

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

In the Matter of	)	
	)	File No. EB-07-SE-390
Digital Antenna, Inc.	)	NAL/Acct. No. 200832100045
Sunrise, Florida	)	FRN # 0005061015

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER**

**Adopted: May 8, 2008**

**Released: May 12, 2008**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Digital Antenna, Inc. (“Digital Antenna”) apparently violated a Commission order by willfully and repeatedly failing to respond fully to a directive of the Enforcement Bureau (“Bureau”) to provide certain information and documents. Based on our review of the facts and circumstances of this case, and for the reasons discussed below, we find that Digital Antenna is apparently liable for a monetary forfeiture in the amount of \$11,000.

**II. BACKGROUND**

2. Digital Antenna manufactures and markets, among other things, cellular and PCS boosters and repeaters used for amplifying cellular and PCS signals. On November 5, 2007, the Bureau’s Spectrum Enforcement Division (“Division”) issued a Letter of Inquiry (“LOI”)<sup>1</sup> to Digital Antenna in response to complaints alleging that Digital Antenna was marketing its boosters/repeaters to end users who are neither licensed cellular or PCS providers nor authorized by their licensed cellular or PCS provider to operate the device on the provider’s network and that the boosters/repeaters were causing interference to licensed services. The LOI directed Digital Antenna to submit a sworn written response to a series of questions relating to the number of boosters/repeaters it manufactured and distributed, its retailers, distributors and individual customers, its marketing materials, and the FCC certification of the products.

3. On November 6, 2007, Digital Antenna provided an incomplete response to the LOI, in substance and in form.<sup>2</sup> The response acknowledged that Digital Antenna manufactures and markets the six models of cellular and PCS boosters identified in the LOI.<sup>3</sup> Digital Antenna asserted that its products are certified by the Commission and do not have to be licensed under Parts 22 and 24 of the

---

<sup>1</sup> Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Mr. Anthony Gallagher, President, Digital Antenna, Inc. (November 5, 2007).

<sup>2</sup> Response from Anthony Gallagher, President, Digital Antenna, Inc., to Kathryn Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (November 6, 2007) (“response”).

<sup>3</sup> *Id.* at 2.

Commission's rules because they are not transmitters.<sup>4</sup> It provided the requested marketing materials, but did not provide the requested information concerning its retailers, distributors and individual customers, or the number of units of each of the devices it manufactured and distributed. Additionally, it did not submit a sworn statement or affidavit as directed in the LOI and required by the Commission's rules.<sup>5</sup>

4. On February 4, 2008, the Division issued a second LOI to Digital Antenna, directing Digital Antenna to provide the information that it had failed to supply in its first response.<sup>6</sup> The second LOI stated that, contrary to Digital Antenna's assertions, cellular and PCS boosters and repeaters are transmitters and may only be used by licensed cellular/PCS providers or by end user customers with the express authorization of the licensed provider. The second LOI directed Digital Antenna to respond within 15 calendar days and warned Digital Antenna that failure to provide complete responses to the LOI may result in enforcement action, including possible monetary forfeitures.

5. In its second LOI response,<sup>7</sup> Digital Antenna asserted its belief that the authorization of a licensed cellular or PCS provider is not required for end users to operate its devices.<sup>8</sup> Although it provided the dates it began manufacturing and marketing its products, it again failed to provide requested information regarding the number of units of each device manufactured and sold and to identify its retailers, distributors and individual customers, stating that the "number of units sold and a list of customers for these products is not provided due to the time consuming nature compared to the amount of time allowed for this response."<sup>9</sup> In addition, Digital Antenna failed to support its second LOI response with a sworn statement or affidavit as required.

### III. DISCUSSION

#### A. Failure to Provide Complete Responses to the LOI

6. We find that Digital Antenna apparently violated Commission orders by failing to provide complete responses to a Bureau inquiry. Sections 4(i), 4(j), and 403 of the Act afford the Commission broad authority to investigate the entities it regulates. Section 4(i) authorizes the Commission to "issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions,"<sup>10</sup> and Section 4(j) states that "the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice."<sup>11</sup> Section 403

---

<sup>4</sup> *Id.*

<sup>5</sup> 47 C.F.R. § 1.16.

<sup>6</sup> Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Mr. Anthony Gallagher, President, Digital Antenna, Inc. (February 4, 2008).

<sup>7</sup> Response from Anthony Gallagher, President, Digital Antenna, Inc., to Kathryn Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (February 15, 2008) ("second LOI response"). Although the second LOI response was dated February 15, 2008, it was not received by the Commission until February 27, 2008. Thus, it was filed beyond the deadline given in the second LOI of February 19, 2008.

<sup>8</sup> *Id.* at 1.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> 47 U.S.C. § 154(i).

<sup>11</sup> 47 U.S.C. § 154(j).

likewise grants the Commission “full authority and power to institute an inquiry, on its own motion ... relating to the enforcement of any of the provisions of this Act.”<sup>12</sup>

7. As indicated above, the Bureau twice directed Digital Antenna to provide certain information related to its products. Such information was necessary to enable the Commission to perform its enforcement function and evaluate whether Digital Antenna or any other entities violated Commission rules. There is no question that Digital Antenna received the LOIs. To date, however, Digital Antenna has failed to provide full and complete responses. Irrespective of whether Digital Antenna agrees with the Bureau that either an FCC license or authorization from a licensed cellular or PCS provider is required to operate its devices, it was obligated to respond fully and completely to the Bureau’s inquiry. Therefore, Digital Antenna’s failure to fully respond to the Bureau’s inquiry constitutes an apparent willful<sup>13</sup> and repeated<sup>14</sup> violation of a Commission order.<sup>15</sup>

## B. Proposed Forfeiture

8. Section 503(b)(1) of the Act and Section 1.80(a)(1) of the Rules authorize the Commission to assess a forfeiture for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.<sup>16</sup> In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act directs us to consider factors, such as “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>17</sup>

---

<sup>12</sup> 47 U.S.C. § 403.

<sup>13</sup> Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act indicates that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. *See, e.g., Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 ¶ 5 (1991) (“*Southern California Broadcasting*”).

<sup>14</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (“*Callais Cablevision*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage). “Repeated” means that the act was committed or omitted more than once. *Southern California Broadcasting*, 6 FCC Rcd at 4388 ¶ 5; *Callais Cablevision*, 16 FCC Rcd at 1362 ¶ 9.

<sup>15</sup> *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7599-7600 ¶¶ 23-28 (ordering \$100,000 forfeiture for egregious and intentional failure to certify the response to a Bureau inquiry); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19898 n. 36 (2003) (noting delayed response to an LOI is considered dilatory behavior which may result in future sanctions) (subsequent history omitted); *BigZoo.Com Corporation*, Notice of Apparent Liability for Forfeiture and Order, 19 FCC Rcd 24437 (Enf. Bur. 2004), *forfeiture ordered*, 20 FCC Rcd 3954 (Enf. Bur. 2005) (“*BigZoo*”) (ordering \$20,000 forfeiture for failure to respond to an LOI); *World Communications Satellite Systems, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 18545 (Enf. Bur. 2003), *forfeiture ordered*, 19 FCC Rcd 2718 (ordering a \$10,000 forfeiture for non-responsive reply to an LOI); *Donald W. Kaminski, Jr.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 10707 (Enf. Bur. 2001), *forfeiture ordered*, 18 FCC Rcd 26065 (Enf. Bur. 2003) (ordering \$4,000 forfeiture for individual’s failure to respond to an LOI).

<sup>16</sup> 47 U.S.C. § 503(b)(1); 47 C.F.R. § 1.80(a)(1).

<sup>17</sup> 47 U.S.C. § 503(b)(2)(E).

9. Under Section 503(b)(2)(C) of the Act and Section 1.80(b)(3) of the Rules,<sup>18</sup> the Commission is authorized to assess a maximum forfeiture of \$11,000 for each violation, or each day of a continuing violation, by an entity not specifically designated in Sections 503(b)(2)(A) or 503(b)(2)(B) of the Act, up to a statutory maximum forfeiture of \$97,500 for any single continuing violation.<sup>19</sup>

10. Section 1.80 of the Rules and the Commission's *Forfeiture Policy Statement* establish a base forfeiture amount of \$4,000 for failure to respond to Commission communications.<sup>20</sup> We find that Digital Antenna's failure to respond fully to the LOIs in the circumstances presented here warrants a substantial increase to this base amount. Misconduct of this type exhibits a disregard for the Commission's authority and, more importantly, threatens to compromise the Commission's ability to adequately investigate violations of its Rules. Prompt and full responses to Bureau inquiry letters are essential to the Commission's enforcement function. We therefore propose an \$11,000 forfeiture against Digital Antenna for failing to respond fully to Commission communications. This forfeiture amount is consistent with recent precedent in similar cases, where companies failed to provide responses to multiple Bureau inquiries concerning compliance with the Commission's Rules despite evidence that the LOIs had been received.<sup>21</sup>

11. We also direct Digital Antenna to respond fully to the February 4, 2008 LOI within thirty days of the release of this NAL. Failure to do so may constitute an additional violation subjecting Digital Antenna to further penalties, including potentially higher monetary forfeitures.

#### IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, Digital Antenna, Inc. is **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount eleven thousand dollars (\$11,000) for willful and repeated violation of a Commission order.

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty

---

<sup>18</sup> 47 U.S.C. § 503(b)(2)(C); 47 C.F.R. § 1.80(b)(3).

<sup>19</sup> In 2004, the Commission amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), to increase the maximum forfeiture amounts in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. *See Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004) (adjusting the maximum statutory forfeiture amounts from \$11,000/\$87,500 to \$11,000/\$97,500); *see also* 47 C.F.R. § 1.80(c).

<sup>20</sup> *See* 47 C.F.R. § 1.80(b)(4); *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd. 17087 (1997), *recon. denied*, 15 FCC Rcd. 303 (1999) ("*Forfeiture Policy Statement*").

<sup>21</sup> *See, e.g., Universal Telecommunications, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 Rcd 6579 (Enf. Bur. 2006) (proposing a \$20,000 forfeiture for failure to respond to an LOI); *Hauppauge Computer Works, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 3684 (Enf. Bur., Spectrum Enf. Div., 2008) (proposing an \$11,000 forfeiture for failure to respond to an LOI); *BigZoo*, 20 FCC Rcd at 3955 (ordering a \$20,000 forfeiture for failure to respond to an LOI) (forfeiture paid); *Liberty Phones, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 17264 (Enf. Bur., Inv. & Hearings Div., 2007) (proposing a \$20,000 forfeiture for failure to respond to an LOI). Most of these cases ordered or proposed forfeitures of \$20,000 for failure to respond to Commission communications. We note, however, that all but one of these cases involved common carriers, which are subject to a higher maximum statutory forfeiture amount than non-common carriers like Digital Antenna. *See* 47 U.S.C. 503(b)(2)(B)-(C). We do not decide here whether failure to respond to an LOI constitutes a continuing violation.

days of the release date of this Notice of Apparent Liability for Forfeiture, Digital Antenna, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. 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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. Digital Antenna will also send electronic notification on the date said payment is made to [Katherine.Power@fcc.gov](mailto:Katherine.Power@fcc.gov) and [Ricardo.Durham@fcc.gov](mailto:Ricardo.Durham@fcc.gov).

15. **IT IS FURTHER ORDERED** that, pursuant to Sections 4(i), 4(j) and 403 of the Act, Digital Antenna, Inc. shall fully respond to the February 4, 2008 Letter of Inquiry sent by the Enforcement Bureau in the manner described by that Letter of Inquiry within thirty (30) days of the release of this NAL.

16. The response to this NAL, 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.

17. 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.

18. **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. Anthony Gallagher, President, Digital Antenna, Inc., 5325 NW 108<sup>th</sup> Avenue, Sunrise, FL 33351.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau