

**Federal Communications Commission**

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

In the Matter of	)	
	)	
New Day Broadband, LLC	)	
	)	
Owner of Antenna Structure No. 1049717	)	File No.: EB-FIELDWR-13-00012802
Clayton, New Mexico	)	NOV No.: V201432940054

**NOTICE OF VIOLATION**

Released: September 17, 2014

By the District Director, San Diego Office, Western Region, Enforcement Bureau:

1. This is a Notice of Violation (Notice) issued pursuant to Section 1.89 of the Commission's rules (Rules)<sup>1</sup> to New Day Broadband, LLC (New Day), owner of Antenna Structure No. 1049717 in Clayton, New Mexico. Pursuant to Section 1.89(a) of the Rules, issuance of this Notice does not preclude the Enforcement Bureau from further action if warranted, including issuing a Notice of Apparent Liability for Forfeiture for the violation(s) noted herein.<sup>2</sup>

2. The Enforcement Bureau's San Diego Office received a complaint from the Union County Sheriff's Department in Clayton, New Mexico, concerning a tower with observed extinguishment of its obstruction lights. On January 13, 2014, an agent of the San Diego Office inspected Antenna Structure No. 1049717 located at 300 West Spruce, Clayton, New Mexico, and observed the following violations:

- a. 47 C.F.R. § 17.51(a): "All red obstruction lighting shall be exhibited from sunset to sunrise unless otherwise specified." Antenna Structure No. 1049717 is 121.9 meters in height above ground level and is required to comply with FCC Paragraphs 1, 3, 13, and 21, specifically, the Antenna Structure must have red obstruction lighting from sunset to sunrise, with a flashing red beacon at the top of the tower and steady burning red lights at two-thirds and one-third of the structure's height. At the time of the inspection, the agent observed only a steady burning red light at the top of the Antenna Structure. No other lights were observed.
- b. 47 C.F.R. § 17.48: "The owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part: (a) Shall report immediately by telephone or telegraph

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<sup>1</sup> 47 C.F.R. § 1.89.

<sup>2</sup> 47 C.F.R. § 1.89(a).

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to the nearest Flight Service Station or office of the Federal Aviation Administration any observed or otherwise 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. Such reports shall set forth the condition of the light or lights, the circumstances which caused the failure, the probable date for restoration of service, the FCC Antenna Structure Registration Number, the height of the structure (AGL and AMSL if known) and the name, title, address, and telephone number of the person making the report.” At the time the agent reported the antenna tower light outage to the FAA and initiated the issuance of a Notice to Airmen (NOTAM), the FAA advised that there had been no other current light outage reports and/or NOTAM issued for the subject antenna structure.

- c. 47 C.F.R. § 17.47(a): “The owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part: (1) Shall make an observation of the antenna structure's lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights, to insure that all such lights are functioning properly as required; or alternatively, (2) Shall provide and properly maintain an automatic alarm system designed to detect any failure of such lights and provide indication of such failure to the owner.” The inspection by the San Diego agent revealed that the required monitoring had not taken place.
- d. 47 C.F.R. § 17.57: “The owner of an antenna structure for which an Antenna Structure Registration Number has been obtained must notify the Commission within 24 hours of completion of construction (FCC Form 854-R) and/or dismantlement (FCC Form 854). The owner must also immediately notify the Commission using FCC Form 854 upon any change in structure height or change in ownership information.” At the time of the inspection, and as of the date of this Notice, New Day has failed to update the Antenna Structure's registration to indicate that New Day is the owner of the Antenna Structure.

3. Pursuant to Section 403 of the Communications Act of 1934, as amended,<sup>3</sup> and Section 1.89 of the Rules, we seek additional information concerning the violations and any remedial actions taken. Therefore, New Day must submit a written statement concerning this matter within twenty (20) days of release of this Notice. The response (i) must fully explain each violation, including all relevant surrounding facts and circumstances, (ii) must contain a statement of the specific action(s) taken to correct each violation and preclude recurrence, and (iii) must include a time line for completion of any pending corrective action(s). The response must be complete in itself and must not be abbreviated by reference to other communications or answers to other notices.<sup>4</sup>

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<sup>3</sup> 47 U.S.C. § 403.

<sup>4</sup> 47 C.F.R. § 1.89(c).

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4. In accordance with Section 1.16 of the Rules, we direct New Day to support its response to this Notice with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of New Day with personal knowledge of the representations provided in New Day's response, verifying the truth and accuracy of the information therein,<sup>5</sup> and confirming that all of the information requested by this Notice which is in the licensee's possession, custody, control, or knowledge has been produced. To knowingly and willfully make any false statement or conceal any material fact in reply to this Notice is punishable by fine or imprisonment under Title 18 of the U.S. Code.<sup>6</sup>

5. All replies and documentation sent in response to this Notice should be marked with the File No. and NOV No. specified above, and mailed to the following address:

Federal Communications Commission  
San Diego Office  
4542 Ruffner Street, Suite 370  
San Diego, CA 92111

6. This Notice shall be sent to New Day Broadband, LLC, at its address of record.

7. The Privacy Act of 1974<sup>7</sup> requires that we advise you that the Commission will use all relevant material information before it, including any information disclosed in your reply, to determine what, if any, enforcement action is required to ensure compliance.

FEDERAL COMMUNICATIONS COMMISSION

James T. Lyon  
District Director  
San Diego Office  
Western Region  
Enforcement Bureau

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<sup>5</sup> Section 1.16 of the Rules provides that "[a]ny document to be filed with the Federal Communications Commission and which is required by any law, rule or other regulation of the United States to be supported, evidenced, established or proved by a written sworn declaration, verification, certificate, statement, oath or affidavit by the person making the same, may be supported, evidenced, established or proved by the unsworn declaration, certification, verification, or statement in writing of such person . . . . Such declaration shall be subscribed by the declarant as true under penalty of perjury, and dated, in substantially the following form . . . : 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'." 47 C.F.R. § 1.16.

<sup>6</sup> 18 U.S.C. § 1001 *et seq.* See also 47 C.F.R. § 1.17.

<sup>7</sup> P.L. 93-579, 5 U.S.C. § 552a(e)(3).