

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

In the Matter of)
Big Munga Development, LLC) File No.: EB-FIELDWR-13-00011784
Antenna Structure Owner)
Los Angeles, California) Citation No.: C201432900002

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 Big Munga Development, LLC (Big Munga Development), owner of the antenna structure (Antenna Structure) located at 1206 Maple Avenue in Los Angeles, California. Specifically, Big Munga Development 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 an antenna structure that exceeds 200 feet in height above ground level; and (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, in violation of Section 303(q) of the Act, and Sections 17.4(a), 17.7(a), 17.21(a), and 17.48 of the Commission's rules (Rules).

2. Notice of Duty to Comply With Laws: Big Munga Development should take immediate steps to come into compliance with the Rules, and to avoid any recurrence of the misconduct, including registering the Antenna Structure with the Commission, notifying the FAA of this Antenna Structure's construction to obtain the required FAA study of necessary painting and/or lighting for the Antenna Structure to ensure the structure does not continue to pose a hazard to air navigation, ensuring prompt

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 Big Munga Development 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.

proper painting and lighting of this Antenna Structure, and notifying the FAA of this Antenna Structure being an air navigation hazard until the tower is properly lit and painted. Big Munga Development is hereby on notice that if it subsequently engages in any conduct of the type described in this Citation, including any violation of Section 303(q) of the Act, or Sections 17.4(a), 17.7(a), 17.21(a), or 17.48 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 Big Munga Development 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 preclude recurrence of the violations, and also a timeline for completion of any correction action(s).

II. BACKGROUND

4. On August 22, 2013, an agent of the Enforcement Bureau's Los Angeles Office (Los Angeles Office) observed a radio antenna mounted atop the Antenna Structure constructed on top of the office building at 1206 Maple Avenue in downtown Los Angeles, California. Subsequent inspection from the roof of the building revealed that the antenna structure plus the building height exceeded 270 feet above ground level. The agent further observed that the Antenna Structure did not have painting or obstruction lighting. Finding that the antenna structure was not registered with the Commission, and that no notice to airmen (NOTAM) had been issued for the Antenna Structure, the Los Angeles Office agent asked the FAA to issue a NOTAM for the structure, and has continued to renew the NOTAM.⁶ Although the Antenna Structure is apparently not being presently used for radio transmissions, Commission records show this structure has been used at one time for licensed radio operations.⁷

III. APPLICABLE LAW AND VIOLATIONS

5. Section 303(q) of the Act states that antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission.⁸ Section 17.4(a) of the Rules mandates that an antenna structure that requires notice to the FAA must be registered with the Commission.⁹ 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.¹⁰ Section 17.21(a) of the Rules

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

⁷ See Common Carrier Fixed Point to Point Microwave License, WPRW876 (cancelled). Although the structure is no longer being used for the transmission of radio energy, Big Munga Development is required to maintain the painting and lighting requirements assigned to the structure until the structure is dismantled. See 47 U.S.C. § 303(q).

⁸ 47 U.S.C. § 303(q).

⁹ 47 C.F.R. § 17.4(a).

¹⁰ 47 C.F.R. § 17.7(a).

requires that an antenna structure that is over 200 feet in height above ground level must have painting and lighting.¹¹ 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.¹²

6. The record in this case shows that, on August 22, 2013, a Los Angeles Office agent observed the Antenna Structure and determined that it exceeded 200 feet in height above ground level and did not have appropriate painting and lighting. Subsequent investigation revealed that no notification to the FAA had apparently occurred and consequently no air safety study had been conducted or issued for the Antenna Structure, nor had the structure been registered with the Commission. In addition, a NOTAM was not on file with the FAA for the structure. Based on the foregoing evidence, we find that Big Munga Development violated Section 303(q) of the Act, and Sections 17.4(a), 17.7(a), 17.21(a) and 17.48 of the Rules.¹³

IV. REQUEST FOR INFORMATION

7. Pursuant to Sections 4(i), 4(j), and 403 of the Act,¹⁴ Big Munga Development 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 Big Munga Development to additional sanctions.

- i. Provide the record of FAA notification and FCC antenna structure registration.
- ii. Provide the plan for installing a lighting system for the Antenna Structure and for painting the Antenna Structure. Include a time-frame for such installation and painting.
- iii. Provide the plan for requesting an FAA NOTAM on a timely basis (to ensure air navigation safety) until the tower is lit and painted. Include a time-frame for such requests.

If it is believed that painting and lighting of the Antenna Structure is not required, provide a copy of the FAA Determination of No Aeronautical Hazard with those specifications.

V. RESPONDING TO THIS CITATION

8. In addition to the required written information described in paragraphs 3 and 7, above, Big Munga Development 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 47 C.F.R. § 17.21(a).

¹² 47 C.F.R. § 17.48.

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

¹⁴ 47 U.S.C. §§ 154(i), 154(j), 403.

9. 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 10, below.

10. All written communications, including the information requested in paragraphs 3 and 7, above, should be provided to the address below.

Federal Communications Commission
Los Angeles District Office
18000 Studebaker Road, Suite 660
Cerritos, California 90703
Re: EB-FIELDWR-13-00011784

11. 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).

12. 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.¹⁵

13. 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.

¹⁵ 47 C.F.R. § 1.17.

14. 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.¹⁶

15. 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

16. If, after receipt of this Citation, Big Munga Development again violates Section 303(q) of the Act, or Sections 17.4(a), 17.7(a), 17.21(a), or 17.48 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.¹⁷ Further, as discussed above, such forfeitures may be based on both the conduct that led to the Citation and the conduct following it.¹⁸ In addition, violations of the Act or the Rules also can result in seizure of equipment through *in rem* forfeiture actions,¹⁹ as well as criminal sanctions, including imprisonment.²⁰

VI. ORDERING CLAUSES

17. **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 403 of the Communications Act, Big Munga Development must provide the written information requested in paragraphs 3 and 7, above. The response to the request for information must be provided in writing, signed under penalty of perjury by an authorized official at Big Munga Development 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.

18. **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 Big Munga Development, LLC, at 860 S. Los Angeles St., #9th Floor, Los Angeles, CA 90014-3311.

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁶ 47 U.S.C. § 503.

¹⁷ 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.

¹⁸ See *supra* para. 2.

¹⁹ See 47 U.S.C. § 510.

²⁰ See 47 U.S.C. §§ 401, 501.