

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

In the Matter of)	File No: EB-10-SJ-0066
)	
AT&T, Inc.)	NAL/Acct. No.: 201132680001
)	
San Juan, PR)	FRN: 0018840736
)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 17, 2011

Released: February 17, 2011

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“*NAL*”), we find that AT&T, Inc. through its subsidiary AT&T Mobility (“AT&T”), operator of an Unlicensed National Information Infrastructure (“U-NII”) transmission system in Santurce, Puerto Rico, apparently willfully and repeatedly violated sections 301 and 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and sections 15.1(b) and 15.1(c) of the Commission’s rules (“Rules”)² by operating an intentional radiator not in accordance with Part 15 of the Rules³ and the device’s Equipment Authorization and without a license. We conclude that AT&T is apparently liable for forfeiture in the amount of twenty-five thousand dollars (\$25,000).

II. BACKGROUND

2. Part 15 of the Rules allows devices employing relatively low-level radiofrequency (“RF”) signals to be operated without individual licenses, as long as their operation causes no harmful interference to licensed services and the devices do not generate emissions or field strength levels greater than a specified level.⁴ Such devices must be authorized and operated in accordance with the Part 15 Rules.⁵ For example, section 15.5 of the Rules provides that operation of an intentional radiator must not cause harmful interference and, if harmful interference occurs, the operation of the device must cease.⁶

3. Operating an RF device, such as an intentional or unintentional radiator, that is not in compliance with its authorization or the Part 15 Rules is a violation of section 302(b) of the Act.⁷

¹ 47 U.S.C. §§ 301, 302a(b); *see also* 47 C.F.R. § 15.407.

² 47 C.F.R. § 15.1(b), (c).

³ 47 C.F.R. §§ 15.1 *et seq.*

⁴ *Revision of Part 15 of the Rules Regarding the Operation of Radio Frequency Devices Without an Individual License*, First Report and Order, 4 FCC Rcd 3493 (1989).

⁵ 47 C.F.R. §§ 15.1(a), 15.5.

⁶ 47 C.F.R. § 15.5.

⁷ 47 C.F.R. § 15.1(c).

Additionally, operating a Part 15 device in a manner that is inconsistent with the Part 15 Rules requires a license pursuant to section 301 of the Act. Such operation without a license violates that provision.⁸

4. As part of its ongoing coordination efforts with the Federal Aviation Administration (“FAA”), the Enforcement Bureau received a complaint that radio emissions were causing interference on or adjacent to the frequency 5610 MHz to the FAA’s Terminal Doppler Weather Radar (“TDWR”) installation serving the San Juan International Airport. TDWR installations exist at 45 major airports in the United States and Puerto Rico and assist air traffic controllers in detecting low-altitude wind shear that can pose a risk to aircraft.⁹ In order to avoid interference to the FAA’s TDWR installations, the Commission requires that U-NII devices operating in the 5.25 – 5.35 GHz and 5.47 – 5.725 GHz bands have Dynamic Frequency Selection (“DFS”) radar detection functionality, which allows them to detect the presence of radar systems and avoid co-channel operations with radar systems.¹⁰

5. On December 7, 2010, agents from the Enforcement Bureau’s San Juan Office (“San Juan Office”) conducted an investigation on the roof of the Miramar Plaza Condominium Building in Santurce, Puerto Rico. The agents from the San Juan Office confirmed by direction-finding techniques that radio emissions on frequency 5605 MHz were emanating from the building’s roof, the location of one of AT&T’s U-NII transmitters, a Motorola Canopy.¹¹ The Canopy model is certified for use as a Part 15 intentional radiator only in the 5735.0 - 5840.0 MHz band and is not certified as a U-NII intentional radiator.¹² The device also is not capable of DFS functionality.¹³

6. On December 8, 2010, agents from the San Juan Office again confirmed using direction-finding techniques that AT&T’s U-NII transmitter on the roof of the Miramar Plaza Condominium Building was operating on the frequency 5605 MHz. The agents conducted additional tests and found that when the frequency for AT&T’s device was changed from 5605 MHz, the interference to the TDWR ceased, thereby confirming that AT&T’s operations were the source of the interference. According to Commission records, AT&T does not hold a license to operate on the frequency 5605 MHz from the Miramar Plaza Condominium Building. On December 13, 2010, AT&T ceased operating its U-NII transmitter at this location.

⁸ 47 C.F.R. § 15.1(b).

⁹ MIT Lincoln Laboratories, <http://www.ll.mit.edu/mission/aviation/faawxsystems/tdwr.html> (last visited Jan. 26, 2011).

¹⁰ See 47 C.F.R. § 15.407(h)(2). See also *Memorandum* from Julius Knapp, Chief, Office of Engineering and Technology, FCC, and P. Michele Ellison, Chief, Enforcement Bureau, FCC, to Manufacturers and Operators of Unlicensed 5 GHz Outdoor Network Equipment Re: Elimination of Interference to Terminal Doppler Weather Radar (TDWR) (dated July 27, 2010), available at http://www.wi-fi.org/files/FCC_Memorandum_on_UNII_Device_Operation_2010_07_27-M.pdf (last visited Feb. 1, 2011).

¹¹ The device was a Motorola Canopy model #5700, FCC ID ABZ89FC5804.

¹² 47 C.F.R. § 15.403(s) (defining U-NII devices as “[i]ntentional radiators operating in the frequency bands 5.15-5.35 GHz and 5.470-5.825 GHz that use wideband digital modulation techniques and provide a wide array of high data rate mobile and fixed communications for individuals, businesses, and institutions.”). Although AT&T’s devices were not authorized to operate in the U-NII bands, they are subject to the U-NII rules (47 C.F.R. 15.401-15.407) because AT&T operated them as U-NII devices on a U-NII frequency.

¹³ Because this device is not authorized to be used on the 5.25 – 5.35 GHz and 5.47 – 5.725 GHz frequency bands, the Rules do not require it to have DFS functionality when manufactured. Devices operating on the 5.25 – 5.35 GHz and 5.47 – 5.725 GHz frequency bands, however, must have DFS functionality. See *supra* note 10.

III. DISCUSSION

7. Section 503(b) of the Act¹⁴ provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.¹⁵ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁶

8. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license.¹⁷ Part 15 of the Rules,¹⁸ however, sets forth conditions under which intentional radiators may operate without an individual license. Pursuant to section 15.1(b) of the Rules, “the operation of an intentional or unintentional radiator that is not in accordance with the regulations in [Part 15] must be licensed pursuant to the provisions of section 301 of the Communications Act. . . .”¹⁹ Thus, if an intentional radiator fails to comply with all of the applicable conditions set forth in Part 15 of the Rules, it is no longer covered by the unlicensed provisions of those Rules and must obtain an individual license pursuant to section 301 of the Act.

9. On December 7 and 8, 2010, as described above, agents from the San Juan Office observed AT&T consciously operate a Part 15 intentional radiator, a Motorola Canopy, on the center frequency of 5605 MHz from the rooftop of a building in Santurce, Puerto Rico. That device is not certified for use on the frequency 5605 MHz. Therefore, AT&T’s operations did not comply with the device’s Equipment Authorization or Part 15 requirements and required a license. According to Commission records, AT&T does not hold a license to operate on the frequency 5605 MHz in Santurce, Puerto Rico. Thus, based on the evidence before us, we find that AT&T apparently willfully and repeatedly violated section 301 of the Act and section 15.1(b) of the Rules by operating an unlicensed radio transmitter on December 7 and 8, 2010.

10. Section 15.201(b) of the Rules²⁰ provides that all intentional radiators operating under Part 15 shall be certificated by the Commission. Section 15.1(c) of the Rules²¹ states that the operation of an intentional radiator that is not in compliance with the administrative and technical provisions in this part is prohibited. Section 302(b) of the Act provides that “[n]o person shall . . . use devices which fail to

¹⁴ 47 U.S.C. § 503(b).

¹⁵ 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, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

¹⁶ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

¹⁷ 47 U.S.C. § 301.

¹⁸ See 47 C.F.R. §§ 15.1 *et seq.*

¹⁹ 47 C.F.R. § 15.1(b).

²⁰ 47 C.F.R. § 15.201(b).

²¹ 47 C.F.R. § 15.1(c).

comply with the regulations promulgated pursuant to this section.”²² Consequently, the operation of an intentional radiator in a manner inconsistent with the Part 15 Rules is a violation of section 302(b) of the Act. Section 15.504(h)(2) of the Rules²³ requires U-NII devices operating in the 5.47 – 5.725 GHz band to employ DFS. AT&T operated a U-NII transmitter that was incapable of operating with the DFS radar detection mechanism required under section 15.407(h)(2) of the Rules. Thus, based on the evidence before us, we find that AT&T apparently willfully and repeatedly violated section 302(b) of the Act and section 15.1(c) of the Rules by operating a U-NII transmitter without DFS capability on a frequency for which it was required on December 7 and 8, 2010.²⁴

11. Pursuant to the Commission’s *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000 and the base forfeiture amount for operation of unauthorized equipment is \$5,000.²⁵ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.²⁶

12. Because AT&T caused interference to the San Juan International Airport’s TDWR and posed a safety hazard to air traffic, we believe an upward adjustment in the forfeiture amount for AT&T’s apparent unlicensed operation is warranted. We also recognize that AT&T is a multi-billion dollar, global enterprise.²⁷ To ensure that forfeiture liability is a deterrent and not simply a cost of doing business, the Commission has determined that large or highly-profitable companies, such as AT&T, should expect the assessment of higher forfeitures for violations.²⁸ Based on these factors, we find that an upward adjustment from \$10,000 to \$20,000 is appropriate for AT&T’s apparent unauthorized operation. We propose the base forfeiture amount (\$5,000) for AT&T’s operation of unauthorized equipment in apparent violation of section 302(b) of the Act and section 15.1(c) of the Rules.

13. Although we could impose larger upward adjustments for AT&T’s apparent violations, we decline to do so, based on the particular circumstances of this case. We caution AT&T and other U-NII service providers, however, that we may do so in future cases if the circumstances warrant or if our current approach does not serve as a sufficient deterrent. Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we therefore conclude that AT&T is apparently liable for a total forfeiture of \$25,000 consisting of the following: \$20,000 for unlicensed operation in violation of section 301 of the Act and section 15.1(b) of the Rules and \$5,000 for operation of unauthorized equipment in violation of section 302(b) of the Act and section 15.1(c) of the Rules.

²² 47 U.S.C. § 302a(b).

²³ 47 C.F.R. § 15.407(h)(2).

²⁴ 47 C.F.R. § 15.1(c).

²⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

²⁶ 47 U.S.C. § 503(b)(2)(E).

²⁷ AT&T is one of the world’s largest communications companies and does business worldwide. Currently, AT&T is also ranked 21 on the Fortune 500, with reported revenues of more than \$123 billion. See http://money.cnn.com/magazines/fortune/global500/2010/full_list/ (last visited February 10, 2011).

²⁸ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099-100 (cautioning all entities and individuals that, independent from the uniform base forfeiture amounts, the Commission will take into account the subject violator’s ability to pay in determining the amount of a forfeiture to guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business, and noting that such large or highly profitable entities should expect that the forfeiture amount set out in a Notice of Apparent Liability against them may in many cases be above, or even well above, the relevant base amount).

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, 0.314 and 1.80 of the Commission's Rules, AT&T, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for violations of sections 301 and 302(b) of the Act and sections 15.1(b) and 15.1(c) of the Rules.²⁹

15. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, AT&T, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

16. AT&T is **HEREBY NOTIFIED** that its operation of a Motorola Canopy transceiver resulted in harmful interference to the FAA's TDWR system that serves the San Juan International Airport. AT&T is **HEREBY WARNED** that any further operation of any U-NII device, including the Motorola Canopy transceiver, on any frequency, and at any location, that results in interference to the FAA's TDWR system serving the San Juan International Airport may be considered a willful violation of section 333 of the Act, which prohibits willful interference to any radio communication of any station licensed or authorized under the Act or operated by the United States Government.³⁰

17. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the 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. 20554.⁸ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, AT&T will send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

18. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, US Federal Building, Room 762, San Juan, PR, 00918-1731 and must include the NAL/Acct. No. referenced in the caption. The statement should also be emailed to SCR-Response@fcc.gov.

19. 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 ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's

²⁹ 47 U.S.C. §§ 301, 302a(b), 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 15.1(b), 15.1(c).

³⁰ 47 U.S.C. § 333.

⁸ See 47 C.F.R. § 1.1914.

current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

20. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to AT&T, Inc. at POB 71514, San Juan, PR 00936

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau