

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

In the Matter of)	
)	
Emeraldbrooke II, LLC)	File No: EB-FIELDNER-12-00005644
)	NAL/Acct. No.: 201332360002
Owner of Antenna Structure Number 1045635)	FRN: 0016916769
Novi, Michigan)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: May 2, 2013

Released: May 3, 2013

By the District Director, Detroit Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Emeraldbrooke II, LLC (Emeraldbrooke), owner of antenna structure number 1045635 (Antenna Structure), located in Novi, Michigan, apparently willfully and repeatedly violated Section 303(q) of the Communications Act of 1934, as amended (Act)¹ and Sections 17.4(g), 17.50 and 17.57 of the Commission's rules (Rules) by failing to (1) display the Antenna Structure Registration Number (ASRN) in a conspicuous place so that it is readily visible near the base of the Antenna Structure; (2) repaint the Antenna Structure as often as necessary to maintain good visibility; and (3) immediately notify the Commission upon a change in ownership information.² We conclude that Emeraldbrooke is apparently liable for a forfeiture in the amount of twenty five thousand dollars (\$25,000). In addition, we direct Emeraldbrooke to submit, no later than thirty (30) calendar days from the date of this NAL, a statement signed under penalty of perjury stating that the Antenna Structure is now in compliance with Part 17 of the Rules.

II. BACKGROUND

2. On October 5, 2011, an agent from the Enforcement Bureau's Detroit Office (Detroit Office) inspected the Antenna Structure. According to its Antenna Structure Registration (ASR), the Antenna Structure stands 91.1 meters in height above ground level and is required to be painted and lighted.³ The agent observed that the ASRN was not posted at the base of the Antenna Structure and that the paint on the Antenna Structure was so severely faded that it no longer provided good visibility. The agent also found that, although Emeraldbrooke has owned the Antenna Structure since 2002, the ASR database did not list Emeraldbrooke as the owner of the Antenna Structure.

3. On November 4, 2011, the Detroit Office issued a *Warning Letter* to Emeraldbrooke for failure to (1) post the ASRN near the base of the Antenna Structure, (2) change the ownership information, and (3) clean and repaint the Antenna Structure as often as necessary to maintain good

¹ 47 U.S.C. § 303(q).

² 47 C.F.R. §§ 17.4(g), 17.50 and 17.57.

³ See Antenna Structure Registration database for antenna structure number 1045635; see also 47 C.F.R. § 17.21 (requiring antenna structures more than 60.96 meters in height to be painted and lighted).

visibility.⁴ In response to the *Warning Letter*, Emeraldbrooke stated that it believed it had updated the ownership information in the ASR database.⁵ Emeraldbrooke also reported that it had contacted a vendor to post the ASRN and to obtain an estimate for re-painting the Antenna Structure.⁶

4. On December 30, 2011, and again on May 8, 2012, and March 14, 2013, agents from the Detroit Office re-inspected the Antenna Structure and found that the ASRN was not posted at the base of the Antenna Structure and that the paint on the Antenna Structure was still severely faded. In addition, on each of those dates, an agent checked the ASR database and the prior owner was still listed as the owner of the Antenna Structure.

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁷ 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.⁸ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁹ and the Commission has so interpreted the term in the Section 503(b) context.¹⁰ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹¹ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹²

⁴ *Emeraldbrooke II, LLC*, Warning Letter (November 4, 2011) (on file in EB-11-DT-0256) (*Warning Letter*).

⁵ Letter from Edmond A. Swad, Member/Manager, Emeraldbrooke II, LLC, to James A. Bridgewater, District Director, Detroit Office, Enforcement Bureau (November 11, 2011) (on file in EB-11-DT-0256) (*Warning Letter Response*).

⁶ *Id.* at 1.

⁷ 47 U.S.C. § 503(b).

⁸ 47 U.S.C. § 312(f)(1).

⁹ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of Section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms . . .”).

¹⁰ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹¹ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹² Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

A. Failure to Comply with Antenna Structure Painting Requirements

6. 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.¹³ Section 17.50 of the Rules states that “[a]ntenna structures requiring painting under this part shall be cleaned or repainted as often as necessary to maintain good visibility.”¹⁴ As described above, agents observed on October 5, 2011, that the paint on the Antenna Structure was severely faded. Notwithstanding the issuance of the *Warning Letter* regarding the severely faded paint and Emeraldbrooke’s statement in the *Warning Letter Response* that it had contacted a vendor to obtain a quote for repainting the Antenna Structure, the condition of the Antenna Structure was unchanged when agents re-inspected the Antenna Structure on December 30, 2011, and again on May 8, 2012, and March 14, 2013. Based on the evidence before us, we find that Emeraldbrooke apparently willfully and repeatedly violated Section 17.50 of the Rules by failing to clean and repaint the Antenna Structure to maintain good visibility.

B. Failure to Post the Antenna Structure Registration Number

7. Section 17.4(g) of the Rules requires that the ASRN be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure.¹⁵ On October 5, 2011, December 30, 2011, May 8, 2012, and March 14, 2013, an agent from the Detroit Office observed that the ASRN for the Antenna Structure was not posted in a conspicuous place and was not visible from anywhere near the base of the structure. Despite being warned in the *Warning Letter*, the ASRN was still not posted as of March 14, 2013. Thus, based on the evidence before us, we find that Emeraldbrooke apparently willfully and repeatedly violated Section 17.4(g) of the Rules by failing to post the ASRN for the Antenna Structure in a conspicuous and visible place near the structure’s base.

C. Failure to Notify the Commission of a Change in Ownership

8. Section 17.57 of the Rules states that the “owner [of a registered antenna structure] must also immediately notify the Commission, using FCC Form 854, upon any change in structure height or change in ownership information.”¹⁶ Emeraldbrooke confirmed ownership of the Antenna Structure since 2002.¹⁷ As of March 14, 2013, the ASR database still did not list Emeraldbrooke as the owner of the Antenna Structure. Based on the evidence before us, we find that Emeraldbrooke apparently willfully and repeatedly violated Section 17.57 of the Rules by failing to immediately notify the Commission of a change in ownership information for the Antenna Structure.

D. Proposed Forfeiture and Reporting Requirement

9. Pursuant to the *Forfeiture Policy Statement*, and Section 1.80 of the Rules, the base forfeiture amount for failure to comply with prescribed marking (painting) is \$10,000, and the base forfeiture amount for failure to file required forms or information is \$3,000.¹⁸ Although Section 1.80 of the Rules does not establish a base forfeiture amount for failure to post the ASR number, the Commission has determined, however, that an appropriate base forfeiture amount for failure to post

¹³ 47 U.S.C. § 303(q).

¹⁴ 47 C.F.R. § 17.50.

¹⁵ 47 C.F.R. § 17.4(g).

¹⁶ 47 C.F.R. § 17.57.

¹⁷ *Warning Letter Response* at 1.

¹⁸ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

the ASR number is \$2,000 per violation.¹⁹ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, any gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.²⁰ We find that Emeraldbrooke's failure for over two years to repaint the Antenna Structure and post the ASRN, and its failure for more than ten years to update the Antenna Structure's ownership information, despite being warned to do so, demonstrates a deliberate disregard for the Commission's rules and warrants an upward adjustment of \$10,000. Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Emeraldbrooke is apparently liable for a total forfeiture in the amount of \$25,000.

10. We also direct Emeraldbrooke to submit a written statement, pursuant to Section 1.16 of the Rules,²¹ signed under penalty of perjury by a principal or officer of Emeraldbrooke, stating the steps taken to correct the violations, including the dates on which the Antenna Structure was repainted, the ASR number was posted, and the FCC Form 854 was submitted to the Commission to update the ownership information for the Antenna Structure. Emeraldbrooke shall also certify that it will otherwise comply with the Commission's antenna structure requirements.²² This statement must be provided to the Detroit Office at the address listed in paragraph 13 within thirty (30) calendar days of the release date of this NAL.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314 and 1.80 of the Commission's rules, Emeraldbrooke II, LLC, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for violations of Section 303(q) of the Act and Sections 17.4(g), 17.50 and 17.57 of the Rules.²³

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Emeraldbrooke II, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. **IT IS FURTHER ORDERED** that Emeraldbrooke II, LLC **SHALL SUBMIT** a statement as described *supra* in paragraph 10 to the Detroit Office within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Detroit Office, 24897 Hathaway Street, Farmington Hills, Michigan 48335. Emeraldbrooke II, LLC shall also email the written statement to NER-Response@fcc.gov.

14. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Emeraldbrooke II, LLC shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159

¹⁹ See *American Towers Corporation*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1282 (2001) (finding that the appropriate forfeiture amount for the failure to post an ASR number to be \$2,000).

²⁰ 47 U.S.C. § 503(b)(2)(E).

²¹ 47 C.F.R. § 1.16.

²² See 47 U.S.C. § 303(q); 47 C.F.R. §§ 17.1 – 17.57.

²³ 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 17.4(g), 17.50 and 17.57.

(Remittance Advice) must be submitted.²⁴ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

15. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁵ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

16. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules.²⁶ The written statement, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Detroit Office, 24897 Hathaway Street, Farmington Hills, Michigan 48335, and must include the NAL/Account number referenced in the caption. The statement should also be emailed to NER-Response@fcc.gov.

17. 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 (GAAP); 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.

²⁴ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁵ See 47 C.F.R. § 1.1914.

²⁶ See 47 C.F.R. §§ 1.80(f)(3), 1.16.

18. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail, to Emeraldbrooke II, LLC at 38701 Seven Mile Road, Suite 245, Livonia, Michigan 48152.

FEDERAL COMMUNICATIONS COMMISSION

James A. Bridgewater
District Director
Detroit Office
Northeast Region
Enforcement Bureau