payment may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or 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 must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption. Payment by overnight mail may be sent to BankOne/LB73482, 525 West Monroe, 8<sup>th</sup> Floor Mailroom, Chicago, Illinois 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.<sup>17</sup>

17. **IT IS FURTHER ORDERED** that copies of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Crown Castle USA, Inc., 2000 Corporate Drive, Canonsburg, PA 15317 and its Counsel, Monica Gambino, Associate General Counsel, Regulatory Affairs, Crown Castle USA, Inc., 2000 Corporate Drive, Canonsburg, PA 15317.

#### FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon  
Assistant Chief, Enforcement Bureau

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of the Act as well as Section 312. *See* H.R. Rep. 97<sup>th</sup> Cong. 2d Sess. 51 (1982); *see also Western Wireless Corporation*, 18 FCC Rcd 10319, 10326 n. 56 (2003); *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991).

<sup>14</sup> 47 C.F.R. §§ 0.111, 0.311, 0.180(f)(4).

<sup>15</sup> 47 C.F.R. § 1.80.

<sup>16</sup> 47 U.S.C. § 504(a).

<sup>17</sup> 47 U.S.C. § 1.1914.