

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

In the Matter of	)	
	)	
<b>VOICESTREAM PCS I LICENSE L.L.C.</b>	)	File No. EB-00-PO-272
	)	
Bellevue, Washington	)	NAL/Acct. No. 200132920001

**FORFEITURE ORDER**

**Adopted: April 2, 2001**

**Released: April 4, 2001**

By the Chief, Enforcement Bureau:

**I. Introduction**

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of twenty-one thousand dollars (\$21,000) against VoiceStream PCS I License L.L.C. (“VoiceStream”), for willful violation of Section 17.4(g) of the Commission’s Rules (“the Rules”).<sup>1</sup> The noted violations involve VoiceStream’s failure to post antenna structure registration (“ASR”) numbers at eleven antenna sites.

2. On February 13, 2001, the Enforcement Bureau released a Notice of Apparent Liability for Forfeiture (“NAL”) against VoiceStream in the amount of twenty-four thousand dollars (\$24,000).<sup>2</sup> VoiceStream filed its response on March 13, 2001.

**II. Background**

3. During routine inspections of antenna structures owned by VoiceStream on June 9, June 21, June 22 (two structures), June 28, July 27, December 15 (five structures), and December 18, 2000, agents from the Commission’s Portland, Oregon, Resident Agent Office (“Portland Office”) observed that the ASR numbers for twelve antenna structures were not posted. On June 12, June 22, June 23, July 14 (two notices), July 27, December 20 (five notices) and December 22, 2000, the Portland Office issued Official Notices of Violation (NOVs) to Voice Stream for violation of Section 17.4(g) of the Rules. In its responses to the NOVs, VoiceStream indicated that it had corrected the violations by posting the antenna structures’ ASR numbers.

**III. Discussion**

4. As the NAL explicitly states, the Enforcement Bureau assessed the proposed forfeiture amount in this case in accordance with Section 503 of the Act,<sup>3</sup> Section 1.80 of the Rules,<sup>4</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Policy Statement*”).

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<sup>1</sup> 47 C.F.R. § 17.4(g).

<sup>2</sup> Notice of Apparent Liability for Forfeiture, NAL Acct. No. 200139220001 (Enf. Bur., released February 13, 2001).

<sup>3</sup> 47 U.S.C. § 503.

<sup>4</sup> 47 C.F.R. § 1.80.

Section 503(b) of the Act<sup>5</sup> requires that, in examining VoiceStream's response, the Commission 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 other such matters as justice may require.<sup>6</sup>

5. Section 17.4(g) of the Rules requires display of the ASR number "at a conspicuous place so that it is readily visible at the base of the antenna structure."

6. VoiceStream, for the first time, contends that the ASR number (1047489) was properly posted at its Keizer, Oregon, antenna site. VoiceStream states that, on an unspecified date following its receipt of the NOV issued for failure to post this ASR number, its Operations Manager visited the Keizer, Oregon, site and observed that a sign indicating the ASR number was "properly attached to the chain link fence surrounding the site at a location clearly visible to the public."<sup>7</sup> On this basis, VoiceStream argues that no forfeiture should be imposed for lack of signage at the Keizer, Oregon, site. We disagree. The ASR number may have been posted on the date of the Operations Manager's visit but VoiceStream has submitted no evidence to suggest that it was posted at the time of the FCC agent's observations on December 15, 2000. On that date, the FCC agent walked around the fence surrounding the antenna structure, observing all four sides of the fence as well as the base of the antenna structure, and saw no sign indicating the ASR number. We conclude that, on December 15, 2000, ASR number 1047489 was not posted. Accordingly, we impose a monetary forfeiture for VoiceStream's failure to post ASR number 1047489.

7. It is undisputed that the ASR numbers were not properly posted, as required by Section 17.4(g) of the Rules, for the other eleven antenna structures inspected by FCC agents. However, VoiceStream propounds a number of arguments for mitigation.

8. VoiceStream's principal argument for mitigation is that the base forfeiture amount for failure to post an ASR number should be \$1,000, not \$2,000. The Bureau's proposed forfeiture was based on the Commission's decision in *American Tower Corp.*,<sup>8</sup> in which the Commission determined that a \$2,000 base forfeiture amount was appropriate for this type of violation.<sup>9</sup> Because the Bureau is bound by the Commission's determination, we will not address VoiceStream's argument in this case.

9. VoiceStream asserts, for the first time, that, because the antenna structure located at 4400 NE Broadway, Portland, Oregon (ASR number 1040956), is less than 20 feet in height, it is exempt from the Federal Aviation Administration's notification requirement and, therefore, from the tower registration requirements.<sup>10</sup> VoiceStream argues that, since it voluntarily registered this antenna structure, the Commission should not impose a monetary forfeiture for failing to post its ASR number. We agree.

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<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> Compare VoiceStream's January 19, 2001, NOV response, stating, in pertinent part, "This is the response to the violation . . . for [the] VoiceStream cell site at 930 Chemawa, Keizer, Oregon. Per FCC records and VoiceStream, the antenna structure under Registration # 1047489 was missing proper tower registration signage."

<sup>8</sup> *American Tower Corp.*, FCC 01-9 (rel. Jan. 16, 2001).

<sup>9</sup> *Id.* at ¶ 9.

<sup>10</sup> See 47 C.F.R. §§ 17.4(a) and 17.14(b). VoiceStream made no mention of this argument in its response to the Notice of Violation regarding the Portland antenna structure.

10. VoiceStream also asserts that the ASR number for its antenna structure at 3025 Industrial Way, NE, Salem, Oregon, was not posted because the sign indicating the ASR number (1040800) was vandalized and fell to the ground. VoiceStream suggests mitigating the proposed forfeiture for failure to post this ASR number from \$2,000 to \$250. While mitigation to \$250 is not warranted, we find that mitigation to \$1,000 is appropriate.

11. Finally, VoiceStream argues that the proposed forfeiture should be mitigated because it has “extensive compliance policies and processes in place to ensure that FCC registration is completed for every site so required. Further, VoiceStream promptly installed signs at the sites in question, and its policies will work to detect those . . . signs that have been weather damaged or vandalized in the future.” This argument lacks merit. After, June 12, 2000, when the Portland Office first notified VoiceStream that it was violating Section 17.4(g) of the Rules, FCC agents observed ten more violations (not counting the antenna structure at 4400 NE Broadway, Portland, Oregon) of that rule over a six month period. Thus, even six months after the initial notification, VoiceStream did not have effective compliance policies in place and no mitigation is warranted on this basis.

12. We have examined VoiceStream’s response to the NAL pursuant to the statutory factors set forth above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that VoiceStream has provided a sufficient justification for mitigating the proposed forfeiture amount to \$21,000, but has not provided a sufficient justification for any further mitigation.

#### IV. Ordering Clauses

13. **ACCORDINGLY, IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,<sup>11</sup> VoiceStream **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$21,000 for willful violation of the provisions of 17.4(g) of the Rules.

14. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission’s Rules<sup>12</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>13</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. number 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>14</sup>

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<sup>11</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>12</sup> 47 C.F.R. § 1.80.

<sup>13</sup> 47 U.S.C. § 504(a).

<sup>14</sup> See 47 C.F.R. § 1.1914.

15. **IT IS FURTHER ORDERED THAT** this notice shall be sent, by certified mail, return receipt requested, to Vice President, Legislative and Regulatory Affairs, for VoiceStream PCS I License L.L.C., Brian O'Connor, at 401 9<sup>th</sup> Street, N.W., Suite 550, Washington, D.C. 20004.

**FEDERAL COMMUNICATIONS COMMISSION**

David H. Solomon  
Chief, Enforcement Bureau