

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

In the Matter of)	File No. EB-02-SD-004
)	
SpectraSite Communications, Inc.)	NAL/Acct. No. 200232940004
)	
Cary, North Carolina)	FRN # 0006-1525-73

MEMORANDUM OPINION AND ORDER

Adopted: October 4, 2002

Released: October 8, 2002

By the Commission:

1. In this *Memorandum Opinion and Order*, we cancel \$6,000 of a proposed forfeiture assessment against SpectraSite Communications, Inc., Cary, North Carolina (SpectraSite).

2. On April 25, 2002, we issued the *Notice of Apparent Liability for Forfeiture (NAL)*¹ to SpectraSite for six apparent violations of Section 303(q) of the Communications Act of 1934, as amended (Act),² and Part 17 of the Commission's Rules (Rules) relating to tower construction, marking, and lighting.³ SpectraSite paid \$105,000 of a \$111,000 proposed forfeiture assessment relating to 5 of the 6 apparent violations identified in the *NAL*. It challenges the remaining \$6,000 assessed for its apparent failure to post an Antenna Structure Registration number at its Oakdale, California site in violation of Section 17.4(g).⁴ In its response to the *NAL*, SpectraSite asserts, for the first time, that it voluntarily registered the Oakdale antenna structure (i.e., the antenna structure is not subject to the Federal Aviation Administration's notification requirement and, hence, our tower construction, marking, and lighting rules).⁵ Our review confirms SpectraSite's assertion.⁶ Accordingly, we cancel the outstanding \$6,000 proposed forfeiture assessment.⁷

3. Accordingly, **IT IS ORDERED** that, pursuant to Section 504(b) of the Act, the \$6,000 forfeiture proposed against SpectraSite Communications, Inc. for apparent violation of Section 17.4(g) of the Rules at its Oakdale, California site **IS CANCELLED**.

¹ See *SpectraSite Communications, Inc.*, 17 FCC Rcd 7884 (2002).

² 47 U.S.C. § 303(q) (antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission).

³ 47 C.F.R. § 17.1 *et seq.*

⁴ 47 C.F.R. § 17.4(g); ASR No. 1208406; 37°47' 39.5" N and 120° 54' 50.7" W.

⁵ In response to a *Notice of Violation* issued on May 4, 2001, SpectraSite informed us only that it had posted the appropriate signage.

⁶ Sections 17.7 and 17.14 of the Rules detail the type of antenna structure construction and alteration that requires notification to the Federal Aviation Administration (e.g., height greater than 200 feet above ground level and height and distance from airports). 47 C.F.R. §§ 17.4, 17.14. In this case, we did not find any criterion that applied to SpectraSite's Oakdale antenna structure.

⁷ See *VoiceStream PCS I License, L.L.C.*, 16 FCC Rcd 7584 (Enf. Bur. 2001); *AT&T Wireless Services, Inc.*, 16 FCC Rcd 6805 (Enf. Bur. 2001).

4. **IT IS FURTHER ORDERED** that a copy of this *Memorandum Opinion and Order* shall be sent by certified mail, return receipt requested, to John Lynch, Esq., Vice-President, General Counsel, and Secretary, SpectraSite Communications, Inc., 100 Regency Forest Drive, Cary, North Carolina 27511, and to Ms. M. Anne Swanson, Esq. Dow, Lohnes & Albertson, 1200 New Hampshire Avenue, N.W., Suite 800, Washington, D.C. 20036-6802.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary