

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

In the Matter of

)

File No. EB-09-AT-0030

)

Verizon Wireless (VAW) LLC

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NAL/Acct. No. 200932480002

)

Owner of an Antenna Structure in Hartwell, GA
Alpharetta, GA

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FRN 0006945687

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FORFEITURE ORDER

Adopted: January 7, 2010**Released:** January 11, 2010

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of thirteen thousand dollars (\$13,000) to Verizon Wireless (VAW) LLC (“Verizon”), owner of an antenna structure¹ located at 2128 Reed Creek Road, in Hartwell, GA for willful and repeated violation of Sections 17.4(a) and 17.21(a) of the Commission’s Rules (“Rules”).² The noted violations involve Verizon’s failure to register its antenna structure with the Commission and failure to paint and light its antenna structure.

II. BACKGROUND

2. On August 18, 2009, in response to a complaint of an unlit tower, agents from the Commission’s Atlanta Field Office of the Enforcement Bureau (“Atlanta Office”) inspected an antenna structure located at 2128 Reed Creek Road in Hartwell, GA. Prior to inspecting the tower, the agents confirmed that no antenna structure located at that address was registered in the Commission’s Antenna Structure Registration (“ASR”) database. The agents determined that the antenna structure exceeded 200 feet in height. The agents observed that the structure did not have any obstruction marking or lighting and that there was no ASR number posted at the structure base.³ The agents contacted the land owner, who identified the tower owner as Verizon.

3. On August 19, 2009, an agent from the Atlanta Office contacted Verizon regarding the antenna structure. Verizon measured the antenna structure and confirmed that the overall height of the antenna structure was 205 feet above ground level. That same day Verizon reduced the antenna structure height to 199 feet above ground level by removing the lightning rod from the top of the antenna structure.

4. On August 20, 2009, Verizon confirmed that the antenna structure was constructed on or about March 2004 and that Verizon had owned the tower since its construction. Verizon also stated that it

¹ 47 C.F.R. § 17.2 (a) “The term antenna structure includes the radiating and/or receive system, its supporting structures and any appurtenances mounted thereon.”

² 47 C.F.R. §§ 17.4(a), 17.21(a).

³ See 47 C.F.R. § 17.4(g).

filed for a determination of no hazard from the Federal Aviation Administration (“FAA”) for a planned addition of a lightning rod to the tower, which would increase its height to 206 feet above ground level.

5. On September 18, 2009, the Atlanta Office issued a *Notice of Apparent Liability for Forfeiture* to Verizon in the amount of thirteen thousand dollars (\$13,000), for the apparent willful and repeated violation of Sections 17.4(a) and 17.21(a) of the Rules.⁴ Verizon submitted a response to the *NAL* requesting reduction of the proposed forfeiture.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ 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) (“*Forfeiture Policy Statement*”). In examining Verizon’s response, Section 503(b) of the Act requires that 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.⁷

7. Section 17.4(a) of the Rules⁸ requires that effective July 1, 1996, the owner of any proposed or existing antenna structure that requires notice of proposed construction to the FAA register the structure with the Commission. Section 17.7(a) of the Rules⁹ requires that notification to the FAA must be made for any construction or alteration of an antenna structure more than 200 feet in height above ground level.¹⁰ Verizon’s antenna structure in Hartwell, GA required notice of proposed construction to the FAA, because it was more than 200 feet in height. Because it was constructed after 1996, Verizon was required to register the structure with the Commission. There is no evidence that Verizon ever registered the structure with the Commission prior to August 19, 2009. In response to the *NAL*, Verizon does not dispute any of these facts.

8. Section 17.21(a) of the Rules¹¹ requires that antenna structures be painted and lighted when they exceed 60.9 meters (200 ft.) in height above ground level or they require special aeronautical study. Section 17.6 of the Rules¹² states that the antenna structure owner is responsible for maintaining the painting and lighting of an antenna structure. Prior to August 19, 2009, Verizon’s antenna structure exceeded 200 feet above ground level and thus was required to be painted and lighted. Verizon, as the owner of the antenna structure, is responsible for the structure obstruction marking and lighting. On August 18, 2009, Verizon’s antenna structure was not painted or lighted, and there is no evidence that the

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200932480002 (Enf. Bur., Atlanta Office, September 18, 2009) (“*NAL*”).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ 47 C.F.R. § 17.4(a).

⁹ 47 C.F.R. § 17.7(a).

¹⁰ *But see* 47 C.F.R. § 17.14 (listing exemptions from the notification to FAA requirement for structures near natural terrain of equal or greater height and structures or objects approved by the Administrator of the FAA for use as navigational aids). None of the exemptions listed in Section 17.14 of the Rules apply to the structure in Hartwell, GA.

¹¹ 47 C.F.R. § 17.21(a).

¹² 47 C.F.R. § 17.6.

structure had ever been painted or lighted since its construction in 2004. In response to the *NAL*, Verizon does not deny any of these facts.

9. Based on the evidence before us, we find that Verizon willfully¹³ and repeatedly¹⁴ violated Sections 17.4(a) and 17.21(a) of the Rules by failing to register its antenna structure in Hartwell, GA from the date the structure was constructed in March 2004 until August 18, 2009 and failing to paint or light its antenna structure in Hartwell, GA from the date the structure was constructed in March 2004 until August 18, 2009.

10. In its response to the *NAL*, Verizon requests a reduction of the proposed forfeiture, because it asserts its violation was minor. Verizon notes that it corrected the violation the same day that it was notified of the violation. Moreover, it explains that its tower was not registered or lit because its construction contractor did not note the lightning rod on the final plans for the antenna structure. The construction contractor only noted the lightning rod in the equipment list in the close out package. Because the construction engineer responsible for the project only consulted the final plans for the structure, Verizon mistakenly thought that its antenna structure was less than 200 feet and did not require registration or lighting. Verizon has since instituted a comprehensive review of all of its antenna structures which are not registered or lit and which are between 190 and 200 feet in height to ensure that it not repeat this mistake.

11. We do not agree that Verizon's violation was minor.¹⁵ Regardless of the reason, an antenna structure over 200 feet in height remained unregistered, unlit and unpainted for several years, thereby posing a serious hazard to air navigation. The "Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors,"¹⁶ and the Commission has "consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations."¹⁷ It is also well established that a mistake resulting in a rule violation is considered a willful violation.¹⁸

¹³ 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 or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁴ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

¹⁵ See *AT&T Wireless Services Inc.*, Forfeiture Order, 17 FCC Rcd 21866 (2002).

¹⁶ *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863,-64, para. 7 (2002); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34 (1991) (holding that a company's reliance on an independent contractor to construct a tower in compliance of FCC rules does not excuse that company from a forfeiture); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972) (holding a licensee responsible for violations of FCC rules despite its reliance on a consulting engineer); *Petracom of Joplin, L.L.C.*, 19 FCC Rcd 6248 (Enf. Bur. 2004) (holding a licensee liable for its employee's failure to conduct weekly EAS tests and to maintain the "issues/programs" list).

¹⁷ *American Paging, Inc. of Virginia*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 10417, 10420, para. 11 (Enf. & Cons. Inf. Div., Wireless Tel. Bur. 1997) (quoting *Triad Broadcasting Company*, 96 FCC 2d 1235, 1244 (1984)).

¹⁸ A violation resulting from an inadvertent mistake or a failure to become familiar with the Commission's requirements is considered a willful violation. See *North Country Repeaters*, 19 FCC Rcd 22139 (Enf. Bur. 2004); *PBJ Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992); *Standard Communications Corp.*, 1 FCC Rcd 358 (1986); *Triad Broadcasting Co., Inc.*, 96 FCC 2d 1235 (1984). However, we note that we are not required to find

Moreover, the Commission has long held that corrective action taken to come into compliance with the Rules after an inspection is expected, and such corrective action does not nullify or mitigate any prior forfeitures or violations.¹⁹ Accordingly, we find no reason to reduce the proposed forfeiture.

12. Finally, Verizon requests a reduction based on its overall history of compliance with the rules. “While Verizon Wireless has had a small number of violations noted previously by the Commission, considering the vast number of towers and antenna sites it maintains, its history of overall compliance with FCC rules is good.”²⁰ In making this claim, Verizon cited *WSJM Inc.*, in which the Enforcement Bureau reduced a forfeiture based on the violator’s “record of compliance.”²¹ In that case, WSJM, Inc. received a Notice of Violation prior to the issuance of the Notice of Apparent Liability. However, the facts underlying the Notice of Violation and Notice of Apparent Liability stemmed from the same inspection. Thus, WSJM had not received any written violations before the inspection underlying the subsequently reduced forfeiture. In this case, Verizon has received at least one notice of apparent liability and four notices of violations since 2002, all completely unrelated to the antenna structure in question.²² Accordingly, we do not find Verizon qualifies for a reduction based on its history of compliance with the rules.

13. We have examined Verizon’s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we find no basis for cancellation or reduction of the \$13,000 forfeiture proposed for these violations.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, Verizon Wireless (VAW) LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of thirteen thousand dollars (\$13,000) for violations of Sections 17.4 and 17.21 of the Rules.²³

15. 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.²⁴ 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

the violations are willful to impose a forfeiture, because the instant violations were repeated.

¹⁹ See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994), *Rama Communications, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 4981 (Enf. Bur. 2009), *Bethune-Cookman College, Inc.*, Forfeiture Order, 24 FCC Rcd 4513 (South Central Region 2009).

²⁰ Response to *NAL* at 4.

²¹ *WSJM, Inc.*, Forfeiture Order, 19 FCC Rcd 17777, 177780 (EB 2004).

²² Response to *NAL* at 4.

²³ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 17.4, 17.21

²⁴ 47 U.S.C. § 504(a).

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 with any questions regarding payment procedures. Verizon will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Verizon Wireless (VAW) LLC at its address of record and to its Deputy General Counsel, John T. Scott, III, Verizon Wireless, 1300 I Street, NW, Suite 400-West, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau