

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

In the Matter of )
AT&T Wireless Services, Inc. ) File No. EB-02-SD-012
Washington, DC ) NAL/Acct. No. 200232940002
) FRN # 0006-1660-29
)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 18, 2002

Released: April 25, 2002

By the Commission: Commissioner Abernathy issuing a statement.

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find AT&T Wireless Services, Inc. ("AT&T Wireless"), Washington, DC, apparently liable for a forfeiture in the amount of one hundred fifty three thousand dollars (\$153,000) for nine willful and repeated violations of Section 303(q) of the Communications Act of 1934, as amended ("Act"), and Part 17 of the Commission's Rules ("Rules") relating to antenna structure construction, marking and lighting.

2. In particular, we find AT&T Wireless apparently liable for one failure to register an existing antenna structure (Section 17.4(a)(2)); four failures to post the Antenna Structure Registration ("ASR") number in a conspicuous location so that it is visible near the base of the antenna structure (Section 17.4(g)); one failure to comply with the Federal Aviation Administration's ("FAA") painting and lighting specifications for antenna structures (Section 17.23); one failure to maintain good visibility of antenna structures that are required to be painted (Section 17.50); and two failures to maintain the required obstruction lighting on the antenna structures (Section 17.51(b)). We find that during the period of June 8, 2001 through February 8, 2002, AT&T Wireless failed to comply with one of these requirements on nine occasions in eight separate locations throughout the country.

3. The apparent violations here come within a year of a prior forfeiture against AT&T Wireless for similar violations. Our rules relating to tower lighting and marking are important to public safety. AT&T Wireless's apparent inability to comply with these rules on a consistent basis is very troubling. In light of these circumstances, we have tripled the base forfeiture amounts for these violations. Future violations will result in even more serious enforcement action.

1 47 U.S.C. § 303(q) (Antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission.)

2 47 C.F.R. § 17.1 et seq.

3 47 C.F.R. §§ 17.4(a)(2), 17.4(g), 17.23, 17.50 and 17.51(b).

4 See ¶ 6 and note 12, infra.

## II. BACKGROUND

4. The Commission's antenna structure construction, marking and lighting requirements operate in concert with FAA regulations to ensure that antenna structures do not present hazards to air navigation. Generally, our rules require that antenna structures located close to airports or that are greater than 200 feet in height comply with painting and lighting specifications designed to ensure air safety.<sup>5</sup> We require antenna structure owners to register antenna structures with the Commission and post ASR numbers at the base of antenna structures to allow for easy contact if problems arise.<sup>6</sup> The rules requiring antenna structure registration for all antenna structures that may pose a hazard to air navigation have been in effect since 1996.<sup>7</sup> We have repeatedly advised antenna structure owners that all existing, unregistered antenna structures subject to our rules must be registered *immediately* or the owners face a monetary forfeiture or other enforcement action.<sup>8</sup>

5. Because of the substantial public safety issues involved, we further require antenna structure owners to monitor lights daily or install automatic alarm systems to ensure lights function properly.<sup>9</sup> Antenna structure owners are required to maintain lighting equipment and replace or repair inoperative lights, indicators and control and alarm systems as soon as practicable.<sup>10</sup> Additionally, antenna structure owners are required immediately to notify the FAA when major antenna structure lights are inoperative and cannot be repaired within 30 minutes.<sup>11</sup> The FAA then issues a Notice to Airmen ("NOTAM") for a period of 15 days advising aircraft that there is an antenna structure at a specific location with a temporary light outage.

6. Commission field agents regularly inspect antenna structures to determine compliance with the antenna structure construction, marking and lighting requirements and promptly respond to complaints of unlit towers. The FAA also routinely notifies Commission field offices when owners fail to either report that lights have been repaired within 15 days or request that a NOTAM be extended. During routine inspections of antenna structures owned by AT&T Wireless, from April 20, 2000 to December 7, 2000, Commission field agents discovered nine antenna structures that did not have the ASR numbers posted as required. These violations resulted in a \$14,000 monetary forfeiture against AT&T Wireless issued on March 19, 2001,<sup>12</sup> which AT&T Wireless paid in full on April 16, 2001. In the course of ongoing routine inspections and investigations, Commission field agents have continued to uncover a significant number of new violations of the Commission's antenna structure requirements by AT&T

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<sup>5</sup> 47 C.F.R. § 17.21.

<sup>6</sup> 47 C.F.R. § 17.4.

<sup>7</sup> Antenna structure owners were required to register existing antenna structures during a two-year filing period between July 1, 1996 and June 30, 1998, and to register new antenna structures prior to construction. *Streamlining the Commission's Antenna Structure Clearance Procedure*, 11 FCC Rcd 4272 (1995).

<sup>8</sup> Subsequent to the expiration of the filing period, the Commission staff issued a Public Notice warning antenna structure owners to register any unregistered antenna structures subject to our requirements immediately or face possible monetary forfeitures or other enforcement action. *Public Notice*, "No-Tolerance Policy Adopted for Unregistered Antenna Structures," 1999 WL 10060 (WTB rel. January 13, 1999). In addition, in June and July 1999, the Wireless Telecommunications Bureau sent letters to licensees informing them that the Commission had no valid registration for their antenna site and that owners and, to the extent they were liable, tenants could face monetary forfeitures for structures that remained unregistered.

<sup>9</sup> 47 C.F.R. § 17.47.

<sup>10</sup> 47 C.F.R. § 17.56.

<sup>11</sup> 47 C.F.R. § 17.48.

<sup>12</sup> *AT&T Wireless Services, Inc.*, 16 FCC Rcd 814 (Enf. Bur. 2001), *forfeiture ordered*, 16 FCC Rcd 6805 (Enf. Bur. 2001).

Wireless, and in the past year have issued a number of Notices of Violation (“NOVs”) for such violations.<sup>13</sup> A brief discussion of the most serious of these safety-related violations, which are the subject of this *NAL*, follows.

Woodland, California - File No. EB-00-SF-478

7. On September 15, 2000, agents from the Commission’s San Francisco, California Field Office (“San Francisco Office”) inspected an antenna structure owned by AT&T Wireless which is located at 824 N. East Street, Woodland, California (ASR No. 1014047). The agents observed that the tower’s visibility was severely reduced by coaxial cable on two sides of the structure. On June 8, 2001, the San Francisco Office issued an NOV citing AT&T Wireless for failure to maintain good visibility of the tower in violation of Section 17.50 of the Rules. In its June 18, 2001, response to the NOV, AT&T Wireless stated that it was in the process of having all of the coaxial cable on the tower painted in aviation orange and white as described in the current FAA Advisory Circular on Obstruction Marking and Lighting and that it anticipated that the painting would be completed by June 29, 2001.<sup>14</sup>

Bluffdale, Utah – File No. EB-01-DV-382

8. On August 14, 2001, after sunset, agents from the Commission’s Denver, Colorado Field Office (“Denver Office”) inspected an antenna structure owned by AT&T Wireless which is located at 16400 South 1942 West in Bluffdale, Utah (ASR No. 1039565). The agents observed that a side intermediate light on the southwestern side of the tower was flashing, rather than steady burning. The FAA’s painting and lighting specifications for the tower require that the side intermediate lights be steady burning. On November 19, 2001, the Denver Office issued an NOV citing AT&T Wireless for failure to conform to the FAA’s painting and lighting specifications for the tower in violation of Section 17.23 of the Rules and failure to correct the improper functioning of a steady burning side intermediate light in violation of Section 17.48(b) of the Rules. In its December 20, 2001, response to the NOV, AT&T Wireless confirmed that a side intermediate light on the tower was flashing, rather than steady burning as required.

Tyler, Texas – File No. EB-01-DL-696

9. On August 15, 2001, an agent from the Commission’s Dallas, Texas Field Office (“Dallas Office”) inspected an antenna structure located at 8562 County Road, Tyler, Texas. The agent observed that there was no ASR number posted at the site. A search of Commission records revealed the structure was registered to AT&T Wireless (ASR No. 1047254). On November 15, 2001, the Dallas Office issued an NOV citing AT&T Wireless for failure to post the ASR number in a conspicuous place so that it is readily visible near the base of the tower in violation of Section 17.4(g) of the Rules. In its December 10, 2001, response to the NOV, AT&T Wireless acknowledged that at the time of the inspection, the ASR number was not affixed to the tower.

Fellsmere, Florida – File No. EB-01-TP-502

10. On November 27, 2001, agents from the Commission’s Tampa, Florida Field Office

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<sup>13</sup> See *Public Notice, Enforcement Bureau Field Offices List of Actions Taken*, DA 01-1314 (rel. May 31, 2001); *Public Notice, Enforcement Bureau Field Offices List of Actions Taken*, DA 01-1644 (rel. July 12, 2001); *Public Notice, Enforcement Bureau Field Offices List of Actions Taken*, DA 01-1756 (rel. July 25, 2001); *Public Notice, Enforcement Bureau Field Offices List of Actions Taken*, DA 01-2948 (rel. December 21, 2001); and *Public Notice, Enforcement Bureau Field Offices List of Actions Taken*, DA 02-197 (rel. January 28, 2002).

<sup>14</sup> Because the violation continued until the painting was completed in June 2001, the violation is within the one-year statute of limitations.

("Tampa Office") inspected an antenna structure located on County Road 507 in Fellsmere, Florida. The agents observed that there was no ASR number posted at the site. Subsequent investigation revealed that AT&T Wireless owned the structure but had not registered it. On December 21, 2001, the Tampa Office issued an NOV citing AT&T Wireless for failure to register the antenna structure in violation of Section 17.4(a)(2) of the Rules. In its January 7, 2002, response to the NOV, AT&T Wireless admitted that the tower was not registered at the time of the inspection.

Malabar, Florida – File No. EB-01-TP-488

11. On November 27, 2001, agents from the Tampa Office inspected an antenna structure located on County Road 507 in Malabar, Florida. The agents observed that there was no ASR number posted in a conspicuous place so that it is readily visible. A search of Commission records revealed that the structure was registered to AT&T Wireless (ASR No. 1028946). On December 3, 2001, the Tampa Office issued an NOV citing AT&T Wireless for failure to post the ASR number in a conspicuous place so that it is readily visible near the base of the tower in violation of Section 17.4(g) of the Rules. In its December 10, 2001, response to the NOV, AT&T Wireless stated that the ASR number was affixed to the tower, but acknowledged that it was not readily visible unless you are in the compound. AT&T Wireless indicated that it would place a placard with the ASR number on the fence so that it is visible at a location accessible to the public within the next few days.

Okeechobee, Florida – File No. EB-02-TP-012

12. On January 8, 2002, an agent from the Tampa Office inspected an antenna structure located on Highway 441 in Okeechobee, Florida. The agent observed that there was no ASR number posted at the site. A search of Commission records revealed that the structure was registered to AT&T Wireless (ASR No. 1226262). On January 14, 2002, the Tampa Office issued an NOV citing AT&T Wireless for failure to post the ASR number in a conspicuous place so that it is readily visible near the base of the tower in violation of Section 17.4(g) of the Rules. In its February 1, 2002, response to the NOV, AT&T Wireless acknowledged that at the time of the inspection, the ASR number was not affixed to the tower.

Center Township, Pennsylvania – File No. EB-02-PA-043

13. On January 24, 2002, at approximately 9 a.m., an agent from the Philadelphia Office inspected an antenna structure owned by AT&T Wireless which is located in Center Township, Pennsylvania (ASR No. 1026350). The agent observed that the white obstruction lighting on the tower was not operating. On January 31, 2002, the Philadelphia Office issued an NOV citing AT&T Wireless for failure to conform to the FAA's painting and lighting specifications in violation of Section 17.23 of the Rules. In its February 13, 2002, response to the NOV, AT&T Wireless confirmed that the obstruction lighting was out at the time of the inspection. AT&T Wireless stated that an employee noticed the outage on January 30, 2002 and discovered that the automatic monitoring system that alerts AT&T Wireless when a light is out did not pick up the outage because a relay on the tower malfunctioned. AT&T Wireless further stated that it opened a NOTAM the same day, and that it repaired the light outage and the malfunctioning relay on the following day and then closed the NOTAM.

Holly Hill, Florida – File No. EB-02-TP-054

14. On February 7, 2002, an agent from the Tampa Office inspected an antenna structure located at 112 Carswell Avenue, Holly Hill, Florida at approximately 5 p.m. The agent inspected the antenna structure again at approximately 10 a.m. on February 8, 2002. On both occasions, the agent observed that there was no ASR number posted at the site and that the red obstruction lighting on the tower was operating, but the white obstruction lighting on the tower was not in operation. Subsequent investigation revealed that the tower was registered to AT&T Wireless (ASR No. 1203757), that the

FAA's painting and lighting specifications for the tower require both red and white obstruction lighting, and that there was no NOTAM in effect for the tower. Thus, the Tampa Office concluded that AT&T Wireless has apparently failed to post the ASR number in a conspicuous place so that it is readily visible near the base of the tower in violation of Section 17.4(g) of the Rules and failed to exhibit the required white obstruction lighting on the tower in violation of Section 17.51(b) of the Rules.<sup>15</sup>

### III. DISCUSSION

15. Based on the evidence before us, we find that AT&T Wireless has apparently failed to register an antenna structure in one instance in willful<sup>16</sup> violation of Section 17.4(a)(2); failed to post an ASR number in a conspicuous location so that it is readily visible near the base of the antenna structure in four instances in willful violation of Section 17.4(g); failed to comply with the FAA's painting and lighting specifications in one instance in willful violation of Section 17.23;<sup>17</sup> failed to maintain good visibility of an antenna structure that is required to be painted in willful violation of Section 17.50; and failed to exhibit the required obstruction lighting on its antenna structure in two instances in willful violation of Section 17.51(b).<sup>18</sup> The violations of Sections 17.23, 17.50 and 17.51(b) were also repeated in that they occurred on more than one day.<sup>19</sup> We also find that AT&T Wireless has failed to maintain the painting and lighting of its antenna structures as required by our rules in willful and repeated violation of Section 303(q) of the Act.

16. Section 503(b) of the Act<sup>20</sup> authorizes the Commission to assess a forfeiture for each violation of the Act or of any rule, regulation, or order issued by the Commission under the Act. In exercising such authority, we are 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."<sup>21</sup>

17. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement"),<sup>22</sup> and Section 1.80 of the Rules,<sup>23</sup> the base forfeiture amount for failure to comply with prescribed lighting and marking

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<sup>15</sup> The Tampa Office had not yet issued an NOV to AT&T Wireless for these violations prior to issuance of this *NAL*.

<sup>16</sup> 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 (1991).

<sup>17</sup> Although in EB-01-DV-382, the Denver Office issued an NOV citing AT&T Wireless for violation of Sections 17.23 and 17.48(b) based on its observation that a side intermediate light on the Bluffdale, Utah antenna structure was flashing rather than steady burning, we are not including the violation of Section 17.48(b) as a separate violation in this *NAL* because this violation is encompassed in the violation of Section 17.23.

<sup>18</sup> We note that in EB-01-PA-043, the Philadelphia Office issued an NOV citing AT&T Wireless for violation of Section 17.23 of the Rules based on its observation that the white obstruction lighting on the Center Township antenna structure was not operating. Although Section 17.23 requires antenna structure owners to comply with the FAA's painting and lighting specifications and thus clearly covers the observed violation, we are citing AT&T Wireless in this *NAL* for violation of Section 17.51(b), which explicitly requires antenna structure owners to exhibit all high intensity and medium intensity obstruction lighting continuously unless otherwise specified.

<sup>19</sup> The term "repeated" means the commission or omission of an act more than once. 47 U.S.C. § 312(f)(2).

<sup>20</sup> 47 U.S.C. § 503.

<sup>21</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>22</sup> 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999).

<sup>23</sup> 47 C.F.R. § 1.80.

requirements is \$10,000, and the base forfeiture amount for failure to file required forms or information (e.g., failure to file an antenna registration form) is \$3,000. The *Forfeiture Policy Statement* does not establish a base forfeiture amount for failure to post the antenna structure registration number.<sup>24</sup> The Commission has determined, however, that an appropriate base forfeiture amount for failure to post the ASR number is \$2,000 per violation.<sup>25</sup>

18. Application of the base amounts to AT&T Wireless's violations results in an initial proposed forfeiture of \$10,000 for each of the four instances of violations of the lighting and marking rules, a forfeiture of \$3,000 for the failure to register an antenna structure, and a forfeiture of \$2,000 for each of the four instances of violations of the ASR posting rules. Thus, the total base forfeiture amount for all of AT&T Wireless's violations is \$51,000.

19. We are concerned, however, with the pattern of apparent violations here. Unlit and improperly lit antenna structures can pose a serious threat to air safety. Furthermore, we have previously stressed the importance of full compliance with the antenna structure rules because of the potential danger to air traffic safety, including the rules designed to enable us to readily locate antenna structure owners.<sup>26</sup>

20. We are particularly troubled that AT&T Wireless continues to violate these rules despite a forfeiture assessment just one year ago for nine instances of failure to comply with the ASR posting rules. This prior forfeiture action put AT&T Wireless on notice that the Commission considers these types of violations to be serious safety-related infractions, yet AT&T Wireless apparently failed to take adequate steps to ensure its future compliance in this area. AT&T Wireless's new violations not only include four new instances of ASR posting violations, but three very serious violations of the antenna structure lighting rules. AT&T Wireless's continuing violations of the antenna structure requirements evince a pattern of non-compliance with and apparent disregard for these safety-related rules. Accordingly, we believe a significant upward adjustment of the base forfeiture amount is warranted.<sup>27</sup> Applying the *Forfeiture Policy Statement* and statutory factors (e.g., nature, extent and gravity of the violation and the history of prior offenses)<sup>28</sup> to the instant case, we conclude that it is appropriate to triple the base forfeiture amounts for AT&T Wireless's apparent violations. Therefore, we find AT&T Wireless apparently liable for a forfeiture in the amount of \$153,000.

#### IV. ORDERING CLAUSES

21. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, AT&T Wireless Services, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of one hundred fifty three thousand dollars (\$153,000) for willfully violating Sections 17.4(a)(2) and 17.4(g) of the Rules and willfully and repeatedly violating Section 303(q) of the Act and Sections 17.23, 17.50 and 17.51(b) of the Rules.

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<sup>24</sup> The fact that the *Forfeiture Policy Statement* does not specify a base amount does not indicate that no forfeiture should be imposed. The *Forfeiture Policy Statement* states that "... any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant. *Forfeiture Policy Statement*, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act. *Id.*

<sup>25</sup> *American Tower Corporation*, 16 FCC Rcd 1282 (2001) ("*American Tower*").

<sup>26</sup> *Id.* at 1282-85.

<sup>27</sup> *Cf.*, *American Tower*, 16 FCC Rcd at 1285 (base forfeiture amount doubled); *TeleCorp Communications, Inc.*, 16 FCC Rcd 805, 807 (Enf. Bur. 2001) (base forfeiture amount doubled).

<sup>28</sup> See also 47 C.F.R. § 1.80, Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

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

23. 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 NAL/Acct. No. 200232940002 and FRN # 0006-1660-29. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operation Group, 445 12th Street, S.W., Washington, DC 20554.<sup>29</sup>

24. The response if any must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, ATTN: Enforcement Bureau – Technical and Public Safety Division and must include NAL/Acct. No. 200232940002.

25. 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; 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.

26. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability shall be sent by Certified Mail Return Receipt Requested to David Jatlow, Vice President, Regulatory Affairs, AT&T Wireless Services, Inc. at Fourth Floor, 1150 Connecticut Avenue, N.W., Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>29</sup> See 47 C.F.R. § 1.1914.

**SEPARATE STATEMENT OF  
COMMISSIONER KATHLEEN ABERNATHY**

***In re: SpectraSite Communications Inc. – Notice of Apparent Liability for Forfeiture; AT&T Wireless Services Inc. – Notice of Apparent Liability for Forfeiture***

I support today's decisions to render substantial notices of apparent liability against wireless tower owners who have violated our tower marking and lighting requirements. I write separately to call attention to the excellent and important work of our field offices in these stepped up enforcement efforts.

Our field agents are our grass roots front line of defense against unlawful spectrum and tower safety practices. As a federal regulatory agency, we necessarily operate with most of our personnel in Washington DC. However, for most Americans, the FCC they see and hear and call upon for help work in the dozens of field offices the Commission operates around the country. The Commission has unique responsibilities for enforcement of interference rules, tower safety, and unlicensed radio operations, among others. These NALs are one indication of this important work. In three regional offices and twenty five field offices round the country, 109 agents with extensive technical and enforcement expertise work tirelessly for a fraction of what they could earn in the private sector. Since January 2001 in the tower safety area alone, field agents have been integral in issuing 37 Commission and/or Enforcement Bureau NALs, forfeiture orders and consent decrees totaling well over \$600,000. Unfortunately, at times, the fine efforts of the field offices do not receive the recognition they deserve. I write separately in an effort to close this gap.