

Federal Communications Commission

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

In the Matter of)	
)	
Exosphere Broadcasting, LLC)	File No. EB-03-TP-178
Owner of Antenna Structure Registration)	NAL/Acct. No.: 200432700009
Number 1027312)	FRN: 0003-4746-40
Saint Augustine, Florida)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: February 4, 2004

By the Enforcement Bureau, Tampa Office:

I. Introduction

1. In this Notice of Apparent Liability for forfeiture (“NAL”), we find Exosphere Broadcasting, LLC, (Exosphere), owner of antenna structure ASR #1027312 in Saint Augustine, Florida, apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Sections 17.50 and 17.51 of the Commission’s Rules (“Rules”).¹ Specifically, we find Exosphere apparently liable for failing to maintain good visibility of the required antenna structure obstruction marking and failing to exhibit obstruction lighting from sunset to sunrise.

II. Background

2. On April 3, 2003, two agents from the Commission’s Tampa Field Office inspected Exosphere’s antenna structure #1027312, located at 29° 51’ 01.0” North Latitude, 081° 19’ 49.0” West Longitude, Saint Augustine, Florida. The agents observed that the antenna structure paint was faded and obstructed by cables attached to the structure, resulting in poor visibility of the structure markings. A representative from the radio stations that utilize the structure for their antennas, WFOY-AM and WAOC-AM, stated that the top beacon on the antenna structure had been extinguished since approximately March 30, 2003, and that he notified an Exosphere representative about the light outage on that date.

3. On the same date, at approximately 10:21 P.M. the FCC agents observed the structure lighting and verified the top beacon on the antenna structure was extinguished. One of the agents contacted the Federal Aviation Administration (“FAA”) and determined that the FAA had not been notified of the light extinguishment.

4. On April 4, 2003, one of the agents interviewed Mr. Jerry Smith, a representative of Exosphere Broadcasting, LLC, who confirmed ownership of the structure. Mr. Smith stated that, on March 30, 2003, a representative of the broadcast stations that use the structure notified him of the light outage, but he did not notify the FAA. Mr. Smith also acknowledged that the structure needed painting and stated the structure would be repainted as soon as possible.

¹ 47 C.F.R. §§ 17.50 and 17.51.

III. Discussion

5. Section 17.50 of the Rules states that antenna structures requiring painting shall be cleaned or repainted as often as necessary to maintain good visibility. The antenna structure owner is responsible for maintaining the structure's painting.² Exosphere is the registered owner of antenna structure #1027312. This structure is required to be painted and exhibit red obstruction lights at night pursuant to Federal Aviation Administration specifications, the structure's ASR, and FCC rules.³ From at least April 3 through 4, 2003, the paint on the structure was faded and obstructed by cables attached to the structure, resulting in poor visibility of the structure markings. Section 17.51 of the Rules requires that red obstruction lighting be exhibited from sunset to sunrise. Exosphere Broadcasting, LLC failed to exhibit the required lights on its antenna structure from at least March 30 to April 3, 2003. In addition, Exosphere Broadcasting, LLC failed to immediately notify the FAA of the improper functioning of the structure's lighting.⁴

6. Based on the evidence before us, we find that Exosphere Broadcasting, LLC repeatedly⁵ and willfully⁶ violated Sections 17.50 and 17.51 of the Rules by failing to maintain good visibility of the required antenna structure obstruction marking and by failing to exhibit required obstruction lighting on its antenna structure between sunset and sunrise.

7. Pursuant to Section 1.80(b) (4) of the Rules, the base forfeiture amount for failure to comply with prescribed antenna structure lighting and/or markings is \$10,000.⁷ Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), 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 such other matters as justice may require."⁸ Considering the entire record and applying the statutory factors listed above, this case warrants a \$10,000 forfeiture.

IV. Ordering Clauses

8. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act⁹ and Sections 0.111, 0.311 and 1.80 of the Rules,¹⁰ Exosphere Broadcasting, LLC, is hereby **NOTIFIED** of its

² See 47 C.F.R. § 17.6(a).

³ See 47 C.F.R. §§ 17.21, 17.22, and 17.23.

⁴ Owners of registered antenna structures with assigned lighting must immediately report to the FAA any known improper functioning of any top or flashing light. See 47 C.F.R. § 17.48(a).

⁵ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁶ 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', 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 Red 4387-88 (1991).

⁷ 47 C.F.R. § 1.80(b)(4).

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 U.S.C. § 503(b).

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APPARENT LIABILITY FOR A FORFEITURE in the amount of \$10,000 for willful and repeated violation of Sections 17.50 and 17.51 of the Commission's Rules.

9. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release of this NAL, Exosphere Broadcasting, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by 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 must note the FRN and NAL/Acct. No. referenced in the letterhead above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, SW, Washington, D.C. 20554.¹¹

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, D.C. 20554, Attn: Spectrum Enforcement Division, and must include the FRN and NAL/Acct. No. referenced in the letterhead above.

12. 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.

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

14. **IT IS FURTHER ORDERED THAT** a copy of this NAL shall be sent by regular mail and Certified Mail, Return Receipt Requested, to Exosphere Broadcasting, LLC, 567 Lewis Point Extension, Saint Augustine, Florida 32086.

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¹⁰ 47 C.F.R. §§ 0.111, 0.311, and 1.80.

¹¹ See 47 C.F.R. § 1.1914.

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Ralph M. Barlow
District Director