

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

In the Matter of )  
                                )  
AT&T Wireless Services, Inc.         )      File Number EB-00-SF-671  
1150 Connecticut Avenue, N.W.         )  
4<sup>th</sup> Floor                                 )  
Washington, D.C. 20036                     )      NAL/Acct. No. 20013276001

**FORFEITURE ORDER**

**Adopted: March 16, 2001**

**Released: March 19, 2001**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of fourteen thousand dollars (\$14,000) against AT&T Wireless Services, Inc. (“AT&T Wireless”) for willfully and repeatedly violating Section 17.4(g) of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violations involve AT&T Wireless’s failure to post antenna structure registration (“ASR”) numbers at the base of several of its antenna structures.

2. On January 16, 2001, the Chief, Enforcement Bureau, issued a Notice of Apparent Liability (“NAL”) for Forfeiture in the amount of eighteen thousand dollars (\$18,000).<sup>2</sup> AT&T Wireless filed a response on February 14, 2001.

**II. BACKGROUND**

3. During routine inspections of AT&T Wireless’s antenna structures, from April 20, 2000, to December 7, 2000, agents from several of the Enforcement Bureau’s Field Offices found nine antenna structures that did not have ASR numbers posted as required.

**III. DISCUSSION**

4. AT&T Wireless does not contest that nine of its antenna structures did not have their ASR numbers properly posted as set forth in Section 17.4(g) of the Rules. Instead, AT&T Wireless challenges the selection of \$2,000 as the base forfeiture amount for a violation of Section 17.4(g) of the Rules, contends that it did not have to register two of its antenna structures, and raises several factors in mitigation of its violations.

5. As an initial matter, AT&T Wireless argues that the base forfeiture amount for failure to post an ASR number should be \$1,000, not \$2,000. The Bureau’s proposed forfeiture

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<sup>1</sup> 47 C.F.R. § 17.4(g).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, DA 01-87 (Enf. Bur., rel. Jan. 16, 2001).

was based on the Commission's decision in *American Tower Corp.*,<sup>3</sup> in which it determined that a \$2,000 base forfeiture amount was appropriate for this type of violation.<sup>4</sup> As the Bureau is bound by the Commission's determination, we will not address AT&T Wireless's argument in this case.

6. AT&T Wireless argues, for the first time, that it had voluntarily registered two of its antenna structures located in Glenallen, Alaska and Denver, Colorado (i.e., the antenna structures did not meet the Federal Aviation Administration's notification requirement).<sup>5</sup> Since it was not required to register these antenna structures, AT&T Wireless argues that we should not fine it for failing to post the antenna structure registration numbers. We agree.

7. After reviewing the coordinates, height, and type of AT&T Wireless's Glenallen and Denver antenna structures and noting that the Federal Aviation Administration issued "no hazard" determinations for both, we conclude that AT&T Wireless was not required to register the two antenna structures. Therefore, in this case, we will reduce the proposed forfeiture by \$4,000.

8. We find that AT&T Wireless's remaining arguments in support of reduction of the proposed forfeiture lack merit. First, AT&T Wireless argues that out of its "thousands of towers," Commission agents "apparently uncovered a very small percentage of non-compliance . . .".<sup>6</sup> Furthermore, AT&T Wireless claims that, given its corporate compliance program, allegedly in place for close to five years prior to our issuance of the NAL, and the lack of what AT&T Wireless characterizes as safety-related infractions, we should conclude that the ASR number posting violations are "minor." We are not persuaded. In *American Tower Corp.*, the Commission discussed the potential impact on public safety that an ASR number violation might have.<sup>7</sup> In addition, despite its allegedly long-standing corporate compliance program, from April of 2000, the time that we first notified AT&T Wireless that it was violating Section 17.4(g) of the Rules, our agents found six other violations (not counting the Glenallen and Denver antenna structures) of the same rule, the last of which occurred more than one-half year later in December of 2000. These repeated violations of safety rules are not minor.<sup>8</sup>

9. AT&T Wireless also contends that we should reduce the proposed forfeiture "because there can be many reasons why a previously-posted ASRN is 'missing' when an inspection occurs, including vandalism and weather."<sup>9</sup> AT&T Wireless argues that we cannot

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<sup>3</sup> *American Tower Corp.*, FCC 01-9 (rel. Jan. 16, 2001).

<sup>4</sup> *Id.* at ¶ 9.

<sup>5</sup> See 47 C.F.R. § 17.7. AT&T Wireless made no mention of this argument in its responses to the Notices of Violation regarding the Glenallen and Denver antenna structures.

<sup>6</sup> AT&T Wireless *Opposition to Notice of Apparent Liability for Forfeiture* at 4 (filed Feb. 14, 2001).

<sup>7</sup> *American Tower Corp.*, at ¶ 9.

<sup>8</sup> Of course, the violations are "minor" in the sense that they are less serious than violations that would result in a higher forfeiture (e.g., failure to light or mark a tower as required). But they are not minor in the sense that AT&T Wireless suggests, i.e., no forfeiture at all is appropriate.

<sup>9</sup> AT&T Wireless *Opposition to Notice of Apparent Liability for Forfeiture* at 5.

find that it willfully violated Section 17.4(g) of the Rules without ruling out the possibility that the violations resulted from vandalism and weather, and argues that we should credit it for allegedly initially complying with the rule. AT&T Wireless, however, presents no evidence that either vandalism or weather or both played a part in the missing ASR numbers. Moreover, while conceding that an “ASRN registrant should periodically monitor its ASRN postings to learn of those that are missing,”<sup>10</sup> AT&T Wireless proffers no evidence of its inspection regime (i.e., when it posted the ASR numbers and when it last inspected them). Indeed, AT&T Wireless admits that it does not have records to support its assertions that its employees posted the ASR numbers in conformance with the Commission’s Rules and its corporate compliance plan.<sup>11</sup>

10. After reviewing the record in this case, we conclude that no further reduction of the proposed forfeiture is warranted. In conclusion, after reviewing Section 503(b)(2)(D) of the Communications Act of 1934 (“Act”),<sup>12</sup> as amended, Section 1.80 of the Rules,<sup>13</sup> the facts, and AT&T Wireless’ opposition to the NAL, we believe that a \$14,000 forfeiture is appropriate.

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act, as amended,<sup>14</sup> and Sections 0.111, 0.311, and 1.80(f)(4) of the Rules,<sup>15</sup> AT&T Wireless **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$14,000 for willfully and repeatedly violating Section 17.4(g) of the Rules requiring it to post ASR numbers at the base of its antenna structures.<sup>16</sup>

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules,<sup>17</sup> within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>18</sup> Payment may be made by mailing a check or similar instrument, payable to the order of the “Federal Communications Commission,” to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 20013276001 referenced above. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>19</sup>

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<sup>10</sup> *Id.* at 5 n.8.

<sup>11</sup> *Id.*

<sup>12</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>13</sup> 47 C.F.R. § 1.80.

<sup>14</sup> 47 U.S.C. § 503(b).

<sup>15</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>16</sup> 47 C.F.R. § 17.4(g).

<sup>17</sup> 47 C.F.R. § 1.80.

<sup>18</sup> 47 U.S.C. § 504(a).

<sup>19</sup> See 47 C.F.R. § 1.1914.

13. **IT IS FURTHER ORDERED** that copies of this Order shall be sent by Certified Mail Return Receipt Requested to AT&T Wireless Services, Inc., 1150 Connecticut Avenue, N.W., Washington, D.C. 20036, and to its counsel, Howard J. Symons, Esq., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., 701 Pennsylvania Avenue, N.W., Suite 900, Washington, D.C. 20004.

**FEDERAL COMMUNICATIONS COMMISSION**

David H. Solomon  
Chief, Enforcement Bureau