

Federal Communications Commission

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

In the Matter of)	
)	File Number: EB-02-BF-338
North Country Repeaters)	
Owner of antenna structure on Rand Hill)	NAL/Acct. No. 200332280008
Beekmantown, New York)	
)	FRN: 0004-1349-61
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 12, 2003

By the Resident Agent, Buffalo Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that North Country Repeaters (“NCR”), owner of antenna structure #1009975, has apparently violated Sections 17.4(a), 17.4(g), and 17.50 of the Commission’s Rules (“Rules”)¹ by failing to register the tower, failing to post the Antenna Structure Registration (“ASR”) number at the base of the antenna structure; and failing to clean and repaint its antenna structure to maintain good visibility. We conclude that NCR is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. On August 28, 2002, an agent of the Commission’s Buffalo Office inspected the antenna structure located on Rand Hill, in Beekmantown, New York. At the time of inspection, the agent found that the tower paint was chipped and faded, that no Antenna Registration Number was posted, and that the coordinates of the tower did not match the coordinates registered with the FAA and FCC.

3. On September 9, 2002, the Buffalo Office issued a Notice of Violation (“NOV”) to North Country Repeaters. The NOV cited violations of Sections 17.4(a), 17.4(g), and 17.50 of the Rules.

4. On September 18, 2002, the Buffalo Office received a response from Mr. Erling Svendsen. In the reply, he stated that the tower had been repainted, paperwork was being processed to correct the coordinates in the FAA and FCC databases, and that the Antenna Registration Number 1009975, was now posted at the base of the tower.

5. On December 16, 2002, Agent Stanbro phoned Mr. Svendsen, inquiring about the current

¹ 47 C.F.R. §§ 17.4(a), 17.4(g), and 17.50

Federal Communications Commission

status to correct the coordinates for tower #1009975. Mr. Svendsen stated he had submitted the paperwork and would fax a copy to the Buffalo Office.

III. DISCUSSION

6. Section 17.4(a) of the Rules requires the owner of an existing or proposed tower that requires notice of proposed construction to the Federal Aviation Administration must register the structure with the Commission. All information provided to the Federal Aviation Administration and Federal Communication Commission must be accurate. At the time of inspection, the FCC database showed there was no tower registered at or near the coordinates observed by the agent, and subsequently verified by the licensee's surveyor.

7. Section 17.4(g) of the Rules states the Antenna Structure Registration Number must be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. NCR did not have an Antenna Structure Registration number posted.

8. Section 17.50 of the Rules states that antenna structures requiring painting under this part shall be cleaned or repainted as often as necessary to maintain good visibility. At the time of inspection, NCRs' tower paint visibility had deteriorated over time to the point of being a hazard to air navigation.

9. Based on the evidence before us, we find that NCR willfully² and repeatedly³ violated Sections 17.4(a), 17.4(g), and 17.50 of the rules by failing to properly register the tower, failing to post the ASR number at the base of the antenna, and failing to repaint the tower to maintain good visibility. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), recon. denied, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")⁴, sets the base forfeiture amount at \$3,000 for failure to file required forms or information, and \$10,000 for failure to comply with prescribed lighting and/or marking requirements. Section 1.80(b)(4) of the Rules⁵ does not establish a base forfeiture amount for failure to post the ASR number.⁶ The Commission has determined, however, that an appropriate base forfeiture

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provide that "the term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act..." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ Section 312(f)(2), which also applies to Section 503(b), provides: [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.

⁴ 47 C.F.R. § 1.80.

⁵ 47 C.F.R. § 1.80(b)(4).

⁶ See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*"), 12 FCC Rcd 17087 (1997), recon. denied 15 FCC Rcd 303 (1999). The *Forfeiture Policy Statement* states that "...any omission of a specific rule violation from the ...[forfeiture guidelines]...should not signal that the Commission considers any unlisted violation as nonexistent or

Federal Communications Commission

amount for failure to post the ASR number is \$2,000 per violation.⁷ In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934 (“Act”), as amended⁸, 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. Applying the *Forfeiture Policy Statement* and the statutory factors listed above, and applying the inflation adjustments, we believe that a fifteen thousand dollar (\$15,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁹, and Sections 0.111, 0.311 and 1.80 of the Rules¹⁰, North Country Repeaters is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of fifteen thousand dollars (\$15,000) for willful and repeated violation of Sections 17.4(a), 17.4(g), and 17.50 of the Rules.

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, North Country Repeaters, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332280008 and FRN: 0004-1349-61.

13. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. 200332280008.

14. 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 practices (“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.

unimportant. Forfeiture Policy Statement, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover, to depart from the Forfeiture Policy Statement and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act. Id.

⁷ American Tower Corporation, 16 FCC Rcd 1282 (2001)

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. §§ 0.111 and 0.311.

Federal Communications Commission

15. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹¹

16. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

17. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to North Country Repeaters, 994 Military Turnpike, Plattsburgh, New York 12901-5926.

FEDERAL COMMUNICATIONS COMMISSION

Gene J. Stanbro
Resident Agent
Buffalo Office

Attachment A: Condensed List of Small Entities

¹¹ See 47 C.F.R. § 1.1914.