

Federal Communications Commission

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

In the Matter of)	
)	
Northeast Passage Corporation.)	File No. EB-00-PA-362
512 U.S. Highway 9)	
Forked River, New Jersey 08731)	NAL/Acct No.: 200132400003

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 22, 2001

By the District Director, Philadelphia Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Northeast Passage Corporation ("NEPC") has apparently violated Sections 17.4(a) and 1.89(b) of the Commission's Rules and Regulations (the "Rules") by failing to register its antenna structure and failing to respond to Commission correspondence.¹ We conclude that NEPC is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

2. By letter dated September 13, 2000, SBC Wireless Inc. informed the Federal Communications Commission's Enforcement Bureau that NEPC failed to register an antenna structure with the Commission. SBC Wireless Inc. stated that it leases space on the unregistered antenna structure that is located in Forked River, New Jersey near the coordinates 39° 49' 37" N by 074° 12' 10" W. The Enforcement Bureau's Technical and Public Safety Division forwarded the complaint to the Philadelphia Office for investigation.

3. During a telephone conversation with FCC agent David Dombrowski, Walter Holmes of NEPC acknowledged that NEPC is the owner of the antenna structure, the overall height of the antenna structure is greater than 200 feet above ground level and the antenna structure was never registered with the Commission. Walter Holmes stated that Northeast Passage Corp. voluntarily installed obstruction lighting on the antenna structure for aeronautical purposes.

¹ 47 C.F.R. §§ 17.4(a) and 1.89(b).

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4. On October 20, 2000, the Philadelphia Office issued NEPC a Notice of Violation for failure to register the antenna structure with the Commission, in violation of Section 17.4(a) of the Rules. The Philadelphia Office requested NEPC to submit a written response addressing the violation within 10 days following receipt of the Notice of Violation. On November 28, 2000, Walter Holmes contacted the Philadelphia Office by telephone and advised FCC agent Trent Williams that NEPC received the Notice of Violation.

5. As of December 7, 2000, NEPC had not registered its antenna structure or submitted a written response to the October 20, 2000 Notice of Violation. Therefore, on December 7, 2000, the Philadelphia Office issued NEPC a Notice of Violation for failure to respond to Commission correspondence, in violation of Section 1.89(b) of the Rules. In the Notice of Violation, the Philadelphia Office included a copy of the October 20, 2000 Notice of Violation and stated that it had not received a reply from NEPC. The Philadelphia Office sent the December 7, 2000 Notice of Violation to NEPC by certified mail. According to the return receipt, NEPC received the Notice of Violation from the U.S. Postal Service on December 15, 2000.

6. As of this date, the Philadelphia Office has not received a reply to the Notices of Violation issued on October 20, 2000 and December 7, 2000 and the Commission has no record that NEPC registered the antenna structure. Although the Philadelphia Office has made numerous attempts to contact NEPC by telephone, NEPC has not returned any of the telephone calls.

III. DISCUSSION

7. Pursuant to Section 17.4(a) of the Rules, the owner of any proposed or existing antenna structure that requires a notice of proposed construction to the Federal Aviation Administration (“FAA”) must register the structure with the Commission. Pursuant to Section 17.7(a) of the Rules, a notification to the FAA is required for any construction or alteration of an antenna structure of more than 200 feet above ground level.² In Section 17.2(a) of the Rules, an antenna structure is defined as the supporting structures and any appurtenances mounted thereon.³ Based on measurements conducted by FCC agent Trent Williams of the Philadelphia Office and Valcom Wireless Construction, Inc., the overall height of the antenna structure exceeds 200 feet above ground level. Consequently, NEPC must register the antenna structure with the Commission by filing FCC Form 854 (Application for Antenna Structure Registration).

8. In the Notices of Violation issued on October 20, 2000 and December 7, 2000, the Philadelphia Office required NEPC to submit a written response addressing its failure to register the antenna structure. Section 1.89(b) of the Rules requires that within 10 days from receipt of the Notice of Violation, the recipient shall send a written answer, in duplicate, directly to the Commission office originating the official notice. Section 1.89(c) of the Rules requires that the answer to each notice shall contain a statement of action taken to correct the condition or omission complained of and to preclude its recurrence.⁴

² 47 C.F.R. § 17.7(a).

³ 47 C.F.R. § 17.2(a).

⁴ 47 C.F.R. § 1.89(c).

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9. Based on the evidence before us, we find that NEPC willfully⁵ violated Section 17.4(a) of the Rules by failing to register its antenna structure and Section 1.89(b) of the Rules by failing to respond to Commission correspondence.

10. Pursuant to Section 1.80 of the Rules,⁶ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("Policy Statement"), the base amount for failure to respond to official Commission correspondence is \$4,000, and the base amount for failure to register antenna structures is \$3,000 (failure to file required forms or information). The total base forfeiture for both violations is \$7,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended, (the "Act"),⁷ that 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 Policy Statement and statutory factors to the instant case, we believe that a monetary forfeiture in the amount of seven thousand dollars (\$7,000) is warranted.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁸, and Sections 0.111, 0.311 and 1.80 of the Rules,⁹ NORTHEAST PASSAGE CORPORATION is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for violating Sections 17.4(a) and 1.89(b) of the Rules.

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

13. 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. 200132400003.

⁵ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he 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 or any rules or regulations of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, and 0.311.

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14. The response, if any, must be mailed to the Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200132400003 referenced above.

15. 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.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

17. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to NORTHEAST PASSAGE CORPORATION at 512 U.S. Highway 9, Forked River, New Jersey 08731.

FEDERAL COMMUNICATIONS COMMISSION

John E. Rahtes
District Director
Philadelphia Office

¹⁰ See 47 C.F.R. § 1.1914.