

Federal Communications Commission

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

In the Matter of)	File No. EB-04-TP-037
)	
Florida Food Products, Inc.)	NAL/Acct. No.: 200432700015
)	
Owner of Unregistered Antenna Structure)	FRN: 0001801687
Eustis, Florida)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 15, 2004

By the Enforcement Bureau, Tampa Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for forfeiture (“NAL”), we find Florida Food Products, Inc., (“FFP”), owner of an unregistered antenna structure in Eustis, Florida, apparently liable for a forfeiture in the amount of three thousand dollars (\$3,000) for willful and repeated violation of Section 17.4(a) of the Commission’s Rules (“Rules”).¹ Specifically, we find FFP apparently liable for failing to register its antenna structure located at Eustis, Florida.

II. BACKGROUND

2. On January 26, 2004, two agents from the FCC Enforcement Bureau’s Tampa Field Office (“Tampa Office”) inspected FFP’s antenna structure located at the approximate coordinates of 28°52’34” north latitude and 081°42’22” west longitude, W. Highway 44, Eustis, Florida. At the time of the inspection, no antenna structure registration number was displayed at the base of the structure. The structure is approximately 74 meters in height (242 feet), painted and lit. An FCC agent checked the FCC Antenna Structure Registration database and found no record that this structure was registered with the Commission.

3. On February 3, 2004, an FCC agent contacted FFP and spoke to one of its representatives. During this conversation the FFP’s representative acknowledged that his company was the owner of the structure.² He further stated that he was not aware of the tower registration requirement. The agent verbally warned the representative of the violation and offered assistance to register the structure.

4. On March 12, 2004, a search of the FCC Antenna Structure Registration database revealed that the structure still was not registered with the Commission.

¹ 47 C.F.R. § 17.4 (a).

² In a subsequent conversation, an FFP representative stated FFP had owned the structure for at least 30 years.

III. DISCUSSION

5. Section 17.4(a) of the Rules requires that the owner of any proposed or existing antenna structure that requires notice of proposed construction to the Federal Aviation Administration must register the structure with the Commission. FFP owns the antenna structure at Eustis, Florida. This structure requires notice of proposed construction, and therefore, Commission registration, because the structure's height exceeds 200 feet. From February 3, 2004, until at least March 12, 2004, FFP failed to register its antenna structure with the Commission.

6. Based on the evidence before us, we find that Florida Food Products, Inc. willfully³ and repeatedly⁴ violated Section 17.4(a) of the Rules by failing to register with the Commission its antenna structure located at Eustis, Florida.

7. Pursuant to Section 1.80(b) (4) of the Rules,⁵ the base forfeiture amount for failure to register an antenna structure (failure to file required forms or information) is \$3,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include 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.⁶ Considering the entire record and applying the statutory factors listed above, this case warrants a \$3,000 forfeiture.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act,⁷ and Sections 0.111, 0.311 and 1.80 of the Rules,⁸ Florida Food Products, Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of three thousand (\$3,000) for willful and repeated violation of Section 17.4(a) of the Commission's Rules by failing to register its antenna structure.

9. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Rules, within thirty days of the release of this NAL, Florida Food Products, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

³ 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 Rcd 4387-88 (1991).

⁴ 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).

⁵ 47 C.F.R. § 1.80(b)(4).

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 U.S.C. § 503(b).

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

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10. 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. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, SW, Washington, D.C. 20554.⁹

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: Enforcement Bureau-Spectrum Enforcement Division and **MUST INCLUDE THE NAL/Acct. No.** referenced 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 Spectrum Enforcement 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 Florida Food Products, Inc., P. O. Box 1300, Eustis, Florida, 32727-1300.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
District Director, Tampa Office, Enforcement Bureau

Attachment

⁹ See 47 C.F.R. § 1.1914.