

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

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

**FORFEITURE ORDER**

**Adopted:** September 27, 2012

**Released:** September 27, 2012

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of twenty-five thousand dollars (\$25,000) to AT&T, Inc. dba AT&T Mobility (AT&T) for willful and repeated violation of Sections 301 and 302(b) of the Communications Act of 1934, as amended (Act),<sup>1</sup> and Sections 15.1(b) and 15.1(c) of the Commission's rules (Rules).<sup>2</sup> The noted violation involves AT&T's operation of an intentional radiator without a license and contrary to the requirements of Part 15 of the Rules<sup>3</sup> and the device's Equipment Authorization.

**II. BACKGROUND**

2. On February 17, 2011, the Enforcement Bureau (Bureau) issued a Notice of Apparent Liability for Forfeiture (*NAL*) to AT&T for its operation of an Unlicensed National Information Infrastructure (U-NII) device on a frequency for which the device was not authorized and without a license. As discussed in detail in the *NAL* in this case,<sup>4</sup> on December 7, 2010 and December 8, 2010, while searching for the source of interference to the Federal Aviation Administration's (FAA) Terminal Doppler Weather Radar (TDWR) serving the San Juan International airport, agents from the Bureau's San Juan Office (San Juan Office) used direction-finding techniques to determine that radio emissions on frequency 5605 MHz emanated from AT&T's U-NII transmitter, a Motorola Canopy,<sup>5</sup> located on the roof of the Miramar Plaza Condominium Building in Santurce, Puerto Rico. 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

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

<sup>2</sup> 47 C.F.R. §§ 15.1(b), (c).

<sup>3</sup> 47 C.F.R. §§ 15.1 *et seq.*

<sup>4</sup> *AT&T, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Red 1894 (Enf. Bur. 2011). A comprehensive recitation of the facts and history of this case found in the *NAL* is incorporated herein by reference.

<sup>5</sup> The device was a Motorola Canopy model #5700, FCC ID ABZ89FC5804.

radiator.<sup>6</sup> The device also is not capable of Dynamic Frequency Selection (DFS), a functionality which allows U-NII transmitters operating in the 5.25-5.35 GHz and 5.47-5.725 GHz bands to detect the presence of FAA radar systems and avoid co-channel operations with radar systems.<sup>7</sup> AT&T submitted a response to the *NAL* requesting cancellation or reduction of the proposed forfeiture, because it alleges its U-NII transmitters operated on the frequencies 5685 MHz and 5825 MHz<sup>8</sup> on December 7 and December 8, 2010 and were not the source of the interference to the FAA's TDWR.<sup>9</sup>

### III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>10</sup> Section 1.80 of the Rules,<sup>11</sup> and the *Forfeiture Policy Statement*.<sup>12</sup> In examining AT&T's response, Section 503(b)(2)(E) 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.<sup>13</sup> As discussed below, we have considered AT&T's response in light of these statutory factors and impose a \$25,000 forfeiture.

4. 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.<sup>14</sup> Part 15 of the Rules,<sup>15</sup> however, sets forth conditions under which intentional radiators may operate without an individual license. Pursuant to Section 15.1(b)

---

<sup>6</sup> 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 device was not authorized to operate in the U-NII bands, it is subject to the U-NII rules (47 C.F.R. 15.401-15.407) because AT&T operated it as U-NII device on a U-NII frequency.

<sup>7</sup> 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](http://www.wi-fi.org/files/FCC_Memorandum_on_UNII_Device_Operation_2010_07_27-M.pdf) (last visited Feb. 1, 2011). 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.

<sup>8</sup> Agents from the San Juan Office only investigated the U-NII device operating on the frequency 5605 MHz. The agents did not confirm that AT&T operated a second U-NII device on the frequency 5825 MHz. The frequency 5825 MHz, however, is an authorized operating frequency for the Motorola Canopy model in question. Accordingly, AT&T's operation of a U-NII device on 5825 MHz is not relevant to this proceeding.

<sup>9</sup> See Answer to Notice of Apparent Liability for Forfeiture from William L. Roughton, Jr., General Attorney, AT&T Services Inc. (Apr. 18, 2011) (*NAL Response*).

<sup>10</sup> 47 U.S.C. § 503(b).

<sup>11</sup> 47 C.F.R. § 1.80.

<sup>12</sup> *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), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

<sup>13</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>14</sup> 47 U.S.C. § 301.

<sup>15</sup> See 47 C.F.R. §§ 15.1 *et seq.*

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...”<sup>16</sup> 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.

5. On December 7 and 8, 2010, agents from the San Juan Office used their direction-finding equipment to determine that AT&T was operating 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. As discussed below, AT&T asserts that its Motorola Canopy device operated on 5685 MHz, not 5605 MHz. The Motorola Canopy device, however, is only certified for use in the 5735.0 -5840.0 MHz band. Therefore, there is no dispute that AT&T’s operations required a license and violated the device’s Equipment Authorization and Part 15 requirements. According to Commission records, AT&T does not hold a license to operate on the frequencies 5605 MHz or 5685 MHz in Santurce, Puerto Rico. Accordingly, we find that AT&T willfully<sup>17</sup> and repeatedly<sup>18</sup> violated Section 301 of the Act and Section 15.1(b) of the Rules by operating an unlicensed radio transmitter.

6. Section 15.201(b) of the Rules provides that all intentional radiators operating under Part 15 shall be certificated by the Commission.<sup>19</sup> Section 15.1(c) of the Rules states that “the operation ... of an intentional ... radiator that is not in compliance with the administrative and technical provisions in this part ... is prohibited ....”<sup>20</sup> Section 302(b) of the Act provides that “[n]o person shall ... use devices which fail to comply with the regulations promulgated pursuant to this section.”<sup>21</sup> 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.

7. Section 15.504(h)(2) of the Rules requires U-NII devices operating in the 5.47 – 5.725 GHz band to employ DFS.<sup>22</sup> AT&T operated a U-NII transmitter incapable of operating with the DFS radar detection mechanism required under Section 15.407(h)(2) of the Rules. In its response, AT&T does not dispute that the Motorola Canopy is incapable of DFS capability. Thus, based on the evidence before us, we find that AT&T 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.<sup>23</sup>

8. The Bureau upwardly adjusted the proposed forfeiture for the violation of Section 301 of the Act by \$10,000, in part, because we found that AT&T apparently caused interference to the TDWR serving the San Juan International Airport.<sup>24</sup> In its *NAL Response*, AT&T provides two screenshots of the “uptime clock” of a Motorola Canopy device that allegedly show that the unit operated on 5685 MHz for

---

<sup>16</sup> 47 C.F.R. § 15.1(b).

<sup>17</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).

<sup>18</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day. 47 U.S.C. § 312(f)(2).

<sup>19</sup> 47 C.F.R. § 15.201(b).

<sup>20</sup> 47 C.F.R. § 15.1(c).

<sup>21</sup> 47 U.S.C. § 302a(b).

<sup>22</sup> 47 C.F.R. § 15.407(h)(2).

<sup>23</sup> 47 C.F.R. § 15.1(c).

<sup>24</sup> The proposed forfeiture was also upwardly adjusted based on the size of AT&T’s gross revenues.

two months prior to December 12, 2010.<sup>25</sup> AT&T asserts that the screenshots are of the Motorola Canopy unit at issue in this case and that the device's "uptime clock" resets to zero every time the frequency setting of the unit is changed.<sup>26</sup> AT&T claims its screenshots demonstrate that the device did not operate on 5605 MHz on December 7 and 8, 2010, and therefore did not cause interference to the San Juan TDWR, which operates on the frequency 5610 MHz. AT&T further asserts that its device could not have been the source of the 5605 MHz interference to the San Juan TDWR because its device was not retuned to a different frequency on December 8, 2010, as described in the *NAL*. AT&T states that the frequency of its device could only have been changed by a "physical onsite intervention or remotely, through commands sent from an AT&T location."<sup>27</sup> AT&T claims that physical onsite intervention did not occur because the agents from the San Juan Office could not access the locked boxes housing the unit's network connections directly, and AT&T personnel were not present during the December 8 inspection. AT&T also states that the "remaining procedure to change the frequencies requires taking the unit off line and resetting it," which AT&T alleges would reset the uptime clock.<sup>28</sup> Thus, AT&T asserts that some other device must have been the source of the 5605 MHz interference.

9. We conclude that the preponderance of the evidence supports the Bureau's findings. On December 7 and 8, 2010, agents from the San Juan Office did not just track the source of the signals on 5605 MHz to the rooftop of the Miramar Condominium building; but traced the source to a specific device, AT&T's Motorola Canopy. On December 8, 2010, the agents took measurements directly in front of the Motorola Canopy transmitter, later identified by AT&T employees as an AT&T device, and recorded the spectral display of the transmission on 5605 MHz.<sup>29</sup> The spectral images show a strong signal on 5605 MHz, and no signal on 5685 MHz. On December 8, 2010, agents from the San Juan Office were present when AT&T's transmitter stopped transmitting on 5605 MHz. At that point, the interference to the San Juan TDWR noticeably decreased. The Commission has repeatedly relied on such evidence to establish a finding of interference.<sup>30</sup>

10. We are unpersuaded that AT&T's device was not the source of the interference. While AT&T offers two screenshots purporting to show that its Motorola Canopy unit operated on 5685 MHz at the time of the FCC measurements, it is unclear whether the device operating on 5685 MHz was the unit examined by the Bureau agents or a different unit.<sup>31</sup> In the absence of more reliable rebuttal information, we find that the preponderance of the evidence supports our earlier conclusion that AT&T's Motorola Canopy on the rooftop of the Miramar Condominium operated on 5605 MHz and caused interference to the San Juan TDWR. Accordingly, we affirm our earlier finding that an upward adjustment to the proposed forfeiture was appropriate.

---

<sup>25</sup> *NAL Response* at 3.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 4.

<sup>28</sup> *Id.*

<sup>29</sup> Agents from the San Juan Office photographed themselves inspecting the exterior of the device in question on the rooftop. The agents were not accompanied by representatives of AT&T.

<sup>30</sup> See *Ayustar Corporation*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 10693 (Enf. Bur. 2011); *Rapidwave, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 10678 (Enf. Bur. 2011); *Utah Broadband*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 1419 (Enf. Bur. 2011).

<sup>31</sup> Although the company could have provided a single screenshot showing the operating frequency, hardware identification, and location, AT&T instead provided two separate screenshots -- one showing the frequency in use and another showing the transmitter identification information. Moreover, the operating frequency displayed in the menu can be changed and printed out as a screenshot with no effect to the transmitter, because any changes to the transmitter are not implemented until the transmitter is rebooted. See *Canopy Installation and Configure Guide*, September 2006. Therefore, it is possible to generate a screenshot showing a device operating on 5685 MHz for any number of days, when the transmitter is in fact operating on 5605 MHz or any other frequency.

11. In any event, even if we reconsidered our finding that AT&T caused interference to the San Juan TDWR, the outcome would be the same. AT&T acknowledges that it operated on an unauthorized frequency. This constitutes a violation of Section 301 of the Act. An upward adjustment of \$10,000 is reasonable given AT&T's substantial gross revenues, and we therefore find no reason to reduce the proposed forfeiture.

#### IV. ORDERING CLAUSES

12. 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, AT&T, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for violation of Sections 301 and 302(b) of the Act and Sections 15.1(b) and 15.1(c) of the rules.<sup>32</sup>

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.<sup>33</sup> If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.<sup>34</sup> AT&T, Inc. shall send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>35</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

14. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-

<sup>32</sup> 47 U.S.C. §§ 301, 302a(b), 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 15.1(b), 15.1(b).

<sup>33</sup> 47 C.F.R. § 1.80.

<sup>34</sup> 47 U.S.C. § 504(a).

<sup>35</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

A625, Washington, D.C. 20554.<sup>36</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

15. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class and Certified Mail Return Receipt Requested to AT&T, Inc. at 1120 20<sup>th</sup> Street, NW, Suite 1000, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau

---

<sup>36</sup> See 47 C.F.R. § 1.1914.