

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

In the Matter of)	
)	
Signal One, LLC)	File No. EB-02-AT-321
)	
Owner of Antenna Structure # 1216312 in)	NAL/Acct. No. 200232480029
Madisonville, Tennessee)	
Chattanooga, Tennessee)	FRN 0005-8247-27

FORFEITURE ORDER

Adopted: December 17, 2003

Released: December 18, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to Signal One, LLC (“*Signal*”) for willful violation of Section 17.51(b) of the Commission’s Rules (“*Rules*”).¹ The violation involves *Signal*’s failure to continuously exhibit all medium intensity obstruction lighting on its tower during daylight hours.

2. On September 30, 2002, the Commission’s Atlanta, Georgia Field Office (“*Atlanta Office*”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to *Signal* for a forfeiture in the amount of ten thousand dollars (\$10,000).² *Signal* filed its response to the *NAL* on October 15, 2002.

II. BACKGROUND

3. Antenna structure #1216312 is located near Madisonville, Tennessee and is registered to *Signal*. The registration includes a requirement to maintain a dual lighting system that includes medium intensity obstruction lighting during daylight operation. At 9:45 a.m. on July 29, 2002, an agent from the *Atlanta Office* inspected antenna structure #1216312. During that inspection, and at a subsequent inspection at 1:30 p.m. on July 30, 2002, the agent observed that the tower’s medium intensity obstruction lighting was not in operation. The tower was observed during a period of approximately 30 minutes each day. On each day the agent observed, from a position one-half mile away up and continuing to the tower base, from both the southwest and northwest directions, that there was no lighting. The agent contacted the FAA Flight Service Station in Nashville, TN on July 30, 2002, and found that the FAA had not been notified of the outage. At approximately 2:00 p.m. on July 30, 2002 the agent telephoned the contact person for *Signal One*, who stated that she would check the outage. The contact person subsequently

¹ 47 C.F.R. § 17.51(b).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232480029 (Enf. Bur., Atlanta Office, released September 30, 2002).

contacted the agent. According to Signal, the contact person reported that a manual poll of the lighting alarm system had failed and an outage report was being made to the FAA on July 30, 2002.

4. On September 30, 2002, the Atlanta Office issued a *NAL* to Signal for the violations observed on July 29 and 30, 2002. Signal replied to the *NAL* on October 15, 2002, and included statements from Flash Technology, Inc., the company that polls Signal's towers for the status of the lights, and Lit Systems, Inc., the company that maintains and repairs Signal's tower lights. Signal requests that the *NAL* be cancelled. In support thereof, it states that after it was contacted on July 30, 2002, and informed that there was an outage at the Madisonville tower, it then called Flash Technology at 3:57 p.m. requesting that it check the status of the lights.³ Flash Technology informed Signal that the tower site answered the polling call, but "would not connect."⁴ Signal claims that through Flash Technology it notified the FAA of the outage, and that by doing so it complied with the Commission's rules.⁵ Signal states that after contacting Flash Technology, it contacted Lit Systems. A Lit Systems representative who went to the tower site at 6:00 p.m. on July 30 reported to Signal that the lights were functioning properly and that there were no alarms indicating a previous light failure. Signal also submits photographs showing a second tower located 1/8 of a mile from its tower #1216312, and suggests that the agent could have observed the wrong tower. Lastly, Signal states that none of its towers had ever been cited for any violations of Commission rules.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁶ Section 1.80 of the Rules,⁷ and *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*"). In examining Signal's response, Section 503(b) of the Act requires that the Commission 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.⁸

7. Section 17.51(b) of the Rules requires that all medium intensity obstruction lighting be exhibited continuously unless otherwise specified. On the basis of the FCC agent's observations during

³ "Trouble Ticket History" for "ASR #1216312", by Flash Technology, submitted with Signal's reply to the *NAL*.

⁴ Statement by Signal in response to the *NAL*.

⁵ Signal's statement is provided to demonstrate its compliance with Section 17.48 of the Rules, 47 C.F.R. § 17.48. That rule requires a report to the FAA of certain lighting outages if the outage is not corrected within 30 minutes. However, Signal's compliance with that rule is not before us as Signal was not cited for a violation of Section 17.48 of the Rules.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 47 U.S.C. § 503(b)(2)(D).

his investigation, we find that Signal willfully violated Section 17.51(b) of the Rules. The dispositive fact is that on July 29 and 30, 2002, the lighting had failed. We give no credence to Signal's assertion that the agent may have confused Signal's tower with a second tower 1/8 mile away. The agent's observations of the tower were made continuously from two directions and starting at one-half mile from the tower. We note also that Signal has provided no evidence whatsoever of any lighting outage at the second tower. Accordingly, we find that Signal violated Section 17.51(b) of the Rules by willfully failing to exhibit medium intensity obstruction lighting on its tower.⁹

8. Section 503(b) of the Act gives the Commission authority to assess a forfeiture penalty against any person if the Commission determines that the person has "willfully or repeatedly" failed to comply with the provisions of the Act or with any rule, regulation or order issued by the Commission. In light of our determination that Signal's violation was willful, it is not necessary to determine whether it was also repeated.

9. We have examined Signal's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Signal willfully violated Section 17.51(b) of the Rules. However, Signal's assertion is correct that it has no previous citations, and as a result we reduce the forfeiture amount to \$8,000 based on its history of overall compliance.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁰ Signal **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for failure to light the captioned antenna structure, in willful violation of Section 17.51(b) of the Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹¹ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232480029 and FRN 0005-8247-27. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹²

⁹ Section 312 (f)(1) of the Act, 47 U.S.C. § 312 (f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Red 4387 (1991).

¹⁰ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹¹ 47 U.S.C. § 504(a).

¹² See 47 C.F.R. § 1.1914.

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Signal One, LLC, 5751 Uptain Road, Chattanooga, TN 37411-5674.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau