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

In the Matter of	)	
	)	
1206 MAPLE AVENUE LLC	)	File Nos.: EB-FIELDWR-16-00022227
Antenna Structure Owner	)	EB-FIELDWR-13-00011784
	)	
Los Angeles, California	)	Citation No.: C201632900001
	)	
	)	
	)	

CITATION AND ORDER
ANTENNA STRUCTURE LIGHTING AND REGISTRATION

Adopted: August 30, 2016 **Released: August 30, 2016**

By the Regional Director, Region Three, Enforcement Bureau:

I. NOTICE OF CITATION

1. This **CITATION AND ORDER** (Citation), notifies 1206 MAPLE AVENUE LLC (Tower Owner), owner of the antenna structure located on the roof of 1206 Maple Avenue in Los Angeles, California and bearing the word "Bendix" on its three vertical faces (Bendix Tower), that it has violated regulations of the Federal Communications Commission (Commission) governing antenna structures by failing to: (*a*) register with the Commission an antenna structure that requires that requires notice to the Federal Aviation Administration (FAA);[1] and (*b*) paint and light an antenna structure that exceeds 60.96 meters (200 feet) in height above ground level in accordance with the Commission's rules (Rules).[2] We therefore direct Tower Owner to take immediate steps to comply with the Commission's tower registration and marking regulations. If Tower Owner fails to comply with these laws, it may be liable for significant fines.

2. ***Notice of Duty to Comply with the Law***: We issue this Citation pursuant to Section 503(b)(5) of the Communications Act of 1934, as amended (Act), which states that the Commission may not impose monetary forfeitures against non-regulatees who violate Commission rules or the Act unless and until: (*a*) the Commission issues a citation to the violator; (*b*) the Commission provides the violator a reasonable opportunity to respond; and (*c*) the violator subsequently engages in conduct described in the citation.[3] Accordingly, Tower Owner is hereby on notice that it must comply with Sections 17.4(a), 17.6(a), 17.21(a), and 17.23 of the Rules and Section 303(q) of the Act.[4] If Tower Owner subsequently

[1] 47 CFR §§ 17.4(a), 17.7(a), 17.21.

[2] 47 CFR § 17.6(a), 17.23.

[3] *See* 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 Tower Owner, because Tower Owner is a nonlicensee, and such notice may not have been provided to it previously

[4] 47 U.S.C. § 303(q); 47 CFR §§ 17.4(a), 17.6(a), 17.21, 17.23.

engages in any conduct of the type this Citation describes — and specifically any violation of Section 303(q) of the Act and the Rules promulgated thereunder — Tower Owner may be subject to civil penalties, including but not limited to, substantial monetary forfeitures. In assessing such forfeitures, the Commission may consider both the conduct that led to this Citation and the conduct following it.[5]

3. ***Notice of Duty to Provide Information***: Pursuant to Sections 4(i), 4(j), and 403 of the Act,[6] we direct Tower Owner to respond in writing, within 30 calendar days after the release date of this Citation, to the questions and requests for documents set out in Section IV of this Citation and Order.

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 Bendix Tower, which itself is situated 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 Bendix Tower 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 Bendix Tower, the Los Angeles Office agent asked the FAA to issue a NOTAM for the structure.[7] Although Bendix Tower was not then being used for radio transmissions, Commission records show this structure has been used at one time for licensed radio operations.[8]

5. On December 6, 2013, the Los Angeles Office issued to Big Munga Development, LLC (Big Munga), the prior owner of Bendix Tower, a Citation notifying Big Munga of its violation of the Act and the Rules and ordering Big Munga to confirm, in writing, that it had taken the necessary steps to comply with the Rules and its obligations under Section 303(q) of the Act.[9] On December 18, 2013, Big Munga responded to the 2013 Citation and indicated that it was in the process of preparing an application to the FAA for a finding of No Aeronautical Hazard with respect to Bendix Tower, and on January 28, 2014, the Commission received the FAA's Determination of No Aeronautical Hazard finding with respect to Bendix Tower.[10] The FAA Determination, which states that Bendix Tower has a height of 237 feet above ground level (AGL), requires Bendix Tower to be lighted in a manner that complies with FAA

[5] *See* 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).

[6] 47 U.S.C. §§ 154(i), 154(j), 403.

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

[8] *See* Common Carrier Fixed Point to Point Microwave License, WPRW876 (cancelled). Although the structure was no longer being used for the transmission of radio energy when the 2013 observation was made, Big Munga was required at that time to maintain the painting and lighting requirements assigned to the structure until the structure is dismantled. *See* 47 U.S.C. § 303(q); 47 CFR § 17.2, *2004 & 2006 Biennial Regulatory Reviews - Streamlining & Other Revisions of Parts 1 & 17 of the Commission's Rules Governing Constr., Marking & Lighting of Antenna Structures*, Report and Order, 29 FCC Rcd 9787, 9808, para. 53 (2014) (stating that "a structure is considered an 'antenna structure' from the start of construction through dismantlement, regardless of when it begins and ceases to transmit radio energy" and emphasizing that "an antenna structure owner's obligations do not cease until the structure is dismantled").

[9] *Big Munga Development LLC*, Citation, 28 FCC Rcd 16361 (EB 2013) (*2013 Citation*).

[10] *Determination of No Hazard to Air Navigation*, FAA Study No. 2013-AWP-7958-OE (Jan. 28, 2014) (*FAA Determination*).

Advisory Circular 70/7460-1 K Change 2, Obstruction Marking and Lighting.[11] The FAA Circular, in turn, requires antenna structures exceeding 150 feet AGL to employ "at least one red flashing (L-864) beacon."[12]

6. On April 25, 2014, Big Munga advised the Los Angeles Office that it had installed a steady-burning red obstruction light (L-810) to comply with the FAA Determination. On May 22, 2014, an agent from the Los Angeles Office inspected Bendix Tower in the early evening and observed that a steady burning red obstruction light activated at 8:05pm, which was 11 minutes after local sunset.

7. On June 6, 2014, after confirming that Big Munga still had not registered Bendix Tower with the Commission, an agent from the Los Angeles Office spoke with a Big Munga employee by telephone and advised that the FAA Determination specified a red flashing (L-864) beacon (not the steady burning red (L-810) obstruction light that he observed on May 22). During subsequent inspections on February 3, 2015 and June 20, 2016, an agent from the Los Angeles Office observed the continued use of an L-810 steady burning red obstruction light at the top of Bendix Tower, and during the June 20, 2016 inspection, the agent noted that the obstruction light was not illuminated until 8:22 PM, or 13 minutes after local sunset. On February 3, 2015, February 18, 2015, and June 14, 2016, an agent from the Los Angeles Office searched the Commission's records of antenna structure registrations and confirmed that Bendix Tower was not registered with the Commission. On June 14, 2016, an agent from the Los Angeles Office investigated the current ownership of Bendix Tower and learned that, in January 2015, Big Munga conveyed Bendix Tower to Tower Owner.

III. APPLICABLE LAW AND VIOLATIONS

8. 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 17.4(a) of the Rules mandates that an antenna structure that requires notice to the FAA must be registered with the Commission.[14] Section 17.6(a) of the Rules states that an antenna structure owner is responsible for complying with applicable structure lighting regulations.[15] Section 17.21(a) of the Rules requires that an antenna structure for which the FAA must be notified (i.e., one that is greater than 60.96 meters (200 feet) in height AGL) must have painting and lighting, and Section 17.23 states that a structure's painting and lighting specifications must conform to the specifications set forth in a final determination of "no hazard" issued by the FAA.[16] Under Section 17.57 of the Rules, an owner of an antenna structure must notify the Commission of any change in the structure's ownership by filing an FCC Form 854 within five (5) days of such change.[17]

9. As discussed above, the record in this case and in the preceding case show that: (*a*) an FCC licensee once operated a transmitter from Bendix Tower,[18] (*b*) although Big Munga notified the FAA

[11] *Id, citing Advisory Circular 70/7460-1 K Change 2, Obstruction Marking and Lighting* (FAA 2007) (*FAA Circular*).

[12] *FAA Circular* at 13.

[13] 47 U.S.C. § 303(q).

[14] 47 CFR § 17.4(a). Specifically, Section 17.4(a) requires tower owners to register with the Commission any tower structure that requires notice of construction to the FAA under Section 17.7 of the Commission's Rules. Section 17.7(a) of the Rules require notification to the FAA for an antenna structure that exceeds 60.96 meters (200 feet) in height AGL.

[15] 47 CFR § 17.6(a).

[16] 47 CFR §§ 17.21(a), 17.23.

[17] 47 CFR § 17.57.

[18] *See 2013 Citation*, 28 FCC Rcd at 16362, para. 4.

of Bendix Tower in early 2014, as required by Part 17 of the Rules,[19] neither Big Munga nor Tower Owner has registered Bendix Tower with the Commission,[20] (*c*) neither Big Munga nor Tower Owner have installed lighting that complies with the Part 17 requirements,[21] and (*d*) neither Big Munga nor Tower Owner notified the Commission following the transfer of Bendix Tower from Big Munga to Tower Owner in January 2015 as required under Part 17 of the Rules. Based on the foregoing evidence, we find that Tower Owner violated Section 303(q) of the Act, and Sections 17.4(a), 17.6(a), 17.21(a), 17.23, and 17.57.[22]

IV. REQUEST FOR INFORMATION

10. We direct Tower Owner to respond to the following inquiries and/or provide the requested documents within 30 days from the release date of this Citation:

i. Confirm in writing that Tower Owner has modified Bendix Tower's lighting to implement a red flashing (L-864) beacon, as required under the FAA Determination.

ii. Confirm in writing the hours each day during which Bendix Tower is lighted (including, for the avoidance of doubt, the illumination of the hazard light at the top of Bendix Tower, as well as the word "BENDIX" that spans the three vertical faces of the structure.

iii. Provide a copy of the agreement to convey Bendix Tower to Tower Owner, along with any ancillary agreements or documents, including, without limitation, the Deed conveying Bendix Tower to Tower Owner. If such documents do not exist, Tower Owner must provide a written statement describing the circumstances surrounding its acquisition of Bendix Tower.

iv. Advise whether, in connection with its acquisition of Bendix Tower, Tower Owner was apprised of the existence of the 2013 Citation and the steps Big Munga took to prevent future violations of Section 303(q) of the Act and Part 17 of the Rules.

v. Describe what actions Tower Owner has taken to prevent future violations of Section 303(q) of the Act and Part 17 of the Rules, and provide a timeline specifying when Tower Owner will complete any pending corrective actions.

V. OPPORTUNITY TO RESPOND TO THIS CITATION

11. Tower Owner may respond to this Citation within 30 calendar days from the release date of this Citation by any of the following methods: (*1*) a written statement, (*2*) a teleconference interview, or (*3*) a personal interview at the Commission Field Office nearest to Tower Owner's place of business. The Commission Field Office nearest Tower Owner is located in Cerritos, California.

12. If Tower Owner requests a teleconference or personal interview, contact Jim Lyon at (858) 496-5126. We note that such teleconference or interview must take place within 30 calendar days of the release date of this Citation. If Tower Owner prefers to submit a written response with supporting documentation, it must send the response within 30 calendar days of the release date of this Citation to the contact and address provided in paragraph below.

13. All written communications should be sent to the address below.

[19] *See supra* paragraph 5; 47 CFR § 17.4(a).

[20] *See supra* paragraph 7.

[21] *See supra* paragraphs 6-7.

[22] 47 U.S.C. § 303(q); 47 CFR §§ 17.4(a), 17.6(a), 17.21(a), 17.23, 17.57.

Federal Communications Commission
Los Angeles District Office
18000 Studebaker Road, Suite 660
Cerritos, California 90703
Re: EB-FIELDWR-16-00022227

With copy to: WR-Response@fcc.gov and Matthew.Gibson@fcc.gov

14. Upon request, the Commission will make reasonable accommodations for persons with disabilities. If applicable, Tower Owner should provide a description of the accommodation required, and include as much detail as possible, and also provide a telephone number and other contact information. Tower Owner should allow at least five business days advance notice; last minute requests will be accepted, but may be impossible to fill. Tower Owner should 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).

15. We advise Tower Owner that it is a violation of Section 1.17 of the Rules[23] for any person to make any false or misleading written or oral statement of fact to the Commission. 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.

16. 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.[24]

17. Violations of Section 1.17 of the Rules or the criminal statute referenced above may result in further legal action, including monetary forfeitures pursuant to Section 503 of the Act.

18. Finally, we warn Tower Owner that, under the Privacy Act of 1974,[25] Commission staff will use all relevant material information before it, including information disclosed in interviews or written statements, to determine what, if any, enforcement action is required to ensure Tower Owner's compliance with the Act and Rules.

VI. FUTURE VIOLATIONS

19. If, after receipt of this Citation, Tower Owner again violates Sections 17.4(a), 17.6(a), 17.21(a), 17.23, and 17.57 of the Rules and Section 303(q) of the Act by engaging in conduct of the type described herein, the Commission may impose sanctions for each such violation. The Commission may impose forfeitures not to exceed $18,936 for each such violation or each day of a continuing violation,

[23] 47 CFR § 1.17.

[24] 18 U.S.C. § 1001.

[25] 5 U.S.C. § 552a(e)(3).

and up to $142,021 for any single act or failure to act.[26] The Commission may further adjust the forfeiture reflecting enumerated statutory factors, which include 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 other such matters as justice may require.[27] Further, as discussed above, the Commission may assess forfeitures on both the conduct that led to this Citation and the conduct following it.[28]

VII. ORDERING CLAUSES

20. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 503(b)(5) of the Act,[29] 1206 MAPLE AVENUE LLC must register Bendix Tower with the Commission pursuant to Section 17.4(a) of the Rules and cease and desist from future violations of the Commission's tower lighting rules set forth in Section 17.21(a) and 17.23.[30]

21. **IT IS FURTHER ORDERED** that, pursuant to Sections 4(i), 4(j), and 403 of the Act,[31] 1206 MAPLE AVENUE LLC must provide the written information requested in Section IV of this Citation and Order. 1206 MAPLE AVENUE LLC must support its responses with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of 1206 MAPLE AVENUE LLC with personal knowledge of the representations provided in the response, verifying the truth and accuracy of the information therein and that all of the information requested has been produced. All such declarations provided must comply with Section 1.16 of the Rules and be substantially in the form set forth therein.[32] The FCC must receive the response within 30 calendar days of the release date of this Citation and Order.

[26] *See* 47 U.S.C. § 503(b)(2)(D); 47 CFR §§ 1.80(b)(7), (9). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(D) ($10,000 per violation or per day of a continuing violation and $75,000 per any single act or failure to act). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), as further amended by the Federal Reports Elimination Act of 1998, Pub. L. No. 105-362, Sec. 1301, 112 Stat. 3280, and as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701, Pub. L. No. 114-74, 129 Stat. 599 (codified as amended 28 U.S.C. § 2461 note) (the 2015 Inflation Adjustment Act), requires the Commission to adjust its penalties for inflation and publish interim final rules with the initial penalty adjustment amounts by July 1, 2016 and new penalty levels must take effect no later than August 1, 2016. *See* 28 U.S.C. § 2461 note. The Commission published those interim final rules on June 30, 2016. *See Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 16-644 (EB 2016); *see also Adjustment of Civil Monetary Penalties to Reflect Inflation*, 81 Fed. Reg. 42554 (June 30, 2016) (setting August 1, 2016, as the effective date for the increases). The adjustments to the civil monetary penalties adopted by the Bureau pursuant to 2015 Inflation Adjustment Act will apply only to such penalties assessed after the effective date of the amendments to Section 1.80(b). *See* 28 U.S.C. § 2461 note (6).

[27] *See* 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(8).

[28] *See supra* paragraph 2.

[29] 47 U.S.C. §§ 154(i), 154(j), 503(b)(5).

[30] 47 CFR §§ 17.4(a), 17.21(a), 17.23.

[31] 47 U.S.C. §§ 154(i), 154(j), 403.

[32] 47 CFR § 1.16.

22. **IT IS FURTHER ORDERED** that a copy of this Citation and Order shall be sent by first class mail and certified mail, return receipt requested, to Steven Hirsh, Member, 1206 MAPLE AVENUE LLC, 860 S. Los Angeles Street, Suite 900, Los Angeles, CA 90014-3319.

FEDERAL COMMUNICATIONS COMMISSION

Lark Hadley
Regional Director, Region Three,
Enforcement Bureau