

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

In the Matter of
Massey, Wood and West, Inc.
and MWW Realty Corp.,
Antenna Structure Owners
Mechanicsville, Virginia
File No.: EB-FIELDNER-20-00031025

CITATION AND ORDER
ANTENNA STRUCTURE LIGHTING AND REGISTRATION

Adopted: March 28, 2022

Released: March 28, 2022

By the Regional Director, Region One, Enforcement Bureau:

I. NOTICE OF CITATION

1. This is a CITATION AND ORDER (Citation) issued to Massey, Wood and West, Inc. and MWW Realty Corp. (together, MWW), owners of antenna structure 1020743 located in Mechanicsville, Virginia (Antenna Structure), for failing to (a) maintain the required obstruction lighting for an antenna structure that exceeds 60.96 meters (200 feet) in height above ground level; (b) observe the required Antenna Structure lighting at least once each 24 hours visually or use an automatic indicator or alarm system to detect a lighting outage; (c) notify the Federal Aviation Administration (FAA) about lighting outages; and (d) notify the Federal Communications Commission (FCC or Commission) of a change in Antenna Structure ownership information. We therefore direct MWW to take immediate steps to comply with FCC antenna structure lighting and registration regulations. If MWW 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. Accordingly, MWW is hereby on notice that it must comply with section 303(q) of the Act and the Commission's rules promulgated thereunder, including sections 17.6(a), 17.21(a), 17.47(a), 17.48(a), and 17.57 of the rules. If MWW subsequently engages in any conduct of the type this Citation describes,

1 47 CFR §§ 17.6(a), 17.7(a), 17.21(a); see also 47 U.S.C. § 303(q) (the Commission has "authority to require the painting and/or illumination of radio towers if and when in its judgment such towers constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation").

2 47 CFR § 17.47(a).

3 47 CFR § 17.48(a).

4 47 CFR § 17.57.

5 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 or 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 MWW, because MWW is a nonlicensee, and such notice may not have been provided to it previously.

6 47 U.S.C. § 303(q); 47 CFR §§ 17.6(a), 17.21(a), 17.47(a), 17.48(a), 17.57.

MWW 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 the Citation.<sup>7</sup>

3. **Notice of Duty to Provide Information:** Pursuant to sections 4(i), 4(j), and 403 of the Act,<sup>8</sup> we direct MWW to respond in writing, within thirty (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.

## II. BACKGROUND

4. On May 12, 2020, the FCC Operations Center received a complaint from a consumer reporting a tower lighting outage for antenna structure number 1020743. Finding that no Notice to Air Missions (NOTAM) had been issued for the Antenna Structure, the FCC Operations Center asked the FAA that same day to issue a 30-day NOTAM for the Antenna Structure.<sup>9</sup> In response to the complaint, an Agent from the Enforcement Bureau's Field Office in Columbia, Maryland (Columbia Office), opened an investigation and subsequently extended the NOTAM three times for the Antenna Structure.<sup>10</sup> On November 23, 2020, the Agent inspected the Antenna Structure and observed that the Antenna Structure, which was over 200 feet in height above ground level, was located at the coordinates listed in the FCC Antenna Structure Registration (ASR) database, was painted, and had a lighting system installed. On February 2, 2022, another Agent from the Columbia Office observed that the lights on the Antenna Structure were not lit after sunset.<sup>11</sup> Commission records indicate that this Antenna Structure had been used at one time for licensed radio operations.<sup>12</sup> Local property records indicate that Massey, Wood and

<sup>7</sup> 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).

<sup>8</sup> 47 U.S.C. §§ 154(i), 154(j), 403.

<sup>9</sup> NOTAMs alert aircraft pilots of potential hazards, including antenna structure lighting outages, which could affect flight safety.

<sup>10</sup> In addition to the FCC Agent extending the NOTAM for the Antenna Structure, in July 2021, a representative of Edward Barnette, the former tower manager for Antenna Structure 1020743, requested a NOTAM extension because of the lighting outage (although a NOTAM was already in place).

<sup>11</sup> See Agent observation of Antenna Structure 1020743 (Feb. 2, 2022) (on file in EB-FIELDNER-20-00031025).

<sup>12</sup> See WQYS810, Industrial/Business Radio Pool; KFG936, Industrial/Business Radio Pool (cancelled); WQHT829, Industrial/Business Radio Pool (cancelled); KNRT488, Specialized Mobile Radio Service (cancelled); WNMD391, Specialized Mobile Radio Service (cancelled); WPJY518, Specialized Mobile Radio Service (cancelled); WNWC600, Location Wideband Radio Service (cancelled); WPIF767, Private Carrier Paging (cancelled). These licenses are available at <https://www.fcc.gov/wireless/universal-licensing-system>. According to the ASR database, antenna structure number 1020743, located at 37° 37' 16.0" North latitude and 77° 23' 43.0" West longitude, was registered by Brook Hill Communications, Inc. (Brook Hill). See Brook Hill Communications, Inc., Application for Antenna Structure Registration, File No. A0024759 (filed May 9, 1997, by Edward N. Barnette, president of Brook Hill). On October 28, 2021, Edward N. Barnette submitted to the Enforcement Bureau an agreement from March 1989 (Tower Lease), between Brook Hill and the previous owner of the Antenna Structure at 8424 Meadowbridge Road, Mechanicsville, Virginia, for Brook Hill's use and management of the Antenna Structure, including responsibility for tower maintenance and lighting. See Filing on behalf of Edward N. Barnette (Oct. 28, 2021) (on file in EB-FIELDNER-20-00031025) (the purpose of the filing is to remove Edward Barnette, "the former tower manager from any liability for the tower"). The Tower Lease, effective March 1989, was for a term of ten years, renewable unless either party gave written notice to the other of its intent to terminate at least 180 days prior to expiration of the term. In 1996, MWW acquired the property and the Antenna Structure, and in November 1997, Massey, Wood and West, Inc. informed Brook Hill that the Tower Lease would not be renewed. *Id.* In a November 1999 letter to MWW Realty Corp., Brook Hill agreed to continue to be responsible for tower maintenance and lighting for half of the revenue from the tenants on the Antenna Structure. In April 2011, Brook Hill informed Massey, Wood and West, Inc. that there were no longer tenants on the Antenna Structure and that electricity would be used for tower lights. *Id.* According to Edward Barnette, when Brook Hill terminated its tenant relationship in (continued....)

West, Inc. and MWW Realty Corp. acquired the property and the Antenna Structure located at 8424 Meadowbridge Road, Mechanicsville, Virginia in June 1996.<sup>13</sup>

5. According to the ASR database, the Antenna Structure, which exceeds 200 feet in height above ground,<sup>14</sup> is required to meet certain painting and lighting specifications.<sup>15</sup> Specifically, the Antenna Structure must be painted and have at its top a flashing red beacon positioned so as to insure unobstructed visibility of the beacon from aircraft at any normal angle of approach, along with steady burning red side obstruction lights on levels at approximately two-thirds and one-third of the overall height of the tower, mounted so as to insure unobstructed visibility of at least one light at each level from aircraft at any normal angle of approach, and all of the lights must burn continuously or be controlled by a light sensitive device adjusted so that the lights will be turned on and off based on the sky light intensity levels.<sup>16</sup>

6. Even though an antenna structure is no longer being used for the transmission of radio energy, the antenna structure owner is required to maintain the painting and lighting specifications assigned to the structure until the structure is dismantled,<sup>17</sup> is required to observe the antenna structure lighting at least once each 24 hours visually or use an automatic properly maintained indicator or alarm system to detect a lighting outage,<sup>18</sup> is required to notify the FAA of certain lighting outages,<sup>19</sup> and is required to notify the Commission of any change in ownership information.<sup>20</sup> Failing to maintain required lighting and marking of an antenna structure and failing to notify the FAA of lighting outages can create a risk to aviation safety. Failing to update the Commission of a change in antenna structure ownership information exacerbates the problem by diminishing the Commission's ability to identify the antenna structure owner when attempting to remedy lighting outages.

### III. APPLICABLE LAW AND VIOLATIONS

7. 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.<sup>21</sup> Section 17.6(a) of the

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April 2011, Brook Hill's responsibility for the lighting on the Antenna Structure ended. *See* Agent interview with representative of Edward Barnette (Nov. 12, 2021) (on file in EB-FIELDNER-20-00031025).

<sup>13</sup> *See* Virginia State, Hanover County Property Assessor's Office Database, Grid Parcel Identification Number (GPIN) 8705-21-7388; Hanover County Circuit Court Land Records, Deed Book 1203, Deed Page 337, Deed dated June 25, 1996, filed in the Hanover County Circuit Court Clerk's Office on Aug. 5, 1996 (on file in EB-FIELDNER-20-00031025).

<sup>14</sup> The registration for Antenna Structure 1020743 indicates that the overall height above ground is 118.8 meters (389.8 feet).

<sup>15</sup> Certain existing structures have been assigned "FCC Paragraphs," instead of chapters, from FAA Advisory Circulars. The FCC Paragraphs applicable to this Antenna Structure are 1, 3, 12, and 21. The assigned FCC Paragraphs, which outline specific painting and lighting requirements, have been printed directly on the registration for Antenna Structure 1020743. The text of the FCC Paragraphs is available at <https://www.fcc.gov/wireless/bureau-divisions/competition-infrastructure-policy-division/antenna-painting-lighting>.

<sup>16</sup> *Id.*

<sup>17</sup> *See* 47 U.S.C. § 303(q); 47 CFR § 17.2; *see also* 2004 and 2006 Biennial Regulatory Reviews - Streamlining and Other Revisions of Parts 1 and 17 of the Commission's Rules Governing Construction, Marking and 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").

<sup>18</sup> 47 CFR § 17.47(a).

<sup>19</sup> 47 CFR § 17.48(a).

<sup>20</sup> 47 CFR § 17.57.

<sup>21</sup> 47 U.S.C. § 303(q).

Commission's rules states that an antenna structure owner is responsible for complying with applicable structure painting and lighting regulations.<sup>22</sup> 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 above ground level) must have painting and lighting.<sup>23</sup> Section 17.47(a) of the rules requires that the lighting on an antenna structure must be observed at least once every 24 hours either visually or by using an automatic indicator or alarm system that will detect a lighting outage.<sup>24</sup> Section 17.48(a) of the rules requires an antenna structure owner to notify the FAA immediately of any known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes.<sup>25</sup> Under section 17.57 of the rules, the owner of an antenna structure for which an ASR number has been obtained must notify the Commission of any change in the antenna structure's ownership information within five (5) days of such change.<sup>26</sup>

8. The record in this case demonstrates that the Antenna Structure was registered with the Commission by Brook Hill, as a manager of the Antenna Structure,<sup>27</sup> and that FCC licensees once operated transmitters from the Antenna Structure.<sup>28</sup> The record in this case also demonstrates that MWW has not maintained the obstruction lighting for the Antenna Structure,<sup>29</sup> and that MWW has not notified the Commission of the change in antenna structure ownership information.<sup>30</sup> The Commission has made clear that antenna structure owners will have primary responsibility for maintaining the prescribed painting and lighting on their antenna structures and will not be permitted to circumvent this responsibility by entering into contractual arrangements.<sup>31</sup> Based on the foregoing evidence, we find that MWW violated section 303(q) of the Act, and sections 17.6(a), 17.21(a), 17.47(a), 17.48(a), and 17.57 of the Commission's rules.<sup>32</sup>

#### IV. REQUEST FOR INFORMATION

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

- i. Provide a copy of the agreement to convey the Antenna Structure to Massey, Wood and West, Inc. and/or MWW Realty Corp., including the deed from 1996 conveying the property and the Antenna Structure located at 8424 Meadowbridge

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<sup>22</sup> 47 CFR § 17.6(a).

<sup>23</sup> 47 CFR § 17.21(a); *see also* 47 CFR § 17.7(a).

<sup>24</sup> 47 CFR § 17.47(a).

<sup>25</sup> 47 CFR § 17.48(a).

<sup>26</sup> 47 CFR § 17.57 (the owner must notify the Commission by filing an FCC Form 854).

<sup>27</sup> *See supra* n.12. Brook Hill provided contractual documents between itself and the Antenna Structure owner indicating the extent of Brook Hill's responsibilities regarding the Antenna Structure, including responsibilities for maintenance and lighting. The owner of an antenna structure that requires notice of proposed construction to the FAA due to physical obstruction must register the structure with the Commission. 47 CFR § 17.4(a). MWW, as the owner of Antenna Structure 1020743, is responsible for updating the ownership information in the ASR database.

<sup>28</sup> *See supra* para. 4, n.12.

<sup>29</sup> *See supra* para. 4; 47 CFR §§ 17.6(a), 17.21(a).

<sup>30</sup> *See supra* para. 4; 47 CFR § 17.57.

<sup>31</sup> *See Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking, and Lighting of Antenna Structures*, Report and Order, 11 FCC Rcd 4272, 4294-96, paras. 52-53, 56-58 (1995); *see also* 47 CFR § 17.2(c) ("Notwithstanding any agreements made between the owner and any entity designated by the owner to maintain the antenna structure, the owner is ultimately responsible for compliance with the requirements of this part [17]").

<sup>32</sup> 47 U.S.C. § 303(q); 47 CFR §§ 17.6(a), 17.21(a), 17.47(a), 17.48(a), 17.57.

- Road, Mechanicsville, Virginia, and provide a written statement describing the circumstances surrounding acquisition of the Antenna Structure.
- ii. Provide a copy of any agreements subsequent to the 1996 deed regarding conveyance of the Antenna Structure and current Antenna Structure ownership information.
  - iii. Describe the actions MWW has taken to prevent future violations of section 303(q) of the Act, and part 17 of the Commission's rules, and provide a timeline specifying when MWW will complete any pending corrective actions.

## V. OPPORTUNITY TO RESPOND TO THIS CITATION

10. MWW must respond to this Citation within 30 calendar days from the release date of this Citation. MWW may respond 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 MWW's place of business. The Commission Field Office nearest MWW is located in Columbia, Maryland.

11. If MWW requests a teleconference or personal interview, contact the FCC's Columbia Regional Office at 301-725-1996. We note that such teleconference or interview must take place within 30 calendar days of the release date of this Citation. If MWW 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 the paragraph below.

12. All written communications should be sent to the street address and e-mail address below and reference File Number EB-FIELDNER-20-00031025.

David C. Dombrowski  
Enforcement Bureau  
Federal Communications Commission  
EB Columbia Regional Office  
9050 Junction Drive  
Annapolis, Maryland 20701  
Field@fcc.gov

13. Upon request, the Commission will make reasonable accommodations for persons with disabilities. If applicable, MWW 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. MWW should allow at least five business days advance notice; last minute requests will be accepted, but may be impossible to fill. MWW should send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau:

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

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

14. We advise MWW that it is a violation of section 1.17 of the Commission's rules<sup>33</sup> 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

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<sup>33</sup> 47 CFR § 1.17.

(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. 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.<sup>34</sup>

16. Violations of section 1.17 of the Commission's rules or the criminal statute referenced above may result in further legal action, including monetary forfeitures pursuant to section 503 of the Act.

17. Finally, we warn MWW that, under the Privacy Act of 1974,<sup>35</sup> 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 MWW's compliance with the Act and the Commission's rules.<sup>36</sup>

## VI. FUTURE VIOLATIONS

18. If, after receipt of this Citation, MWW again violates section 303(q) of the Act, and/or sections 17.6(a), 17.21(a), 17.47(a), 17.48(a), and 17.57 of the Commission's rules by engaging in conduct of the type described herein, the Commission may impose sanctions for each such violation. For example, the Commission may impose monetary forfeitures. The base forfeiture for failure to comply with prescribed lighting and/or marking is \$10,000.<sup>37</sup> 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 such other matters as justice may require."<sup>38</sup>

## VII. ORDERING CLAUSES

19. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 4(j) of the Act,<sup>39</sup> Massey, Wood and West, Inc. and MWW Realty Corp. must cease and desist from future violations of the Commission's rules for the lighting of antenna structures set forth in sections 17.6(a), 17.21(a), 17.47(a) and 17.48(a), and must update the Antenna Structure ownership information pursuant to section 17.57 of the Commission's rules.<sup>40</sup>

20. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i), 4(j), and 403 of the Act,<sup>41</sup> Massey, Wood and West, Inc. and MWW Realty Corp. must provide the written information requested in Section IV, above. Massey, Wood and West, Inc. and MWW Realty Corp. must support the responses with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of Massey, Wood and West, Inc. and MWW Realty Corp. 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

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<sup>34</sup> 18 U.S.C. § 1001.

<sup>35</sup> 5 U.S.C. § 552a(e)(3).

<sup>36</sup> Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

<sup>37</sup> See 47 CFR § 1.80(b).

<sup>38</sup> See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10).

<sup>39</sup> 47 U.S.C. § 154(i), (j).

<sup>40</sup> 47 CFR §§ 17.6(a), 17.21(a), 17.47(a), 17.48(a), 17.57.

<sup>41</sup> 47 U.S.C. §§ 154(i), 154(j), 403.

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of the Commission's rules and be substantially in the form set forth therein.<sup>42</sup> The FCC must receive the response within 30 calendar days of the release date of this Citation and Order.

21. **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 Patricia Nelson, Registered Agent for Massey, Wood and West, Inc. and MWW Realty Corp., 1713 Westwood Ave., Richmond, Virginia 23227.

FEDERAL COMMUNICATIONS COMMISSION

David C. Dombrowski  
Regional Director, Region One  
Enforcement Bureau  
Federal Communications Commission

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<sup>42</sup> 47 CFR § 1.16.