

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

In the Matter of)
)
SpectraSite Communications, Inc.) File Number EB-01-TP-157
)
Antenna Structure Registration # 1215109) NAL/Acct.No.: 200132700006
)
Cary, NC 27511)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: April 25, 2001

By the Enforcement Bureau, Tampa Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that SpectraSite Communications, Inc. apparently violated Section 17.51(a)¹ of the Commission's Rules, by failing to properly light antenna structure (ASR # 1215109) located in Ocala, Florida. We conclude that SpectraSite Communications, Inc. is apparently liable for forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On April 5, 2001, agents from the Commission's Tampa Field Office observed an unlighted antenna structure along the northbound lanes of Interstate 75 near Ocala, FL. The owner of the antenna structure was later determined to be SpectraSite Communications, Inc.

3. On February 6, 2001, an agent from the Tampa Office contacted Spectrasite Communications and determined that SpectraSite was unaware of the tower outage and that FAA had not been notified of the outage.

III. DISCUSSION

4. Section 17.51(a) requires that all red obstruction lighting shall be exhibited from sunset to sunrise unless otherwise specified. On April 5, 2001 Tampa Office agents observed that antenna structure # 1215109 was not illuminated.

¹ 47 C.F.R. § 17.51(a)

5. Pursuant to Section 1.80(b)(4)² of the Commission's Rules, the base forfeiture amount for failure to comply with prescribed lighting and/or marking is \$10,000. Section 503(b)(2)(D) of the Communications Act of 1934, as amended ('Act')³ requires us to take into account "... 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." Considering the entire record and applying the statutory factors listed above, this case warrants a \$10,000 forfeiture.

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended,⁴ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,⁵ SpectraSite Communications, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of amount of \$10,000 for willful⁶ violation of Section 17.51(a) of the Commission's Rules

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules⁷, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, SpectraSite Communications, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. 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. referenced in the letterhead above.

9. 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. referenced in the letterhead above.

² 47 C.F.R. § 1.80(b)(4)

³ 47 U.S.C. § 503 (b)(2)(D)

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁶ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally 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" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁷ 47 C.F.R. § 1.80.

10. 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.

11. 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. 20554.⁸

12. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to SpectraSite Communications, Inc. at 100 Regency Forest Drive, Suite 400, Cary, NC 27511.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
District Director, Tampa Office
Enforcement Bureau

⁸ See 47 C.F.R. § 1.1914.