

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

In the Matter of	)	
	)	
Florida Food Products, Inc.	)	File No. EB-04-TP-037
	)	NAL/Acct. No. 200432700015
Owner of an Unregistered Antenna Structure	)	FRN 0001801687
Eustis, Florida	)	

**FORFEITURE ORDER**

**Adopted: December 22, 2004**

**Released: December 28, 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 dollars (\$3,000) to Florida Food Products, Inc (“FFP”), owner of an unregistered antenna structure in Eustis, Florida, for willful and repeated violation of the registration requirements of Section 17.4(a) of the Commission’s Rules (“Rules”).<sup>1</sup>

**II. BACKGROUND**

2. On January 26, 2004, the Commission’s Tampa, Florida Field Office (“Tampa Office”) inspected FFP’s antenna structure, searched the Commission’s databases, and determined that the structure was not registered.<sup>2</sup> The Tampa Office notified FFP that its structure was not registered, and after FFP still failed to register the antenna structure, it issued FFP a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) on March 15, 2004.<sup>3</sup> The *NAL* found that FFP willfully and repeatedly violated the registration requirements of Section 17.4(a) of the Rules and proposed a \$3,000 forfeiture.

3. In its response, FFP did not dispute the *NAL*’s findings. FFP nevertheless sought cancellation of the proposed forfeiture based upon its good faith efforts to comply with the subject registration requirements, after the Tampa Office notified FFP of the lack of registration.

**III. DISCUSSION**

4. The forfeiture amount proposed 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

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<sup>1</sup> 47 C.F.R. § 17.4(a).

<sup>2</sup> Because FFP’s antenna structure exceeds 200 feet and is subject to Federal Aviation Administration notification, the Rules require that the structure be registered with the Commission. *See* 47 C.F.R. § 17.4(a); *see also* 47 C.F.R. § 17.7(a).

<sup>3</sup> *Florida Food Products, Inc.*, NAL/Acct. No. 200432700015 (Enf. Bur., Tampa Office, released March 15, 2004).

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

*Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines.*<sup>6</sup> In assessing forfeitures, Section 503(b)(2)(D) of the Act requires that we 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> As discussed below, we have considered FFP's response in light of these statutory factors and have determined that no reduction of the proposed forfeiture is warranted.

5. Section 17.4(a) of the Rules provides that, effective July 1, 1996, the owner of any proposed or existing antenna structure that requires notification to the Federal Aviation Administration ("FAA") must register the structure with the Commission. Section 17.4(a)(2) of the Rules provides that the owner of an antenna structure that had been assigned painting or lighting requirements prior to July 1, 1996 must register the structure prior to July 1, 1998. FFP admits that its tower was not registered at the time of the inspection on January 26, 2004, but FFP argues that its violation of Section 17.4(a) of the Commission's Rules was not willful because it made good faith efforts to register the tower shortly after the Commission inspection. We disagree. The term "willful," as used in Section 503(b) of the Act, does not require a finding that the rule violation was intentional or that the violator was aware that it was committing a rule violation.<sup>8</sup> Rather, the term "willful" simply requires that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission's Rules.<sup>9</sup> Further, because FFP has not yet registered the tower, its failure to do so is a continuing violation, and thus is "repeated."<sup>10</sup> Accordingly, we find that FFP willfully and repeatedly violated Section 17.4(a) of the Rules

6. Additionally, FFP's attempts to comply with the requirements of Section 17.4(a) by contacting the Commission and the Federal Aviation Administration do not mitigate its failure to timely register its antenna structure. Section 17.4(a) of the Commission Rules, as described above, required FFP to register its antenna structure in 1996, and FFP did not begin its registration process until after the Tampa Office notified it on January 26, 2004, more than eight years later, that the tower was not registered. According to Commission records, the tower still is not registered. The Commission expects that violations, which are observed during inspection and/or are the subject of an enforcement action, will be corrected,<sup>11</sup> and does not believe that corrective measures mitigate or warrant forfeiture cancellations or reductions for past violations.<sup>12</sup> Based on the record, we thus do not find that cancellation or reduction

<sup>6</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

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

<sup>8</sup> 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 ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991) ("*Southern California*").

<sup>9</sup> See *Southern California*, *supra* at 4387.

<sup>10</sup> As provided by 47 U.S.C. § 312(f)(2), a violation which occurs more than once is "repeated." 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). See *Southern California Broadcasting Co.*, *supra*.

<sup>11</sup> See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21875 ¶ 26 (finding that all Commission licensees and regulatees are "expected to promptly take corrective action when violations are brought to their attention," and that such corrective action does not warrant reduction or cancellation of a forfeiture for past violations); see also *Seawest Yacht Brokers*, 9 FCC Rcd at 6099, 6099 ¶ 7 (1994); *TCI Cablevision of Maryland, Inc.*, 7 FCC Rcd 6013, 6014 ¶ 8 (1992); *Sonderling Broadcasting Corp.*, 69 FCC 2d 289, 291 (1978); *South Central Communications Corp.*, 18 FCC Rcd 700, 702-03 ¶ 9 (Enf. Bur. 2003).

<sup>12</sup> *Id.*

of the proposed forfeiture of \$3,000 is warranted, due to FFP's beginning the registration process.

7. Because FFP has yet to register its tower,<sup>13</sup> we will require, pursuant to Section 308(b) of the Act,<sup>14</sup> that FFP report to the Enforcement Bureau within thirty (30) days of the release of this *Order* whether it has achieved compliance with Section 17.4(a) of the Rules. FFP's report must be submitted in the form of an affidavit signed by an officer or director of the licensee. If FFP fails to submit such a report or we find that FFP has not come into compliance with Section 17.51(b), we will consider further appropriate enforcement action.

#### IV. ORDERING CLAUSES

8. 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> Florida Food Products, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand dollars (\$3,000) for its willful and repeated violation of Section 17.4(a) of the Rules.

9. **IT IS ALSO ORDERED** that, pursuant Section 308(b) of the Act, FFP must submit the report described in Paragraph 10, above, within 30 days from the release of this *Order*, to: Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Room 7-A 555, Washington, D.C. 20554, Attention: Katherine Power, Esquire.

10. 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>16</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 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>17</sup>

11. **IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Florida Food Products, Inc., P.O. Box 1300, Eustis, Florida 32727-1300.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon  
Assistant Chief, Enforcement Bureau

<sup>13</sup> As of the adoption date of this *Order*, a search of the Commission's ASR Data Base reveals that the tower remains unregistered.

<sup>14</sup> 47 U.S.C. § 308(b)

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

<sup>16</sup> 47 U.S.C. § 504(a).

<sup>17</sup> See 47 C.F.R. § 1.1914.