

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

In the Matter of	)	
	)	
VoiceStream PCS I License L.L.C.	)	File No. EB-00-PO-272
	)	
Bellevue, Washington	)	NAL/Acct.No. 200132920001

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted:** February 9, 2001

**Released:** February 13, 2001

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture, we find VoiceStream PCS I License L.L.C. ("VoiceStream"), Bellevue, WA, apparently liable for a forfeiture in the amount of twenty-four thousand dollars (\$24,000) for twelve violations of Section 17.4(g) of the Commission's Rules, relating to the posting of antenna structure registration numbers.<sup>1</sup> Specifically, the Commission's Rules require that antenna structure owners post the Antenna Structure Registration ("ASR") numbers near the base of an antenna structure. We find that during the period of June 9, 2000 through December 18, 2000, VoiceStream failed to comply with this requirement in twelve instances. A list of the specific violations is attached. See Attachment 1.

**II. BACKGROUND**

2. The Commission's antenna structure painting, lighting and registration requirements operate in concert with Federal Aviation Administration ("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. 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. The Commission's Rules requiring antenna structure registration for all antenna structures that may pose a hazard to air navigation have been in effect since July 1, 1998.<sup>2</sup> We have repeatedly advised antenna structure owners that all existing, unregistered antenna structures subject to our rules must be registered *immediately* or

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<sup>1</sup> 47 C.F.R. § 17.4(g).

<sup>2</sup> 47 C.F.R. § 17.4(a)(2).

the owners face a monetary forfeiture or other enforcement action.<sup>3</sup>

3. Because of the significant public safety concern related to antenna structure registration, Enforcement Bureau field agents regularly inspect antenna structures to determine compliance with the Commission's registration and antenna structure painting and lighting requirements. During routine inspections of antenna structures owned by VoiceStream, from June 9, 2000 to December 18, 2000, Bureau field agents discovered twelve antenna structures that did not have the ASR numbers posted as required. These antenna structures are identified by FCC case number, date of violation, structure geographic location and ASR number in Attachment 1.

### III. DISCUSSION

4. Based on the evidence before us, we find that VoiceStream PCS I License L.L.C. apparently willfully and repeatedly<sup>4</sup> violated Section 17.4(g) of the Commission's Rules<sup>5</sup> by its failure to comply with the Commission's Rules regarding the posting of antenna structure registration numbers.

5. Section 503(b) of the Act provides for forfeitures up to \$100,000 for each violation of the Act or of any rule, regulation or order issued by the Commission under the Act by a common carrier.<sup>6</sup> 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>7</sup>

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<sup>3</sup> Antenna structure owners were required to register existing antenna structures as of July 1, 1998 and to register new antenna structures prior to construction. *Streamlining the Commission's Antenna Structure Clearance Procedure*, 11 FCC Rcd 4272 (1995). 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 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>4</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). The term "repeated" is the commission or omission of an act more than once. 47 U.S.C. § 312(f)(2).

<sup>5</sup> 47 C.F.R. § 17.4(g).

<sup>6</sup> See 47 U.S.C. Section 503(b); 47 C.F.R. Section 1.80. Pursuant to the Debt Collection Improvement Act of 1996 (Pub. L. No. 104-134, Sec. 31001, 110 Stat 1321), the Commission made an inflationary adjustment raising the statutory maximum forfeiture amount to \$120,000. *Amendment of Section 1.80(b) of the Commission's Rules*, 15 FCC Rcd 18,221 (2000).

<sup>7</sup> 47 U.S.C. § 503(b)(2)(D)

6. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement")<sup>8</sup> does not establish a base forfeiture amount for failure to post the antenna structure registration number.<sup>9</sup> The Commission has determined that an appropriate base amount is \$2,000 per violation.<sup>10</sup> Application of that base amount to each of VoiceStream's violations would lead to a proposed forfeiture of \$24,000. We find no basis for making any adjustments to this amount.

#### IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>11</sup> Section 1.80 of the Commission's Rules,<sup>12</sup> and the authority delegated in Sections 0.111 and 0.311 of the Commission's Rules,<sup>13</sup> VoiceStream PCS I License L.L.C. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty-four thousand dollars (\$24,000) for violating Section 17.4(g) of the Commission's Rules.<sup>14</sup>

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules,<sup>15</sup> within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, VoiceStream PCS I License L.L.C. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. 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. 200132920001 referenced above.

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<sup>8</sup> 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999)

<sup>9</sup> The fact that the Guidelines do not specify a base amount does not indicate that no forfeiture should be imposed. The Guidelines state 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 Guidelines*, at 17,099, para. 22. The Commission retains the discretion, moreover, to depart from the Guidelines and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in section 503 of the Act. *Id.*

<sup>10</sup> *American Tower Corporation*, FCC 01-9 (released: January 16, 2001).

<sup>11</sup> 47 U.S.C. § 503(b).

<sup>12</sup> 47 C.F.R. § 1.80.

<sup>13</sup> 47 C.F.R. §§ 0.111, 0.311.

<sup>14</sup> 47 C.F.R. § 17.4(g).

<sup>15</sup> 47 C.F.R. § 1.80.

10. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Technical and Public Safety Division and must include the NAL/Acct. No. 200132920001.

11. 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.

12. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.<sup>16</sup>

13. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Dan Menser, Corporate Counsel, VoiceStream PCS I License L.L.C. at 12920 SE 38<sup>th</sup> Street, Bellevue, WA 98006.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>16</sup> See 47 C.F.R. § 1.1914.

## Attachment #1

<b>Case Number</b>	<b>Violation Date</b>	<b>Tower Location</b>	<b>ASR Number</b>
EB-00-PO-096	6/9/00	Vancouver, WA	1047490
EB-00-PO-116	6/21/00	Vancouver, WA	1041076
EB-00-PO-120	6/22/00	Vancouver, WA	1040957
EB-00-PO-163	6/28/00	Portland, OR	1040984
EB-00-PO-164	6/22/00	Portland, OR	1040986
EB-00-PO-171	7/27/00	Vancouver, WA	1041075
EB-00-PO-257	12/15/00	Salem, OR	1040819
EB-00-PO-258	12/15/00	Salem, OR	1040799
EB-00-PO-259	12/15/00	Salem, OR	1040800
EB-00-PO-260	12/15/00	Keizer, OR	1047489
EB-00-PO-261	12/15/00	Salem, OR	1040826/1214390 <sup>17</sup>
EB-00-PO-272	12/18/00	Portland, OR	1040956

<sup>17</sup> This tower was re-registered with the FCC on 6/30/00. Company name changed from Western Wireless Corporation to VoiceStream PCS I License L.L.C. A new ASR (1214390) number was assigned.