

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

In the Matter of	)	
	)	
Lamar County Cellular, Inc.	)	File No. EB-05-SE-184
	)	NAL/Acct. No. 200632100012
	)	FRN # 0007260862

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: April 26, 2006**

**Released: April 26, 2006**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Lamar County Cellular, Inc. (“Lamar”) apparently willfully and repeatedly violated Section 20.18(d) of the Commission’s Rules (“Rules”),<sup>1</sup> by failing to provide Enhanced 911 (“E911”) Phase I service within six months of a valid request by the Texas Commission on State Emergency Communications (“Texas CSEC”) on behalf of the Paris Police Department of Lamar County, Texas. For Lamar’s apparent violations, and for the reasons discussed below, we propose a forfeiture in the amount of twelve thousand dollars (\$12,000).

**II. BACKGROUND**

2. Under Phase I of the E911 requirements, wireless carriers must provide the designated Public Safety Answering Point (“PSAP”) with both the telephone number of the mobile handset that originated the 911 call and the location of the base station or cell site that received the 911 call.<sup>2</sup> Further, wireless carriers are required to provide such information by April 1, 1998 or within six months of a valid request by the designated PSAP, whichever is later.<sup>3</sup>

3. A PSAP request is deemed valid if the PSAP can demonstrate that it will be capable of receiving and utilizing the Phase I data no later than six months after its request. Specifically, a PSAP request is deemed valid if the PSAP can demonstrate that: (i) a mechanism is in place for recovering the PSAP’s costs; (ii) it has ordered the equipment necessary to receive and utilize the E911 data to be installed no later than six months following its request; and (iii) it has made a timely request to the appropriate local exchange carrier for the necessary trunking and other facilities.<sup>4</sup>

4. On June 23, 2005, the Texas CSEC, the agency responsible for coordinating, overseeing and implementing emergency communications and 911 programs in the state of Texas, filed a complaint

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<sup>1</sup> 47 C.F.R. § 20.18(d).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> See 47 C.F.R. § 20.18(j)(1), (2); see also *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson, Texas*, Order, 16 FCC Rcd 18982, 18982 ¶ 1 (2001), *recon. granted in part, denied in part, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson, Texas*, Order on Reconsideration, 17 FCC Rcd 24282 (2002).

with the Enforcement Bureau regarding Lamar's failure to timely implement E911 Phase I service in Lamar County, Texas. The Texas CSEC asserted that it sent Lamar a request to implement E911 Phase I service on behalf of the Paris Police Department of Lamar County, Texas, in October 1999. According to the Texas CSEC, to date Lamar has not fulfilled the E911 Phase I service request.

5. On July 6, 2005, the Enforcement Bureau's Spectrum Enforcement Division ("Division") issued Lamar a Letter of Inquiry ("LOI").<sup>5</sup> Lamar responded to the LOI on August 10, 2005,<sup>6</sup> and supplemented its response on November 17, 2005.<sup>7</sup>

6. In its response to the LOI, Lamar admitted that it received the Texas CSEC's request and conceded that the request was valid.<sup>8</sup> Lamar stated that it is a "bare bones operation" that maintains a single analog cell site in the town of Paris in Lamar County, which is served by a single PSAP, the Paris Police Department.<sup>9</sup> In order to save on operating costs, Lamar does not operate its own cellular switch but rather utilizes other carriers' cellular switching services.<sup>10</sup> When it received the initial October 1999 Phase I request from the Texas CSEC, Lamar was using cellular switching services provided by CenturyTel. Due to jurisdictional LATA boundary issues, Lamar had its cellular-originated 911 calls routed from the CenturyTel cellular switch to the local landline switch owned by Blossom Telephone Company ("Blossom")<sup>11</sup> in Lamar County. Lamar claimed that, at that time, it implemented what it believed "in good faith" to be a Phase I compliant solution. While Lamar's solution, by default, identified its lone cell site as the one being used by the emergency caller, it did not contain the caller's call-back number. Lamar maintained that, at that time, it did not realize that the FCC's rules require a call-back number.<sup>12</sup> Lamar stated that the Texas CSEC informed it that it had not achieved Phase I compliance in November of 2002.<sup>13</sup>

7. Lamar asserted that it then began working with CenturyTel to achieve Phase I compliance, but in early 2003, ALLTEL acquired CenturyTel and Lamar had to renew its Phase I implementation efforts with ALLTEL. As part of these efforts, Lamar installed a digital trunk to the selective router in Dallas, Texas, which serves the Paris Police Department. Lamar asserted that it worked with ALLTEL to achieve Phase I compliance using this arrangement but was unable to craft a Phase I solution.

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<sup>5</sup> See Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Rod Brown, Lamar County Cellular, Inc. (July 6, 2005).

<sup>6</sup> See Letter from Kenneth C. Johnson, Esq. and Gregory W. Whiteaker, Esq., Bennet & Bennet, PLLC to Ava Holly Berland, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (August 10, 2005) ("Response").

<sup>7</sup> See Letter from Michael R. Bennet, Esq. and Kenneth C. Johnson, Esq., Bennet & Bennet, PLLC to Ava Holly Berland, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (November 17, 2005) ("Supplemental Response")

<sup>8</sup> Response at 1-2.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Lamar noted that Blossom and Lamar are affiliated companies. *Id.* at n. 2.

<sup>12</sup> *Id.* at 2. Lamar stated that a fixed pseudo-ANI ("p-ANI") from the Lamar cellular emergency caller was sent from the CenturyTel switch to the Paris Police Department identifying Lamar's solitary cellular site. *Id.* at n. 3.

<sup>13</sup> *Id.* at 3.

8. Lamar stated that in March 2005, it changed its cellular switching host from ALLTEL to Pine Cellular. Lamar indicated that it has Pine Cellular's switch route 911 calls via analog Multi-Frequency ("MF") trunks back through the Blossom switch and then to the PSAP. According to Lamar, both the Pine Cellular and Blossom switches required upgrades for Lamar to be able to send the Phase I data to the PSAP. Lamar asserted in its August 10, 2005 response to the LOI that it was working with the switch manufacturer to implement a Call-Path Associated Signaling solution whereby the Pine Cellular switch sends a 10-digit p-ANI in the form of Emergency Services Routing Digits and the calling party's number to the Blossom switch, which in turn would forward this information to the selective router serving the Paris Police Department. However, in its November 17, 2005 supplement to the LOI response, Lamar reported that on August 11, 2005, it learned that the Blossom switch cannot be physically configured to pass such Phase I p-ANI data to the selective router assigned to the Paris Police Department using the incoming MF trunks.

9. Lamar noted in its November 17, 2005 supplement that it is currently pursuing a plan involving completion of a digital circuit using terrestrial microwave facilities located between its leased cellular switch and a new landline switch. This plan would also utilize the E911 services of a Non-Call Path Associated Signaling ("NCAS") solution vendor. Lamar stated that it has commenced construction of the microwave path and entered into contract negotiations with the NCAS solution vendor. Further, Lamar expected to order the dedicated T1 facilities necessary to carry its wireless 911 traffic from the landline switch to the selective router by November 30, 2005. Based on the time required to complete construction of the microwave link, provision the dedicated T1 facilities, and deploy the NCAS solution, Lamar stated that it expects to be fully Phase I compliant by February 22, 2006.<sup>14</sup>

### III. DISCUSSION

10. As stated previously, Section 20.18(d) of the Rules requires wireless carriers to provide to the designated PSAP both the 911 caller's telephone (call back) number and the location of the cell site or base station that received the 911 call from any mobile handset accessing their systems by April 1, 1998 or within six months of a valid request by a designated PSAP, whichever is later. The record establishes, and Lamar does not dispute, that the Texas CSEC made a valid request on behalf of the designated PSAP in October 1999. Moreover, the record indicates, and Lamar does not dispute, that it did not transmit the required data (both the 911 caller's call back number and the cell site location) and thus did not provide compliant E911 Phase I service within six months of the Texas CSEC's valid request.

11. Under Section 503(b) of the Act<sup>15</sup> and Section 1.80(a) of the Rules,<sup>16</sup> any entity that willfully and repeatedly fails to comply with the requirements of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term "willful" means that the violator consciously and deliberately acted or failed to act, irrespective of any intent to violate the Commission's requirements, and the term "repeatedly" means that the act or failure to act occurred more than once or more than one day if the violation has been continuous in nature.<sup>17</sup> Based on the record before us, we find

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<sup>14</sup> We note that Lamar has not updated its response to the LOI as of the date of this NAL to indicate that it has achieved full Phase I compliance.

<sup>15</sup> 47 U.S.C. § 503(b).

<sup>16</sup> 47 C.F.R. § 1.80(a).

<sup>17</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 at 2294-95 (1982) (stating that the definitions of willful and repeated, set forth in Section 312(f)(1) and (2), shall govern Section 503(b)); see also *Telecom House, Inc.*, 20 FCC Rcd 15131 ¶ 14 (2005); *Southern California Broadcasting*, 6 FCC Rcd 4387, 4388 ¶ 5 (1991); *Bureau D'Electronique Applique*, 20 FCC Rcd 17893 ¶¶ 9-10 (Enf. Bur., Spectrum Enf. Div., 2005).

that Lamar apparently willfully and repeatedly violated Section 20.18(d) of the Rules by failing to comply with the Commission's E911 Phase I requirements within six months of the Texas CSEC's valid request.

12. Under Section 503(b)(6) of the Act,<sup>18</sup> we are barred from proposing a forfeiture for apparent violations that occurred more than one year prior to the date of this NAL, but we are not barred from taking into account the fact that Lamar's apparent violations began prior to that time period in determining the appropriate forfeiture amount.<sup>19</sup> The forfeiture amount proposed herein thus takes into account the continuing nature of Lamar's violations, but relates to the company's apparent willful and repeated failure to achieve full E911 Phase I compliance within the one-year statutory period.

13. Under Section 503(b)(2)(B) of the Act,<sup>20</sup> a common carrier may be assessed a forfeiture of up to \$130,000 for each violation, or for each day of a continuing violation up to a maximum of \$1.325 million for a single act or failure to act. Additionally, in determining the appropriate forfeiture amount, we need to consider the factors set forth in Section 503(b)(2)(D) of the Act,<sup>21</sup> which includes "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," as well as guidelines set forth in the Commission's Forfeiture Policy Statement.<sup>22</sup>

14. The Commission's Forfeiture Policy Statement and Section 1.80 of the Rules do not establish a base forfeiture for violation of Section 20.18(d). Nevertheless, the Commission has stated that the "omission of a specific rule violation from the list ... [establishing base forfeiture amounts] should not signal that the Commission considers any unlisted violation as nonexistent or unimportant. The Commission expects, and it is each licensee's obligation to know and comply with all Commission's rules."<sup>23</sup> Thus, the Commission retains its discretion to issue forfeitures on a case-by-case basis,<sup>24</sup> and has assessed forfeiture liability,<sup>25</sup> for rule violations irrespective of whether corresponding base forfeiture amounts have been established.

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<sup>18</sup> 47 U.S.C. § 503(b)(6).

<sup>19</sup> See, e.g., *Globcom, Inc. d/b/a Globcom Global Communications*, 18 FCC Rcd 19893, 19903 ¶ 23 (2003), *forfeiture ordered*, FCC 06-49 (rel. April 19, 2006); *Roadrunner Transportation, Inc.*, 15 FCC Rcd 9669, 9671-71 ¶ 8 (2000); *Cate Communications Corp.*, 60 RR 2d 1386, 1388 ¶ 7 (1986); *Eastern Broadcasting Corp.*, 10 FCC 2d 37, 37-38 ¶ 3 (1967).

<sup>20</sup> 47 U.S.C. § 503(b)(2)(B).

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

<sup>22</sup> See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17115 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

<sup>23</sup> *Id.* at 12 FCC Rcd at 17099 ¶ 22.

<sup>24</sup> *Id.*

<sup>25</sup> See *Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22630 ¶¶ 19-20 (2002) (assessing an aggregate \$133,000 forfeiture irrespective of the absence of an established base forfeiture for violations of the cable signal leakage standards); *Midwest Television, Inc.*, 20 FCC Rcd 3959 (Enf. Bur. 2005) (assessing a \$20,000 proposed forfeiture irrespective of the absence of an established base forfeiture for failure to broadcast emergency information accessible to hearing impaired viewers); *A-O Broadcasting Corp.*, 31 Communications Reg. (P&F) 411 ¶ 22 (2003), *forfeiture ordered*, 20 FCC Rcd 756 (2005) (assessing a \$28,000 forfeiture, *inter alia*, irrespective of the absence of an established base forfeiture for violations of radio frequency exposure limits).

15. Having considered the statutory factors and recent precedent,<sup>26</sup> we find that the gravity and the extent of Lamar's apparent willful and repeated violation of Section 20.18(d) warrants a proposed forfeiture in the amount of \$12,000. In this connection, the Commission has found that violations of E911 requirements are extremely serious given the critical function these requirements serve in promoting and safeguarding life and property.<sup>27</sup> We also note that the E911 Phase I requirements set forth in Section 20.18(d) have been in effect for over eight years, and that Lamar's failure to comply with those requirements and provide Phase I service was repeated and continuous in nature. Indeed, we note that nearly six years have lapsed since Lamar received the Texas CSEC's valid request for E911 Phase I service and that Lamar apparently has yet to fully implement a technical solution that would impart critical data (the 911 caller's call back number) to the Paris Police Department of Lamar County, Texas.

16. We recognize that Lamar has encountered difficulties in its efforts to develop a compliant technical solution. However, the Commission has repeatedly stated that "an assertion that a vendor, manufacturer, or other entity was unable to supply compliant products will not excuse noncompliance" with E911 requirements.<sup>28</sup> A carrier's "concrete and timely actions" taken with a vendor, manufacturer, or other entity may be considered as possible mitigation factors in an enforcement context.<sup>29</sup> Here, Lamar has not shown that it exercised the level of diligence expected of carriers in processing the Texas CSEC's request for Phase I service to warrant mitigation. Rather, the record establishes, and Lamar admits, that after it received the Texas CSEC's request for E911 Phase I service in October 1999, Lamar did not recognize its responsibilities and thus did not undertake concrete or timely action to address and implement a compliant E911 Phase I solution. Accordingly, we find that no mitigation of the proposed forfeiture amount is warranted on this basis.

17. We also find that no downward adjustment of the proposed forfeiture amount is warranted on the basis of Lamar's professed "good faith" belief that by providing the PSAP with the location of its cell site it was E911 Phase I compliant. As a Commission licensee, Lamar is charged with being familiar and complying with applicable Commission requirements.<sup>30</sup> Moreover, it is a well

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<sup>26</sup> See *Dobson Cellular Systems, Inc. and American Cellular Corporation*, FCC 06-48 (rel. April 18, 2006) (proposing a total \$750,000 forfeiture against two commonly-owned carriers for failure to provide E911 Phase I service in response to valid PSAP requests in nine instances and failure to provide E911 Phase II service in response to valid PSAP requests in 41 instances) ("*Dobson*"); *Sprint Spectrum LP d/b/a Sprint PCS*, 19 FCC Rcd 19901, 19906-07 ¶¶ 12-13 (Enf. Bur. 2004), *consent decree ordered*, 20 FCC Rcd 12328 (Enf. Bur. 2005) (proposing a \$50,000 forfeiture for E911 Phase I violations, based on the carrier's failure to implement Phase I E911 service seven months after receiving valid requests on behalf of two PSAPs) ("*Sprint PCS*").

<sup>27</sup> See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Second Memorandum Opinion and Order, 14 FCC Rcd 20850, 20852 ¶ 2 (1999), *clarified*, 16 FCC Rcd 18982 (2001); see also *Dobson*, FCC 06-48 ¶ 59; *T-Mobile USA, Inc.*, 18 FCC Rcd 3501, 3504 ¶ 7 (2003); *Sprint PCS*, 19 FCC Rcd at 19906 ¶ 12.

<sup>28</sup> See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Stay, 17 FCC Rcd 14841, 14854 ¶ 37 (2002); *Revision of the Commission's Rules to Ensure Compatibility of Enhanced 911 Emergency Calling Systems, Request for Waiver by Sprint Spectrum LP d/b/a Sprint PCS*, 16 FCC Rcd 18330, 18340 ¶ 32 (2001); *Revision of the Commission's Rules to Ensure Compatibility of Enhanced 911 Emergency Calling Systems, Request for Waiver by AT&T Wireless Services*, 16 FCC Rcd 18253, 18261 ¶ 26 (2001); see also *Sprint PCS*, 19 FCC Rcd at 19905 ¶ 10.

<sup>29</sup> *Id.*

<sup>30</sup> See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099 ¶ 22 (stating that "[t]he Commission expects, and it is each licensee's obligation, to know and comply with all of the Commission's rules"); see also *Communication Services Integrated, Inc.*, 37 Communication Reg. (P&F) 29 ¶ 14 (2005); *Monroe Area Broadcasters Inc.*, 18 FCC Rcd 6255, 6257 ¶ 9 (Enf. Bur. 2003).

established and longstanding principle that ignorance of the law is not a mitigating factor and does not warrant a downward adjustment of the proposed forfeiture amount.<sup>31</sup>

18. Finally, given that Lamar apparently is still not providing E911 Phase I service to the Paris Police Department, we require Lamar, pursuant to Section 308(b) of the Act,<sup>32</sup> to submit a report within 30 days of the release of this NAL, explaining the status of its deployment of Phase I service to the Paris Police Department, including a timeline for such deployment.

#### IV. CONCLUSION

19. We find that Lamar apparently willfully and repeatedly violated Section 20.18(d) of the Rules by failing to fulfill a valid request for E911 Phase I service to a PSAP within six months of the date of the request. For its violations, we propose a \$12,000 forfeiture.

#### IV. ORDERING CLAUSES

20. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, Lamar County Cellular, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of \$12,000 for willful and repeated violation of Section 20.18(d) of the Rules.

21. **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 for Forfeiture, Lamar County Cellular, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

22. **IT IS FURTHER ORDERED** that, pursuant to Section 308(b) of the Act, Lamar County Cellular, Inc. **SHALL SUBMIT** the report described in paragraph 18 within thirty days of the release date of this Notice of Apparent Liability for Forfeiture to: Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20054, ATTN: Ava Holly Berland.

23. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules 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>33</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for

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<sup>31</sup> See *Southern California Broadcasting*, 6 FCC Rcd at 4387 ¶ 3 (finding that inadvertence and/or mistaken beliefs regarding Commission requirements are “at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”); see also *Evergreen Broadcasting*, 26 FCC 2d 453 ¶ 4 (1970); *Barnacle Broadcasting Company Ltd.*, 19 FCC Rcd 13830, 13832-33 ¶ 10 (Enf. Bur. 2004).

<sup>32</sup> 47 U.S.C. § 308(b).

<sup>33</sup> 47 U.S.C. § 504(a).

payment of the full amount of the NAL under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12<sup>th</sup> Street, S.W., Room 1A625, Washington, D.C. 20554.<sup>34</sup>

24. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

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 for Forfeiture shall be sent by first class mail and certified mail return receipt requested to Mr. Rod Brown, Lamar County Cellular, Inc., 3940 Lamar Avenue, Paris, Texas 75462-5206, and to Michael R. Bennet, Esq., Bennet & Bennet, PLLC, 10 G Street, N.E., 7<sup>th</sup> Floor, Washington, D.C. 20002.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

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<sup>34</sup> See 47 C.F.R. § 1.1914.