

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

In the Matter of)	
)	File No. EB-06-SE-352
Panhandle Telecommunications Systems, Inc.)	NAL/Acct. No. 200732100002
)	FRN # 0001704246

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted Date: October 19, 2006

Released Date: October 19, 2006

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. By this Notice of Apparent Liability for Forfeiture (“NAL”), we find Panhandle Telecommunications, Inc. (“Panhandle”) apparently liable for a forfeiture in the amount of five thousand six hundred dollars (\$5,600) for constructing a facility before completing environmental review, in apparent willful violation of Sections 1.1307(a)(3) and 1.1307(a)(4) of the Commission’s Rules (“Rules”).¹

II. BACKGROUND

2. Under the Commission’s rules implementing the National Environmental Policy Act of 1969, as amended, (“NEPA”),² licensees, permittees and applicants (collectively, “licensees”) are required to assess proposed facilities to determine whether the facilities may significantly affect the environment, as defined in Section 1.1307 of the Rules.³ For actions that may have significant environmental effects, licensees must prepare and submit to the Commission an Environmental Assessment (“EA”)⁴ and undergo environmental review and any mandatory consultation with expert agencies, prior to initiating construction.⁵ This includes actions for which no pre-construction authorization is otherwise required.⁶

3. Section 1.1307(a)(3) provides that an EA is required for proposed facilities that may affect listed threatened or endangered species or designated critical habitats, or are likely to jeopardize the continued existence of any proposed endangered or threatened species or likely to result in the destruction or adverse modification of proposed critical habitats, as determined by the Secretary of the Interior pursuant to the Endangered Species Act of 1973 (“ESA”).⁷ Thus, applicants and licensees are routinely required to evaluate their proposed construction projects for potential adverse effects on species that are

¹ 47 C.F.R. §§ 1.1307(a)(3) and 1.1307(a)(4).

² 42 U.S.C. §§ 4321-4335.

³ 47 C.F.R. § 1.1307.

⁴ See 47 C.F.R. § 1.1311.

⁵ See 47 C.F.R. § 1.1308.

⁶ 47 C.F.R. § 1.1312.

⁷ 16 USC §§ 1531 *et seq.*

endangered, threatened, or otherwise subject to Section 1.1307(a)(3), and to file an EA if the terms of Section 1.1307(a)(3) are met. To assist in making this assessment, licensees may solicit and consider the comments of the U.S. Fish and Wildlife Service (USFWS).⁸

4. Section 1.1307(a)(4) of the Rules requires licensees to consider whether their proposed facilities would affect properties listed or eligible for listing (“historic properties”) in the National Register of Historic Places (“National Register”). In considering potential effects on historic properties, Section 1.1307(a)(4) requires licensees to follow the prescribed procedures established by the Programmatic Agreements for collocated antennas⁹ and for historic preservation review.¹⁰ The Collocation and Nationwide Agreements¹¹ are designed to tailor and streamline the review and consultation procedures required by the National Historic Preservation Act of 1966, as amended (“NHPA”),¹² and the implementing regulations issued by the Advisory Council on Historic Preservation (“Advisory Council”).¹³

5. The Nationwide Agreement requires licensees¹⁴ to: (i) determine the geographical areas of potential effects (“APE”) for both direct and visual effects;¹⁵ (ii) identify historic properties within the

⁸ See 47 C.F.R. § 1.1307(a)(3) and Note. Alternatively, licensees may use other sufficient means to determine that species and habitats protected under the ESA would not be affected. See FCC Environmental Checklist, <http://wireless.fcc.gov/siting/environmental-assessment.html>.

⁹ See *Wireless Telecommunications Bureau Announces Execution of Programmatic Agreement with respect to Collocating Wireless Antennas on Existing Structures*, Public Notice, 16 FCC Rcd 5574 (WTB 2001), *recon. denied*, 20 FCC Rcd 4084 (WTB 2005) (“*Collocation Agreement*”).

¹⁰ See *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Report and Order, WT Docket No. 03-128, 20 FCC Rcd 1073 (2004), *clarified*, 20 FCC Rcd 17995 (2005), *aff’d*, *CTIA-The Wireless Ass’n. v. FCC*, No. 05-1008 (D.C. Cir. September 26, 2006) (“*Nationwide Agreement*”).

¹¹ Section 1.1307(a)(4) of the Rules incorporates by reference the Collocation Agreement and the Nationwide Agreement.

¹² 16 U.S.C. § 470 *et seq.* The NHPA requires that a federal agency consider the effects of its federal undertakings, including actions that it authorizes or approves, on historic properties prior to issuing federal licenses, permits or approvals. See 16 U.S.C. §§ 470f, 470w(7). In considering such effects, the NHPA further requires the federal agency to consider the views of expert agencies. Specifically, the NHPA requires the federal agency to consider the views of the Advisory Council on Historic Preservation, the agency tasked with the responsibility for implementing the NHPA, the appropriate State Historic Preservation Officer, and, if affected historic properties are of religious or cultural significance to Indian tribes or Native Hawaiian organizations, their representatives. See 16 U.S.C. §§ 470a(a)(3), (d)(6)(B), 470f, 470i. Consistent with the Advisory Council’s regulations, the Commission’s environmental rules delegate the task of identification and consideration of the effects that proposed facilities may have on historic properties, including the initiation of consultation, to its licensees, permittees and applicants, but the Commission remains ultimately responsible. See 47 C.F.R. § 1.1307(a)(4); *see also* 36 C.F.R. § 800.2(a)(3); *Nationwide Agreement*, 20 FCC Rcd at 1076-77 ¶ 5.

¹³ See 36 C.F.R. § 800.1 *et seq.* Under the NHPA and the Advisory Council’s implementing regulations, a federal agency may, with the agreement of the Advisory Council and the relevant State Historic Preservation Officer or the National Conference of State Historic Preservation Officers, adopt Programmatic Agreements to tailor the historic preservation review and consultation procedures, as well as exempt actions, that are unlikely to affect historic properties. See 16 U.S.C. § 470v; 36 C.F.R. § 800.14(b),(c).

¹⁴ The requirements of the Nationwide Agreement apply to Commission licensees, permittees, registration holders, and applicants or prospective applicants for a wireless or broadcast license, authorization or antenna structure registration. See *Nationwide Agreement*, 20 FCC Rcd at 1145, Appendix B, Section II. A. 2.

¹⁵ “APE” refers to the geographic area within which a proposed communication facility “may directly or indirectly cause alterations in the character or use” of historic properties. *Nationwide Agreement*, 20 FCC Rcd at 1145,

applicable APE; and (iii) consider the effects a proposed facility may have on the identified properties. In the course of this process, licensees must, among other things, solicit the views of the State Historic Preservation Officer (“SHPO”) and, if applicable, any Indian tribe or Native Hawaiian organization (“NHO”) that may attach religious or cultural significance to potentially affected historic properties.

6. Thus, under the Nationwide Agreement, licensees must identify the historic properties located within the APE that may be directly or visually affected by their proposed facility. The APE for direct effects is the area of potential ground disturbance and any property that will be physically altered or destroyed by the undertaking; the “presumed APE” for visual effects is based on the height of the facility.¹⁶ For a facility that is 200 feet or less in overall height, the presumed APE for visual effects is a half mile.¹⁷ To identify historic properties located within the APE for direct and visual effects (“nearby historic properties”), licensees must review certain records maintained by the appropriate SHPO, gather information from interested Indian tribes and NHOs, and make additional reasonable good faith efforts at identification within the APE for direct effects.¹⁸ In the course of the identification and assessment process, licensees must also solicit and consider the views of the local government and the general public.¹⁹ At the conclusion of this process, licensees must provide the SHPO and any interested consulting parties with Submission Packets (“Packets”) detailing their proposals and explaining the effects, if any, their proposals may have on nearby historic properties.²⁰ Licensees must provide the SHPO a 30-day period to review these Packets, during which other parties may submit comments.²¹

7. In cases where a licensee determines that its proposed facility will not involve historic properties,²² and the SHPO concurs or does not respond within 30 days of receipt of the Packet, the historic preservation review process is deemed complete, and the licensee may begin construction if all other required review processes have been completed.²³ In cases where a licensee determines that its proposed facility will have an effect on nearby historic properties, but that the effect is not adverse, and the SHPO does not respond within 30 days of receipt of the Packet, the historic preservation review

Appendix B, Section II. A. 3.

¹⁶ *Id.* at 1156, Appendix B, Sections VI. C. 2; VI. C. 4.

¹⁷ *Id.* at 1156, Appendix B, Section VI. C. 4. a.

¹⁸ *Nationwide Agreement*, 20 FCC Rcd at 1156-1158, Appendix B, Section VI. D. The Nationwide Agreement requires licensees to use “reasonable and good faith efforts” to identify any Indian tribe or NHO that “may attach religious or cultural significance” to the nearby historic properties. *Id.* at 1149-50, Appendix B, Section IV B. Such efforts may include reference to the Commission’s Tower Construction Notification System through which such tribes and organizations register geographical areas that encompass significant religious or cultural historic properties of interest. *Id.* See also generally *Clarification of Procedures for Participation of Federally Recognized Indian Tribes and Native Hawaiian Organizations under the Nationwide Programmatic Agreement*, Declaratory Ruling, 20 FCC Rcd 17955 (2005) (“*Declaratory Ruling*”).

¹⁹ See *Nationwide Agreement*, 20 FCC Rcd at 1153-1154, Appendix B, Section V. Notice to the public may be accomplished through local zoning or historic preservation review proceedings.

²⁰ *Id.* at 1160, Appendix B, Section VII A. 1. The Nationwide Agreement attaches standardized Packets for collocated antenna construction (FCC Form 621) and for new tower construction (FCC Form 620). See *Nationwide Agreement*, 20 FCC Rcd at 1180-1201, Appendix B, Attachments 3 and 4.

²¹ *Id.* at 1160-61, Appendix B, Section VII. A. 2-4.

²² A no effect determination signifies that there are no historic properties within the APE, or that there are such properties but the proposed facility will not alter their qualifying historic character. See *Nationwide Agreement*, 20 FCC Rcd at 1161, Appendix B, Section VII. B. 1.

²³ *Id.* at 1161, Appendix B, Section VII. B. 1 and 2.

process is deemed complete after the licensee provides the Commission with a copy of the Packet and allows for the prescribed period for Commission review.²⁴ Finally, if the licensee or the SHPO determines that the proposed facility will have an adverse effect on nearby historic properties, the historic preservation review process is not complete until the conclusion of a prescribed process to address and, if possible, mitigate the effects.²⁵ If an Indian tribe or NHO disagrees with the licensee's determination or does not respond to contacts, the licensee must seek guidance from the Commission and cannot proceed without the Commission's concurrence.²⁶

8. As a wireless licensee, Panhandle is subject to the Commission's environmental rules, including the specific endangered species, historic preservation, and other environmental review requirements. On October 21, 2005, Panhandle began construction of an antenna structure in Hough, Oklahoma, without first determining whether the proposed facility might affect or be likely to jeopardize listed or proposed threatened or endangered species or designated critical habitats. In addition, Panhandle began construction without first completing the requisite pre-construction review pursuant to Section 106 of the NHPA²⁷ to determine if the proposed facilities may affect properties listed or eligible for listing in the National Register. On November 3, 2005, Panhandle completed construction of the antenna structure; however, it was not until November 16, 2005 that Panhandle notified the Oklahoma SHPO that it had constructed the facility.²⁸ On December 8, 2005, Panhandle notified the Commission of the construction of the antenna structure and fully disclosed the violation.²⁹

9. After it had constructed its antenna structure without first completing the requisite endangered species and historic preservation pre-construction reviews, Panhandle retained environmental consultant Terracon to fulfill its obligations under Section 1.1307. Terracon conducted a review of the site and facility and determined that the facility had no significant effect on the environment. Specifically, Terracon determined that Panhandle's facility did not affect species or habitats protected

²⁴ *Id.* at 1162, Appendix B, Section VII. C. 2. In cases where the SHPO affirmatively concurs with a licensee's determination of no adverse effect, the process is complete and the licensee may proceed without any submission to the Commission. *Id.* at 1161-62, Appendix B, Section VII C. 1.

²⁵ *Id.* at 1162-63, Appendix B, Section VII. C. 3-6 and D. In such cases, the licensee must file an EA and may not begin construction until the Commission makes a finding of no significant impact on the environment. *See* 47 C.F.R. § 1.1308. The NHPA establishes a procedural scheme whereby effects on historic properties must be considered prior to federal licensing; it does not preclude federally licensed actions that alter or impair historic properties. *See* 16 U.S.C. § 470f; *see also National Mining Ass'n v. Fowler*, 324 F.3d 752, 755 (D.C. Cir. 2003) (noting that the NHPA does not impose substantive standards on federal agencies; it only requires federal agencies to solicit the Advisory Council's views and take into account the effects of its licensed actions on historic properties); *Davis v. Latscher*, 202 F.3d 359, 368-69 (D.C. Cir. 2000); *City of Alexandria v. Slater*, 198 F. 3d 862, 871 (D.C. Cir. 1999), *cert. denied sub nom.*, 531 U.S. 820 (2000) (finding that the NHPA is a procedural not a substantive statute and thus does not bar federally authorized projects that significantly or adversely affect historic properties, it only requires that federal agencies consider such effects in their decision making); *Amendment of Environmental Rules in Response to New Regulations Issued by the Council on Environmental Quality, Order*, 60 RR 2d 13, 16 ¶¶ 7-8, note 12 (1986) (noting that the Commission may authorize actions that adversely affect the environment, where it concludes that "the public benefits outweigh the environmental consequences").

²⁶ *Nationwide Agreement*, 20 FCC Rcd at 1152, Appendix B, Section IV. G.

²⁷ 16 U.S.C. §§ 470 *et seq.*

²⁸ On November 17, Oklahoma Survey, which performs archaeological review for the Oklahoma SHPO, declined to comment on the project because construction of the antenna structure had already been completed.

²⁹ *See* Letter from Marjorie Spivak, Esq., counsel for Panhandle Telecommunications Systems, Inc., to Dan Abeyta, Assistant Chief, NEPA Adjudications, Spectrum Competition and Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission (December 8, 2005).

under the ESA,³⁰ that no historic properties were in the APE for visual or direct effects;³¹ that no cultural resources were observed during the course of Terracon's survey;³² and that no cultural resources were damaged by construction activities at the tower location.³³ In the course of this review, Panhandle attempted to obtain the views of the Oklahoma SHPO consistent with the Nationwide Agreement, but was told that the relevant state agencies would not comment because the tower had already been constructed.

10. On December 7, 2005, Panhandle sought to identify interested Indian tribes and solicit their views by submitting the site to the Commission's Tower Construction Notification System ("TCNS"). The TCNS notification was sent by the Commission to all federally-recognized Indian tribes that had identified the Hough, Oklahoma area as within their area of geographic preference. Several of these tribes responded that they had no interest in the site. On January 24, 2006, after two unsuccessful attempts by Panhandle to contact the Jicarilla Apache Nation, the Wichita and Affiliated Tribes, the Cheyenne-Arapaho Tribes of Oklahoma, the Seminole Nation of Oklahoma, and the Northern Cheyenne Tribe, Panhandle referred the site to the Commission staff for follow-up contact.³⁴ Accordingly, on February 22, 2006, the Commission staff sent a letter to the tribes that failed to respond giving them a final 20-day period to indicate an interest in the site. This 20-day period expired without any response from any of the referenced tribes.

11. On February 16, 2006, Terracon submitted a request to USFWS to concur with Terracon that the proposed structure had no effect on species or habitats protected under the ESA. On March 13, 2006, Panhandle submitted to the Commission a Form 620 and a NEPA Land Use Checklist. The documentation established that Panhandle's facility did not affect proposed or existing threatened or endangered species or critical habitats. The documentation also established that no listed or determined eligible National Register sites were identified within the APE for visual or direct effects, and that there was no other evidence of cultural resources in the project area.³⁵

12. On August 28, 2006, the Wireless Telecommunications Bureau ("WTB") sent Panhandle a Letter of Inquiry ("LOI").³⁶ In its response to the LOI,³⁷ Panhandle acknowledges that it constructed its

³⁰ See Letter from Rebecca Murphy, Esq., counsel for Panhandle Telecommunications Systems, Inc., to Dan Abeyta, Assistant Chief, NEPA Adjudications, Spectrum Competition and Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission (September 14, 2006), page 4.

³¹ *Id.* at 1.

³² *Id.*

³³ *Id.*

³⁴ In the *Declaratory Ruling*, the Commission clarified that once an applicant has made two good faith efforts over 40 days to obtain a response from an Indian tribe or NHO as specified in the Nationwide Agreement, the Commission upon notice will send a letter or email to the Indian tribe or NHO seeking an indication of the Indian tribe's or NHO's interest in participating in review of the proposed construction. If the Indian tribe or NHO does not respond within 20 days, it will be deemed to have no interest in pre-construction review, and the applicant's obligations with respect to that Indian tribe or NHO under the Nationwide Agreement are complete. *Declaratory Ruling*, 20 FCC Rcd at 16092.

³⁵ Because the Oklahoma SHPO declined to participate in review of this constructed tower, Commission staff has independently reviewed the submission and concurs in these determinations.

³⁶ See Letter from Dan Abeyta, Assistant Chief, NEPA Adjudications, Spectrum Competition and Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Marjorie Spivak, Esq., counsel for Panhandle Telecommunications Systems, Inc. (August 28, 2006).

³⁷ See Letter from Rebecca Murphy, Esq., counsel for Panhandle Telecommunications Systems, Inc., to Dan Abeyta, Assistant Chief, NEPA Adjudications, Spectrum Competition and Policy Division, Wireless Telecommunications

antenna structure before completing the environmental and historic preservation review requirements.³⁸ According to Panhandle, the failure in its process was “completely unintentional and resulted from an inadvertent oversight.”³⁹ Panhandle states that, after the company realized its error, it contacted appropriate agencies, completed the required documentation, and instituted new policies to ensure that all regulatory requirements are met before it constructs any new communications facilities.⁴⁰ After receiving Panhandle’s LOI response, the WTB referred the matter to the Enforcement Bureau for possible enforcement action.

III. DISCUSSION

13. Under Section 503(b)(1)(B) of the Communications Act of 1934, as amended (“Act”),⁴¹ and Section 1.80(a)(1) of the Rules,⁴² any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁴³ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, and the person against whom such notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.⁴⁴ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.⁴⁵

14. The record establishes that Panhandle commenced and completed construction of its antenna structure in Hough, Oklahoma, prior to completing the requisite endangered species review and prior to submitting the required Form 620 to the Oklahoma SHPO and receiving the recommendation of the Oklahoma SHPO. The record also establishes that Panhandle commenced and completed construction at the Hough, Oklahoma site prior to notifying interested Indian tribes of its intention to construct. Thus, we find that Panhandle commenced and completed construction at the Hough, Oklahoma site prior to concluding the environmental and historic preservation review process in apparent willful violations of Sections 1.1307(a)(3) and 1.1307(a)(4) of the Rules.⁴⁶ Based on our finding, and consistent with Section

Bureau, Federal Communications Commission (September 14, 2006).

³⁸ *Id.* at 1.

³⁹ *Id.* at 7.

⁴⁰ *Id.* at 6 and 7.

⁴¹ 47 U.S.C. § 503(b)(1)(B).

⁴² 47 C.F.R. § 1.80(a)(1).

⁴³ 47 U.S.C. § 503(b)(1)(B) and 47 C.F.R. § 1.80(a)(1).

⁴⁴ *See* 47 U.S.C. § 503(b)(4); 47 C.F.R. § 1.80(f).

⁴⁵ *See, e.g., SBC Communications, Inc.*, 17 FCC Rcd 7589, 7591, ¶ 4 (2002).

⁴⁶ Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. *See, e.g., Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California*”). Because Panhandle consciously and deliberately constructed this facility, its failure to comply with the environmental review requirements was willful. Its claim of inadvertent mistake is not a mitigating factor and does not negate a finding of willfulness. *See Emery Telephone*, 13 FCC Rcd 23854, 23859 ¶¶ 11-12 (1998), *recon. dismissed in part and den’d in part*, 15 FCC Rcd 7181 (1999); *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 ¶ 5 (1992); *Bureau D’Electronique Appliquee, Inc.*, 20 FCC Rcd 17893, 17896 ¶¶ 9-12 (Enf. Bur. 2005); *Eure Family Ltd. Partnership*, 17 FCC Rcd 7042, 7043 ¶¶ 5-7 (Enf. Bur. 2002).

503(b)(1)(B) of the Act and Section 1.80(a)(1) of the Rules, we find it appropriate to propose a forfeiture penalty against Panhandle.⁴⁷

15. Section 503(b)(2)(B) of the Act authorizes the Commission to assess forfeitures against common carriers of up to \$130,000 for each violation, or each day of a continuing violation, up to a maximum of \$1.325 million for a single act or failure to act.⁴⁸ In determining the appropriate forfeiture amount, Section 503(b)(2)(D) of the Act⁴⁹ directs the Commission to consider “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.”

16. The Commission has established base forfeiture amounts for certain violations,⁵⁰ but has not specified a base forfeiture amount for constructing a facility prior to completing historic preservation or other environmental reviews required under Section 1.1307(a) of the Rules. Nevertheless, the Commission has stated that “any omission of a specific rule violation from the list ... [establishing base forfeiture amounts] should not signal that the Commission considers any unlisted violation as nonexistent or unimportant. The Commission expects, and it is each licensee’s obligation to know and comply with all Commission’s rules.”⁵¹ Thus, the Commission retains its discretion to issue forfeitures on a case-by-case basis.⁵² Having considered the statutory factors and as explained below, we propose a base forfeiture amount of \$7,000.

17. In determining the appropriate base forfeiture amount, we consider the nature of Panhandle’s violations. The Commission has long required licensees to submit environmental assessments, perform environmental review and obtain Commission approval before they construct facilities that *may* have a significant effect on the environment.⁵³ The Commission has explained that any construction delay resulting from requiring pre-construction environmental review “is more than offset by the public interest benefits of ensuring, in compliance with Federal environmental statutes, that no potentially irreversible harms to the environment occurs.”⁵⁴ We also note that the Commission has

⁴⁷ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

⁴⁸ 47 U.S.C. § 503(b)(2)(B). The Commission twice amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), to increase the maxima forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. *See Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 15 FCC Rcd 18221 (2000) (adjusting the maximum statutory amounts from \$100,000/\$1,000,000 to \$120,000/\$1,200,000); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 19 FCC Rcd 10945 (2004) (adjusting the maximum statutory amounts from \$120,000/\$1,200,000 to \$130,000/\$1,325,000); *see also* 47 C.F.R. § 1.80(c).

⁴⁹ 47 U.S.C. § 503(b)(2)(D).

⁵⁰ *See The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113-15 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”); *see also* 47 C.F.R. § 1.80.

⁵¹ *Forfeiture Policy Statement*, 12 FCC Rcd at 17099 ¶ 22.

⁵² *Id.*

⁵³ *See Amendment of Environmental Rules*, First Report and Order, Gen. Docket No. 88-387, 5 FCC Rcd 2942, 2294 Appendix 3. (1990) (amending Section 1.1312 of the environmental rules to require that facilities, which are subject to geographic blanket licenses and which may affect the environment, be evaluated and approved “prior to the initiation of construction of the facility”) (“*First Report*”), *modified*, Second Report and Order, 6 FCC Rcd 1716 (1991) (further amending the rules to require the facilities of non-dominant common carriers be subject to the same pre-construction environmental review as wireless carriers that operate under geographic blanket licenses).

⁵⁴ *First Report*, 5 FCC Rcd at 2943 ¶ 11.

determined that \$10,000 is the appropriate base forfeiture amount for violations of other environmental rules, specifically, the radio frequency radiation exposure limits set forth in Section 1.1307(b), notwithstanding the absence of an established base forfeiture amount in the rules.⁵⁵ While we think that failure to comply with Sections 1.1307(a)(3) and 1.1307(a)(4) are serious violations and may have a significant effect on threatened and endangered species, critical habitats, and historic properties, such violations do not potentially jeopardize public health and safety, as do violations of the radio frequency radiation exposure limits. We thus find that a lower base forfeiture amount of \$7,000 is appropriate for violations of the environmental and historic preservation review requirements of Sections 1.1307(a)(3) and 1.1307(a)(4) of the Rules.

18. This \$7,000 base forfeiture amount is subject to adjustment, however.⁵⁶ We find that Panhandle is entitled to a downward adjustment of the proposed forfeiture based on its voluntary disclosures to Commission staff, and prompt efforts to address endangered species and historic preservation concerns by consulting with relevant expert agencies and Commission staff, *prior* to the Commission's initiation of an investigation. Accordingly, consistent with precedent,⁵⁷ we reduce the proposed forfeiture amount from \$7,000 to \$5,600.

IV. CONCLUSION

19. We propose a forfeiture of \$5,600 against Panhandle for its failure to comply with the rules regarding threatened or endangered species and critical habitats, as well as the historic preservation review requirements, prior to constructing its facility in apparent willful violations of Sections 1.1307(a)(3) and 1.1307(a)(4) of the Rules.

V. ORDERING CLAUSES

20. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, Panhandle Telecommunications Systems, Inc., **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of \$5,600 for its apparent willful violations of Section 1.1307(a)(3) and 1.1307(a)(4) of the Rules.

21. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Panhandle Telecommunications Systems, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

22. 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.⁵⁸ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the

⁵⁵ See *A-O Broadcasting Corporation*, 17 FCC Rcd 24184, 24190 ¶ 22 (2002), *forfeiture ordered*, 31 Communications Reg. (P&F) 411 (2003), *recon. denied*, 20 FCC Rcd 756 (2005) (determining that the \$10,000 base forfeiture amount established for antenna lighting and other safety violations should apply to violations of Section 1.1307(b) violation, given the serious and "public safety nature" of the radio frequency radiation maximum exposure limits); see also *Americom Las Vegas Limited Partnership*, 17 FCC Rcd 23689, 23694 ¶ 19 (Enf. Bur. 2002), *forfeiture ordered*, 19 FCC Rcd 9643 (Enf. Bur. 2003), *review pending*.

⁵⁶ See 47 C.F.R. 1.80(b)(4), Section II. *Adjustment Criteria for Section 503 Forfeitures*.

⁵⁷ See *Local Phone Services, Inc.*, 21 FCC Rcd 9974 ¶ 117 (2006) *Emery Telephone*, 13 FCC Rcd at 23858 ¶¶ 5, 10; *Victoria Cellular Corp.*, 7 FCC Rcd 7853, 7854 ¶¶ 10-11 (1992); *American Family Ass'n*, 17 FCC Rcd 18135, 18137 ¶ 10 (Enf. Bur. 2002), *recon. denied*, 18 FCC Rcd 2413 (Enf. Bur. 2003).

⁵⁸ 47 U.S.C. § 504(a).

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 Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for payment of the full amount of the NAL under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁵⁹

23. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

24. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.⁶⁰

25. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail return receipt requested to Marjorie Spivak, Esq., counsel for Panhandle Telecommunications, Inc., Bennet & Bennet PLLC, 10 G Street, NE, Washington, DC 20002.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

⁵⁹ See 47 C.F.R. § 1.1914.

⁶⁰ *Id.*