

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

In the Matter of)	File Number EB-02-TP-644
)	
AT&T Wireless Services of Florida, Inc.)	NAL/Acct. No. 200432700014
Owner of Antenna Structure Registration Number)	
1030401 in Starke, Florida)	FRN 0001-5809-43
Washington, D.C.)	

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 AT&T Wireless Services of Florida, Inc., (AT&T Wireless) owner of antenna structure #1030401 in Starke, Florida, apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.51(b) of the Commission's Rules (“Rules”)¹. Specifically, we find that AT&T Wireless is apparently liable for failing to exhibit medium intensity obstruction lighting on structure 1030401.

II. BACKGROUND

2. On July 23, 2003, the FCC Enforcement Bureau’s Tampa Field Office (“Tampa Office”) received a complaint about an unlit and unpainted antenna structure located in Starke, Florida with Antenna Structure Registration (“ASR”) #1030401. The Commission’s ASR database showed AT&T Wireless as the owner and specifies that the structure be lit with a dual lighting system.

3. On October 9, 2003, agents from the Tampa Office observed during daylight hours that structure 1030401 was not illuminated per its assigned painting and lighting specifications in that no white medium intensity lighting was exhibited or installed on the structure. Although the structure had paint, the paint was faded resulting in poor visibility of the structure.

4. On October 10, 2003, an agent from the Tampa Office contacted the Federal Aviation Administration (“FAA”) and determined no report of a light outage had been made for this structure. The

¹ 47 C.F.R. § 17.51(b).

agent reported the outage to the FAA.

5. On October 14, 2003 the FCC agents made a second observation during daylight hours and noted that structure 1030401 was not illuminated per its assigned painting and lighting specifications in that no white medium intensity lighting was exhibited or installed on the structure.

6. On January 30, 2004, the Tampa Office issued to AT&T Wireless a Letter of Inquiry concerning the painting and lighting of this antenna structure. The Tampa Office received AT&T Wireless' written response on February 20, 2004. In its response, AT&T Wireless stated it acquired structure # 1030401 on July 31, 2003 from Florida RSA#8, LLC, a subsidiary of United States Cellular Corporation ("USCC"). AT&T Wireless also stated that the structure, constructed in 1987, was originally required to be painted and exhibit red lighting at night; and that on August 11, 2000, the FAA issued a Determination of No Hazard to USCC that allowed USCC to use dual lighting (medium intensity white strobes during daytime, red lighting at night). AT&T Wireless stated that USCC filed an application with the FCC on August 30, 2000, to modify the ASR for the structure to use the dual lighting system; and that this was the lighting requirement for the structure on July 31, 2003 when AT&T Wireless acquired the structure from USCC. AT&T Wireless stated it conducted a quarterly audit of the structure on October 27, 2003, and learned that the structure exhibited lights at nighttime only, and also determined that "the tower had to be repainted or it had to request authority from the FAA to use dual lighting." AT&T Wireless stated it subsequently discovered that the previous owner, USCC, had received authority from the FAA to install a dual lighting system and had already modified the structure's ASR for the new lighting requirements. AT&T Wireless stated it then obtained quotes and ordered the dual lighting equipment, which was installed on January 20, 2004.

III. DISCUSSION

6. Section 17.51(b) requires that all high intensity and medium intensity obstruction lighting should be exhibited continuously unless otherwise specified. On October 9, 2003, October 14, 2003, and until January 20, 2004, AT&T Wireless failed to exhibit medium intensity obstruction lighting on structure 1030401 in accordance with its registration requirements.

7. Based on the evidence before us, we find AT&T Wireless willfully² and repeatedly³ violated Section 17.51(b) of the Rules by failing to exhibit tower lights on structure 1030401.

8. Pursuant to Section 1.80(b) (4) of the Rules,⁴ the base forfeiture amount for failure to exhibit

² 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).

³ 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).

⁴ 47 C.F.R. § 1.80(b)(4).

obstruction lighting is \$10,000. 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 other such matters as justice may require.⁵ Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ AT&T Wireless is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.51(b) of the Rules by failing to exhibit tower lights on structure 1030401.

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, AT&T Wireless SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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, S.W., Washington, D.C. 20554.⁸

12. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Spectrum Enforcement Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

13. 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.

14. 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

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁸ See 47 C.F.R. § 1.1914.

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.

15. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to AT&T Wireless Services of Florida, Inc., 1150 Connecticut Avenue, NW, 4th Floor, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
Tampa Office, Enforcement Bureau

Attachment