

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

In the Matter of)
Fifth Street Funding, Inc.) File No.: EB-FIELDWR-13-00007000
Antenna Structure Owner) File No.: EB-FIELDWR-13-00007278
Los Angeles, CA) Citation No.: C201432900001

CITATION AND ORDER

Antenna Structure Lighting and Registration

Adopted: December 5, 2013

Released: December 6, 2013

By the District Director, Los Angeles Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. This is an official CITATION AND ORDER (Citation) issued pursuant to Section 503(b)(5) of the Communications Act of 1934, as amended (Communications Act or Act), to Fifth Street Funding, Inc. (Fifth Street Funding), owner of two antenna structures located in Los Angeles, California. Specifically, Fifth Street Funding is being cited for failing to: (1) register with the Federal Communications Commission (Commission) an antenna structure that requires notice to the Federal Aviation Administration (FAA); (2) notify the FAA of an antenna structure that exceeds 200 feet in height above ground level; (3) paint and light antenna structures that exceed 200 feet in height above ground level; (4) notify the FAA of any known extinguishment of any top steady burning light or any flashing obstruction light, regardless of its position, not corrected within 30 minutes; and (5) notify the Commission within 24 hours of completion of construction of a registered antenna structure, in violation of Section 303(q) of the Act, and Sections 17.4(a), 17.7(a) 17.21(a), 17.48, and 17.57 of the Commission's rules (Rules), respectively.

2. Notice of Duty to Comply With Laws: Fifth Street Funding should take immediate steps to come into compliance, and to avoid any recurrence of the misconduct, including applying painting and lighting to both towers and registering the antenna structures with the Commission. Fifth Street Funding is hereby on notice that if it subsequently engages in any conduct of the type described in this Citation,

1 47 U.S.C. § 503(b)(5). Section 503(b)(5) of the Act provides that a Citation is not required in the case of violations of Section 303(q) of the Act, 47 U.S.C. § 303(q), if the person/entity involved is a nonlicensee tower owner who has previously received notice of the obligations imposed by Section 303(q) from the Commission or the permittee or licensee who uses that tower. In this case, however, we are providing a Citation to Fifth Street Funding because such notice may not have been previously provided. See North Chapel Investments, Citation and Order, 27 FCC Rcd 4813 (Enf. Bur. 2012) (citation issued to nonlicensee antenna structure owner which may not have had notice of its obligations concerning its antenna structures).

2 47 U.S.C. § 303(q).

3 47 C.F.R. §§ 17.4(a), 17.7(a), 17.21(a), 17.48, 17.57.

including any violation of Section 303(q) of the Act, or Sections 17.4(a), 17.7(a), 17.21(a), 17.48 or 17.57 of the Rules, it may be subject to civil and criminal penalties, including but not limited to substantial monetary fines (forfeitures). Such forfeitures may be based on both the conduct that led to this Citation and the conduct following it.⁴

3. Your Response Required: Pursuant to Sections 4(i), 4(j), and 403 of the Communications Act,⁵ we also direct Fifth Street Funding to respond in writing, within thirty (30) calendar days after the release date of this Citation, and signed under penalty of perjury, with descriptions of the specific action(s) taken to provide the required notification, registration, and lighting and painting for the antenna structures, plans to preclude recurrence of the violations, and also a timeline for completion of any correction action(s).

II. BACKGROUND

4. In 1932, two antenna structures were constructed on top of a building (the Spring Arcade Building) located at 541 South Spring Street in downtown Los Angeles, California. The two structures were used from 1932 until approximately 1938 for an AM broadcast station. The height of each structure is 61 meters (200 feet). However, the height of each structure above ground level when combined with the height of the Spring Arcade Building is 108 meters (353 feet). In 2001, one of the antenna structures was registered with the Commission and received Antenna Structure Registration Number 1230377 (Structure One).⁶ An FAA air safety study was conducted and issued for Structure One on August 30, 2001, which determined that Structure One would not be a hazard to air navigation only if the structure was painted and lighted in accordance with Chapters 4, 5, and 12 of FAA Circular Number 70/7460-1K.⁷ Specifically, Structure One was required to have daytime and twilight marking, as well as at least one top-mounted red flashing obstruction beacon and red obstruction lights at intermediate levels, for nighttime. A subsequent FAA determination, however, was issued on November 7, 2001, indicating no marking or lighting was required.⁸ A review of both FAA and FCC records reveals that no FAA air safety study has ever been conducted or issued for the second structure (Structure Two), nor has that structure ever been registered with the Commission.

5. On February 14, 2013, in response to a complaint from the Los Angeles Police Department concerning unlit antenna structures atop the Spring Arcade Building, an agent from the Enforcement Bureau's Los Angeles Office (Los Angeles Office) inspected the two structures and determined they were not lit and that no appropriate lighting was installed on the structures. Finding also that both structures exceeded 200 feet above ground level and that no notice to airmen (NOTAM) had been issued for the structures, the Los Angeles agent asked the FAA to issue NOTAMs for both structures.⁹ On March 26, 2013, the Los Angeles Office issued a Letter of Inquiry concerning the two

⁴ See 47 U.S.C. § 503(b)(5). See also S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) (If a person or entity that has been issued a citation by the Commission thereafter engages in the conduct for which the citation of violation was sent, the subsequent notice of apparent liability “*would attach not only for the conduct occurring subsequently but also for the conduct for which the citation was originally sent.*”) (emphasis added).

⁵ 47 U.S.C. §§ 154(i), 154(j), 403.

⁶ See Antenna Structure Registration Number 1230377. The status of the structure is currently listed as “granted.”

⁷ See Form 7460-1 for FAA Aeronautical Study Number 2001-AWP-3318-OE, issued August 30, 2001; see also Antenna Structure Registration Number 1230377.

⁸ See Form 7460-1 for FAA Aeronautical Study Number 2001-AWP-4212-OE, issued November 7, 2001.

⁹ NOTAMs alert aircraft pilots of potential hazards, including antenna structure light outages, which could affect flight safety.

structures to Fifth Street Funding.¹⁰ In their LOI Response, Fifth Street Funding stated they “have undertaken the necessary steps with the City of Los Angeles to obtain their approval for the removal and demolition of these Antennas on the property.”¹¹

6. On September 6, 2013, the FAA issued a “Marking & Lighting Recommendation” for Structure One and Structure Two specifying that each structure should be “marked/lighted with red lights, Chapters 4, 5 & 12” pursuant to FAA Circular 70/7460-1K.¹² Specifically, each structure is required to have daytime and twilight marking, as well as at least one top-mounted red flashing obstruction beacon and red obstruction lights at intermediate levels, for nighttime. To date, neither antenna structure tower has the required marking and lighting and neither structure has been dismantled.

III. APPLICABLE LAW AND VIOLATIONS

7. Section 303(q) of the Act states that antenna structure owners shall maintain the painting and lighting of the antenna structures as prescribed by the Commission.¹³ Section 17.4(a) of the Rules mandates that an antenna structure that requires notice to the FAA must be registered with the Commission.¹⁴ Section 17.7(a) of the Rules specifies that notification to the FAA is required for an antenna structure that exceeds 200 feet in height above ground level.¹⁵ Section 17.21(a) of the Rules requires that an antenna structure that is over 200 feet in height above ground level must have painting and lighting.¹⁶ Section 17.48 of the Rules requires antenna structure owners to notify the FAA immediately of any known extinguishment of any top steady burning light or any flashing obstruction light, regardless of its position, not corrected within 30 minutes.¹⁷ Section 17.57 of the Rules requires an antenna structure owner to notify the Commission within 24 hours of completion of construction of a registered antenna structure.¹⁸

8. The record in this case shows that, on February 14, 2013 a Los Angeles Office agent observed that neither Structure One nor Structure Two was painted or lighted, despite the fact that both structures exceeded 200 feet in height above ground level, and that no contact had been made by Fifth Street Funding to notify the FAA of the light outages. In addition, the agent determined that Fifth Street Funding had not notified the FAA of the construction of Structure Two and had not registered the structure with the Commission. Fifth Street Funding also failed to notify the Commission of the

¹⁰ See *Fifth Street Funding, Inc.*, Letter of Inquiry (Mar. 26, 2013) (on file in EB-FIELDWR-13-00007000) (LOI).

¹¹ Response of Fifth Street Funding, Inc., to Los Angeles Office, at 1 (May 1, 2013) (on file in EB-FIELDWR-13-00007000) (LOI Response). Fifth Street Funding also took responsibility for renewing the NOTAMS for the two structures.

¹² See FAA Aeronautical Study Number 2013-AWP-5620-OE, issued September 6, 2013 (Structure One), FAA Aeronautical Study Number 2013-AWP-5621-OE, issued September 6, 2013 (Structure Two). Although Structure One and Structure Two are no longer being used for the transmission of radio energy, Fifth Street Funding is required to maintain the painting and lighting requirements assigned to the structures until the structures are dismantled. See 47 U.S.C. § 303(q).

¹³ 47 U.S.C. § 303(q).

¹⁴ 47 C.F.R. § 17.4(a).

¹⁵ 47 C.F.R. § 17.7(a).

¹⁶ 47 C.F.R. § 17.21(a).

¹⁷ 47 C.F.R. § 17.48.

¹⁸ 47 C.F.R. § 17.57.

completed construction of Structure One. As of the date of this Citation and Order, both structures continue to lack the required painting and lighting, Structure Two has not been registered with the Commission, and Fifth Street Funding has not updated the status of Structure One's antenna structure registration to "constructed." Based on the foregoing evidence, we find that Fifth Street Funding violated Section 303(q) of the Act and Sections 17.4(a), 17.7(a), 17.21(a), 17.48, and 17.57 of the Rules.¹⁹

IV. REQUEST FOR INFORMATION

9. Pursuant to Sections 4(i), 4(j), and 403 of the Act,²⁰ Fifth Street Funding is directed to confirm in writing that it has taken the necessary measures and made the corrections to ensure that it does not continue to violate the rules discussed above, and provide the information requested below within thirty (30) calendar days after the release date of this Citation. A failure to respond in writing, or the provision of an inadequate, incomplete, or misleading response, may subject Fifth Street Funding to additional sanctions.

- i. Provide the plan for installing the required lighting and painting for Structure One and Structure Two. Include a time-frame for such lighting and painting.
- ii. Provide the plan for requesting the issuance of NOTAMs from the FAA on a timely basis (to ensure air navigation safety) until the structures are appropriately lighted and painted. Include a time-frame for such requests.
- iii. Provide the plan for updating the registration for Structure One with the FCC and registering Structure Two with the FCC. Include a time-frame for completing the required filings.
- iv. If Fifth Street Funding is planning on dismantling Structure One and Structure Two, provide the plan for dismantling the structures. If applicable, include a time-frame for such dismantlement.

V. RESPONDING TO THIS CITATION

10. In addition to the required written information described in paragraphs 3 and 9, above, Fifth Street Funding may, if it so chooses, respond to this Citation—challenging the factual and legal findings herein—within thirty (30) calendar days from the release date of this Citation either through (1) a written statement, (2) a teleconference interview, or (3) a personal interview at the Commission Field Office nearest to your place of business.

11. If you would like to arrange a teleconference or personal interview, please contact Charles A. Cooper at (562) 860-7474. The nearest Commission Field Office is located in Cerritos, California. Such teleconference or interview must take place within thirty (30) calendar days of the date of this Citation. If you would like to submit a written response, including any supporting documentation, you must send the response within thirty (30) calendar days of the date of this Citation to the contact and address provided in paragraph 12, below.

12. All written communications, including the information requested in paragraphs 3 and 9, above, should be provided to the address below.

¹⁹ 47 U.S.C. § 303(q); 47 C.F.R. §§ 17.4 (a), 17.7 (a), 17.21 (a), 17.48, 17.57.

²⁰ 47 U.S.C. §§ 154(i), 154(j), 403.

Federal Communications Commission
Los Angeles District Office
18000 Studebaker Road, Suite 660
Cerritos, California 90703
Re: EB-FIELDWR-13-00007000

13. Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need, and include as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least five (5) business days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to fcc504@fcc.gov or call the FCC's Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:
202-418-0530 (voice), 202-418-0432 (tty);

For accessible format materials (braille, large print, electronic files, and audio format):
202-418-0531 (voice), 202-418-7365 (tty).

14. Please be advised that it is a violation of Section 1.17 of the Rules (47 C.F.R. § 1.17) for any person or a staff member of that person to make any false or misleading written or oral statement of fact. Specifically, no person shall:

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.²¹

15. Further, the knowing and willful making of any false statement, or the concealment of any material fact, in reply to this Citation is punishable by fine or imprisonment under 18 U.S.C. § 1001.

16. If you violate Section 1.17 of the Rules or the criminal statute referenced above, you may be subject to further legal action, including monetary fines pursuant to Section 503 of the Act.²²

17. Under the Privacy Act of 1974, 5 U.S.C. § 552a(e)(3), we are informing you that the Commission's staff will use all relevant material information before it, including information that you disclose in your interview or written statement, to determine what, if any, enforcement action is required to ensure your compliance with the Act and the Rules.

VI. FUTURE VIOLATIONS

²¹ 47 C.F.R. § 1.17.

²² 47 U.S.C. § 503.

18. If, after receipt of this Citation, Fifth Street Funding again violates Section 303(q) of the Act, or Sections 17.4(a), 17.7(a), 17.21(a), 17.48, or 17.57 of the Rules by engaging in conduct of the type described herein, the Commission may impose monetary forfeitures not to exceed \$16,000 for each such violation or each day of a continuing violation, and up to \$122,500 for any single act or failure to act.²³ Further, as discussed above, such forfeitures may be based on both the conduct that led to the Citation and the conduct following it.²⁴ In addition, violations of the Act or the Rules also can result in seizure of equipment through *in rem* forfeiture actions,²⁵ as well as criminal sanctions, including imprisonment.²⁶

VI. ORDERING CLAUSES

19. **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 403 of the Communications Act, Fifth Street Funding must provide the written information requested in paragraphs 3 and 9, above. The response to the request for information must be provided in writing, signed under penalty of perjury by an authorized official at Fifth Street Funding with personal knowledge of the information and representations provided in the written response, and must be received by the FCC within thirty (30) calendar days after the release date of this Citation and Order.

20. **IT IS FURTHER ORDERED** that a copy of this Citation and Order shall be sent both by First Class U.S. Mail and Certified Mail, Return Receipt Requested, to Fifth Street Funding at 541 South Spring Street, Suite 204, Los Angeles, CA 90013

FEDERAL COMMUNICATIONS COMMISSION

Charles A. Cooper
District Director
Los Angeles Office
Western Region
Enforcement Bureau

²³ See 47 U.S.C. §§ 401, 501, 503; 47 C.F.R. § 1.80(b)(7). This amount is subject to further adjustment for inflation (see 47 C.F.R. § 1.80(b)(9)), and the forfeiture amount applicable to any violation will be determined based on the statutory amount designated at the time of the violation.

²⁴ See *supra* para. 2.

²⁵ See 47 U.S.C. § 510.

²⁶ See 47 U.S.C. §§ 401, 501.