

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
T-Mobile License, LLC)	File No.: EB-FIELDWR-15-00018431
)	NAL/Acct. No.: 201632940001
Licensee of Stations WQGB378, WQGA745,)	FRN: 0001565449
WQQQ249)	
)	
Phoenix, Arizona)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 12, 2015

Released: November 12, 2015

By the District Director, San Diego Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. T-Mobile License, LLC (T-Mobile) is the licensee of Advanced Wireless Service (AWS) stations WQGB378 and WQGA745, and Broadband Personal Communications Service (Broadband-PCS) station WQQQ249, Phoenix, Arizona, located on an office building rooftop in that city. T-Mobile apparently has failed to adequately prevent public access to the areas immediately in front of the antennas for these stations where radiofrequency (RF) emissions exceed what is permissible for exposure to the general population. Accordingly, we propose a penalty of \$60,000 for failing to comply with the requirement of our RF maximum permissible exposure (MPE) limits applicable to all such stations located in areas accessible to the public and workers. T-Mobile’s inadequate warning signage and broken plastic barriers did not comply with the FCC’s stated expectations for restricting access to areas that present a potential public safety hazard. Accordingly, a monetary penalty is warranted.

II. BACKGROUND

2. The Commission requires licensees to comply with RF exposure limits.¹ The Commission’s rules (Rules) specify guidelines and procedures for evaluating the environmental effects of RF exposure from FCC-regulated transmitters.² The Rules include MPE limits for electric and magnetic field strength and power density for transmitters operating at frequencies from 300 kHz to 100 GHz. These MPE limits, which are set forth in Section 1.1310 of the Rules, have protections for persons who may be exposed to RF as part of their job and have the ability to control their level of exposure

¹ See 47 C.F.R. §§ 1.1307, 1.1310, 2.1093. The maximum permitted exposure limits are generally based on recommended exposure guidelines published by the National Council on Radiation Protection and Measurements (“NCRP”) in “Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields,” NCRP Report No. 86, sections 17.4.1, 17.4.1.1, 17.4.2, and 17.4.3 (1986).

² See 47 C.F.R. §§ 1.1307, 1.1310, 2.1093. The FCC’s Office of Engineering and Technology (OET) has published bulletins further explaining RF exposure and the requirements for compliance. See OET Bulletin 56, “Questions and Answers about the Biological Effects and Potential Hazards of Radiofrequency Electromagnetic Fields” (Aug. 1999); OET Bulletin 65, “Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields” (Aug. 1997) (OET Bulletin 65). These documents are available on the FCC website where OET also maintains a website answering inquiries on RF exposure. See <https://www.fcc.gov/encyclopedia/radio-frequency-safety> (last visited Jun. 22, 2015).

(“occupational/controlled” exposure),³ as well as protections for the public and those workers who are unable to control their level of RF exposure in their work (“general population/uncontrolled” exposure).⁴

3. On January 14, 2015, in response to a complaint from the owner of an office building located at 4040 E. McDowell Road, Phoenix, Arizona (Building), agents from the Enforcement Bureau’s San Diego Office inspected the rooftop of the Building. The rooftop is divided into three sections, each approximately 25 feet wide and running the length of the Building. Several antenna panels utilized by cellular, AWS, and Broadband-PCS providers are located in the southern section of the Building (Antenna Area). The northern section has a penthouse area, which itself is enclosed, but has two outdoor patios, one in the northwest corner of the Building and one in the northeast corner of the Building. The penthouse patios and the Antenna Area are bisected by an elevated platform in the middle section which is approximately 40 inches higher than the floor in each of the patios and the Antenna Area. This center section can be easily accessed by anyone on either patio, allowing unrestricted access to the Antenna Area. Access to the rooftop is gained by taking an elevator or a staircase to the top floor of the Building.⁵ Exiting the elevator or stairwell, individuals can access the penthouse, and the two patios atop the Building, or, if they have a key or the combination to a key lockbox,⁶ can unlock another door that leads directly onto the Antenna Area.

4. At the time of the inspection, there were no RF exposure notices or signs mounted near or in the penthouse or patios warning of the hazard in the adjacent areas, although there were two warning signs mounted on the door leading directly to the Antenna Area. Interviews with the property owner, manager, and maintenance staff revealed that neither they nor the Building’s contract or maintenance workers had RF exposure safety training. According to the property manager, she and other Building workers work on the rooftop, including the Antenna Area, from time to time, but due to inadequate signage and barriers, they are not aware of areas to avoid or steps to take to limit RF exposure.⁷ The Building owner complained to the agents that Building staff has difficulty gaining RF exposure safety assistance from the carriers that use the rooftop.

³ The occupational limits apply in situations in which persons are exposed to RF as a consequence of their employment, provided those persons are “fully aware” of the potential for exposure and can “exercise control” over their exposure. 47 C.F.R. § 1.1310(e)(1). For example, wireless technicians and broadcast engineers would likely be in this category due to their experience working with RF exposure and their knowledge of and the ability to avoid the hazards of RF exposure. The occupational limits also apply in situations where an individual is transient through a controlled location where the occupational limits apply, provided that he or she is made aware of the potential for exposure. *Id.* It does not apply to persons who are not fully aware of the potential for exposure and who must do work in an area exceeding the general population MPE limit. *Compare* 47 C.F.R. § 1.1310(e)(1) *with* 47 C.F.R. § 1.1310(e)(2).

⁴ *See* 47 C.F.R. § 1.1310(e)(2). The more stringent general population limits apply in situations in which the general public may be exposed to RF, or in which persons exposed as a consequence of their employment may not be “fully aware” of the potential for exposure or cannot “exercise control” over their exposure. *Id.* This includes not only the general public, but also building workers that may come into contact with RF such as window-washers, HVAC technicians, electricians, roofers, and maintenance workers, etc., if these workers have not been trained to safely work in the presence of transmitting RF sources.

⁵ There is also an exterior stairwell allowing access to one of the two patios, but that stairwell appeared to be locked at the time of the inspection.

⁶ The Building owner and manager informed the agents that while they had their own key to the rooftop access door, only the carriers had the combination to the lockbox, so the Building could not control who accessed the rooftop.

⁷ In particular, the Building manager told the agents that when it rains, she and other Building workers go to the rooftop, including the Antenna Area, to divert some of the rain water to the drainage system to prevent leaking to the floor below.

5. T-Mobile operates transmitters for Stations WQGB378, WQGA745, and WQQQ249 on the rooftop⁸ using two sets of antenna panels on the southeast corner of the Antenna Area.⁹ One set is facing to the southwest (SW Panel) and one set is facing to the southeast (SE Panel). The SW Panel (consisting of three antenna panels) is located approximately ten feet from the edge of the rooftop and thirty feet from the rooftop door, while the SE Panel (consisting of four antenna panels) is located approximately two to three feet from the edge of the rooftop. At the time of the inspection, there were orange plastic posts, approximately three feet tall, located near both sets of panels. The posts were apparently set up to impede access to the front of the antenna panels, where RF exposure would be the highest. Their inadequacy was demonstrated in that at the time of the inspection, some of these posts did not have any plastic links attached to them to create a barrier. The other posts had plastic links attached, but the links were broken and, consequently, did not impede access to the front of the antenna panels. Two RF exposure signs were posted next to the SW Panel, one stating areas may exceed FCC MPE limits, but the signs did not delineate or explain what areas may exceed the limits. Two RF exposure signs were also observed on the back of the SE Panel, but access to these signs was blocked by the one connected plastic chain-link barrier erected between two plastic posts. The agents observed graffiti on the front of the middle panel of the SW Panel, as well as pens and cigarette butts in the Antenna Area, suggesting that the general public has actually accessed the antenna areas in the past and on at least one occasion was in extremely close proximity to an antenna in an area that exceeds our permissible RF exposure limits.

6. Because the front of each set of panels was easily accessible to anyone walking on the roof and into the Antenna Area, the agents made spatially-averaged discrete measurements of RF emissions twelve inches in front of each of the antenna panels, utilizing a Narda SRM-3000 Narrowband Meter and Probe. RF emissions from several panels exceeded the public MPE limits. Specifically, on the SW Panel, RF emissions from Station WQGB378 were measured at 2.46 mW/cm² (246% of the general population MPE limits), RF emissions from Station WQQQ249 were measured at 2.20 mW/cm² (220% of the general population MPE limits), and RF emissions from Station WQGA745 were measured at 2.70 mW/cm² (270% of the general population MPE limits).¹⁰ On the SE Panel, RF emissions from Station WQGB378 were measured at 1.78 mW/cm² (178% of the general population MPE limits). The next day, January 15, 2015, the agents returned to the rooftop and, finding the same conditions concerning accessibility to the areas in front of the antenna panels, made another set of RF emissions measurements in front of both sets of panels. On the SW Panel, RF emissions from Station WQGB378 were measured at 2.98 mW/cm² (298% of the general population MPE limits), and RF emissions from Station WQQQ249 were measured at 2.68 mW/cm² (268% of the general population MPE limits). On the SE Panel, RF emissions from Station WQGA745 were measured at 2.42 mW/cm² (242% of the general population MPE limits), and RF emissions from Station WQQQ249 were measured at 1.82 mW/cm² (182% of the general population MPE limits).

7. On January 16, 2015, the agents met with a T-Mobile representative on the rooftop at the Building. The agents observed that the plastic chain-links on the orange plastic poles were re-connected,

⁸ At the time of the inspection, the San Diego agents observed Station WQGB378 operating on frequencies 2145–2155 MHz; Station WQGA745 operating on 2110–2120 MHz (from both the SW and SE panels); and Station WQQQ249 operating on frequencies 1975–1990 MHz (from both the SW and SE panels). T-Mobile also operates PCS-Broadband Station KNLG707 on frequencies 1970–1975 MHz from the rooftop.

⁹ Also operating from the Building's rooftop is Wirelesco, L.P., licensee of PCS-Broadband station KNLF254, Phoenix, Arizona, and Nextel West Corporation, licensee of YX – Special Mobilized Radio (SMR) Service station WPEE791, Phoenix, Arizona.

¹⁰ For a listing of the limits for exposure, see 47 C.F.R. § 1.1310(e), Table 1 – Limits for Maximum Permissible Exposure (listing, in section (B) the “Limits for General Population/Uncontrolled Exposure”).

forming some barriers to access to the front of the SW and SE Panels. The agents showed the T-Mobile representative the accessibility of the rooftop from the two patios located in the northeast and northwest areas of the rooftop of the Building, as well as the evidence of general public access to the Antenna Area of the rooftop including cigarette butts and pens, as well as graffiti on one of the antenna panels. Agents additionally informed the T-Mobile representative of statements from the Building management concerning lack of adequate RF exposure training. The agents also discussed the inadequate RF exposure signage, and the previously broken barriers and inadequate informational postings to clearly indicate areas to avoid or how to limit RF exposure. The T-Mobile representative informed the agents that T-Mobile would take action to correct any deficiencies found during the investigation to bring the site into compliance with the Rules.¹¹

III. DISCUSSION

8. We find that T-Mobile apparently willfully and repeatedly violated Section 1.1310 of the Rules, by failing to comply with the radiofrequency MPE limits applicable to its transmitters and facilities.¹² Section 503(b) of the Communications Act of 1934, as amended (Act), 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.¹³ 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.¹⁴ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹⁵ and the Commission has so interpreted the term in the Section 503(b) context.¹⁶ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁷ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁸

¹¹ On February 4, 2015, the T-Mobile representative notified the San Diego Office that T-Mobile had increased the signage, markings and barriers of the Building rooftop, including the Antenna Area, patios, stairwells and fire escape.

¹² 47 C.F.R. § 1.1310.

¹³ 47 U.S.C. § 503(b).

¹⁴ 47 U.S.C. § 312(f)(1).

¹⁵ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law.”).

¹⁶ See, e.g., *So. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹⁷ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁸ 47 U.S.C. § 312(f)(2). Section 312(f)(2) of the Act, 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.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, para. 9.

A. T-Mobile Apparently Violated Section 1.1310 of the Rules by Failing to Comply With the Radiofrequency Maximum Permissible Exposure Limits on the Building Rooftop

9. We find that the evidence in this case is sufficient to establish that T-Mobile willfully and repeatedly violated Section 1.1310 of the Rules. Section 1.1310 of the Rules requires licensees to comply with RF exposure limits.¹⁹ Table 1 in Section 1.1310 of the Rules provides that the general population RF MPE limit for a station operating in the frequency range of 1,500 MHz to 100,000 MHz is 1.00 mW/cm².²⁰ The general population or uncontrolled exposure limits “apply in situations in which the general public may be exposed, or in which persons who are exposed as a consequence of their employment may not be fully aware of the potential for exposure or cannot exercise control over their exposure.”²¹ The phrase “fully aware” in the context of applying these exposure limits means that:

an exposed person has received written and/or verbal information fully explaining the potential for RF exposure resulting from his or her employment. With the exception of *transient* persons, this phrase also means that an exposed person has received appropriate training regarding work practices relating to controlling or mitigating his or her exposure.²²

This training “is not required for *transient* persons, but they must receive written and/or verbal information and notification (for example, using signs) concerning their exposure potential and appropriate means available to mitigate their exposure.”²³ The phrase “exercise control” means that “an exposed person is allowed to and knows how to reduce or avoid exposure by administrative or engineering controls and work practices, such as use of personal protective equipment or time averaging of exposure.”²⁴ Licensees can demonstrate compliance by restricting public access to areas where RF exceeds the general population MPE limits.²⁵

10. The inspections conducted by the San Diego agents on January 14 and 15, 2015, revealed that publicly accessible areas in front of two sets of antenna panels operated by T-Mobile on the rooftop of the Building exceeded the general population RF MPE limits, measuring from 175% to 300% of the MPE limit for those transmitters and facilities. While there were RF exposure safety signs near the antenna panels, the signs did not explain where the areas of concern were that exceeded the MPE limits, nor was

¹⁹ 47 C.F.R. § 1.1310.

²⁰ *Id.* at § 1.1310(e), Table 1.

²¹ *Id.* at § 1.1310(e)(2). See *Entravision Holdings, LLC*, Memorandum Opinion and Order, 22 FCC Rcd 21718 (Enf. Bur. 2007) (finding the general population exposure limits apply when persons that are exposed as a consequence of their employment may not be fully aware of the potential for exposure or cannot exercise control over their exposure); *Americom Las Vegas Limited Partnership*, Memorandum Opinion and Order, 21 FCC Rcd 14286, 14290 (2006) (finding the licensee of the transmitter emitting the excessive RF is liable for the failure to provide appropriate signs in remote areas warning the public of excessive RF exposure).

²² 47 C.F.R. § 1.1310(e)(1).

²³ *Id.*

²⁴ *Id.*

²⁵ See, e.g., OET Bulletin 65 at 53 (“Restricting access is usually the simplest means of controlling exposure to areas where high RF levels may be present. Methods of doing this include fencing and posting such areas or locking out unauthorized persons in areas, such as rooftop locations, where this is practical. There may be situations where RF levels may exceed the MPE limits for the general public in remote areas, such as mountain tops, that could conceivably be accessible but are not likely to be visited by the public. In such cases, common sense should dictate how compliance is to be achieved. If the area of concern is properly marked by appropriate warning signs, fencing or the erection of other permanent barriers may not be necessary.” (internal citations omitted)).

access to those areas of concern restricted. There were no actual barriers restricting access to the areas of concern, nor were there markings on the rooftop accompanied by signage to delineate the areas and explain the dangers associated with entering them. The areas of concern were accessible to all maintenance and contract workers employed by the Building as well as to the general public who could access the Antenna Area by walking over from two patios also on the rooftop. Material left behind in the Antenna Area and graffiti on the antenna panels indicated that members of the public did access the Antenna Area and the areas of concern, and workers for the Building stated they accessed the Antenna Area regularly but had no RF exposure safety training and did not know what particular areas to avoid.

11. T-Mobile bears the responsibility to restrict access to the noncompliant areas that exceed the public RF exposure limits, with barriers, markings, and appropriate signage, or to modify the facility and operation so as to bring its stations' operations within the RF exposure limits prior to public or worker access to the impacted area.²⁶ Because T-Mobile failed to do so, we find that T-Mobile's operation of AWS stations WQGB378 and WQGA745, and Broadband-PCS station WQQQ249, exceeded the general population/uncontrolled RF MPE limits, and violated Section 1.1310 of the Rules.

B. Proposed Forfeiture

12. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission."²⁷ Here, Section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against T-Mobile of up to \$160,000 for each day of a continuing violation, up to a statutory maximum of \$1,575,000 for a single act or failure to act.²⁸ In exercising our forfeiture authority, we must consider 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."²⁹ In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.³⁰ Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.³¹

13. The Commission has determined that an appropriate base forfeiture amount for violation of the RF MPE limits is \$10,000, reflecting the public safety nature of the RF exposure rules.³² On January 14

²⁶ 47 C.F.R. §§ 1.1307(b)(1), 1.1307(b)(5), 1.1310. Additional guidance is provided in *OET Bulletin 65*.

²⁷ 47 U.S.C. § 503(b).

²⁸ 47 U.S.C. § 503(b)(2); *see* 47 C.F.R. § 1.80(b). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(B) of the Act (\$100,000 per violation or per day of a continuing violation and \$1,000,000 per any single act or failure to act). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321, requires the Commission to adjust its forfeiture penalties periodically for inflation. *See* 28 U.S.C. § 2461 note 4. The Commission most recently adjusted its penalties to account for inflation in 2013. *See Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 28 FCC Rcd 10785 (Enf. Bur. 2013); *see also Inflation Adjustment of Monetary Penalties*, 78 Fed. Reg. 49,370-01 (2013) (setting Sept. 13, 2013, as the effective date for the increases).

²⁹ 47 U.S.C. § 503(b)(2)(E).

³⁰ 47 C.F.R. § 1.80(b)(8), Note to paragraph (b)(8).

³¹ *Id.*

³² *A-O Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 24184, 24191, para. 22 (2002) (concluding that a base forfeiture amount of \$10,000 is appropriate for failure to comply with the RF

(continued...)

and January 15, 2015, T-Mobile's Stations WQGB378, WQQQ249, and WQGA745, each exceeded the RF MPE limits in publicly accessible areas on the Building's rooftop. Thus, the base forfeiture for the violations by the three stations would be \$30,000. We recognize that T-Mobile is a multi-billion dollar enterprise.³³ In this respect, the Commission has determined that large or highly profitable companies should expect the assessment of higher forfeitures for violations of the Act and the Rules.³⁴ Thus, to ensure that the forfeiture liability serves as an effective deterrent and not simply a cost of doing business for T-Mobile, a significant upward adjustment of the base forfeiture amount for the three stations to \$75,000 is justified.

14. We also find, however, that T-Mobile made efforts prior to the San Diego Office inspection to place signage at various points on the rooftop. That signage, however, was insufficient, particularly in the areas of concern, to notify persons of means to mitigate their exposure. T-Mobile also made efforts prior to the inspection to restrict access to the areas of concern with orange plastic posts. Those efforts, however, were also inadequate and unsuccessful because the chains connecting the posts were broken and disconnected, thus creating no barriers.³⁵ Nevertheless, we find a downward adjustment for T-Mobile's good faith efforts is appropriate.³⁶ Therefore, applying the *Forfeiture Policy Statement*, Section 1.80 of the

(...continued from previous page)

exposure limits), *forfeiture ordered* Forfeiture Order, 31 Communications Reg. (P&F) 411 (2003), *aff'd* Memorandum Opinion and Order, 20 FCC Rcd 756 (2005); *accord AMFM Radio Licenses, LLC, et al., Notice of Apparent Liability for Forfeiture*, 18 FCC Rcd 22769 (2003) (*AMFM Radio Licenses NAL*), *forfeiture ordered Radio One Licenses, LLC*, Forfeiture Order, 19 FCC Rcd 23922 (2004), *aff'd* Memorandum Opinion and Order, 21 FCC Rcd 14271 (2006); *Americom Las Vegas Limited Partnership*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 23689 (Enf. Bur. 2002), *forfeiture ordered* Forfeiture Order, 19 FCC Rcd 9643 (Enf. Bur 2004), *aff'd* Memorandum Opinion and Order, 21 FCC Rcd 14286 (2006), *further reconsideration dismissed* Memorandum Opinion and Order, 22 FCC Rcd 20530 (Enf. Bur. 2007); *Infinity Broadcasting Corporation of Florida*, Forfeiture Order, 22 FCC Rcd 2288 (2007), *aff'd* Order on Review, 24 FCC Rcd 4270 (2009); *Entravision Holdings, LLC*, Memorandum Opinion and Order, 22 FCC Rcd 21718 (Enf. Bur 2007); *Visionary Related Entertainment, LLC*, Forfeiture Order, 22 FCC Rcd 2271 (Enf. Bur. 2007); *Minority Business & Housing Development, Inc.*, Forfeiture Order, 24 FCC Rcd 7353 (Enf. Bur. 2009); *Frandsen Media Company, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 6600 (Enf. Bur 2011), *forfeiture ordered* Forfeiture Order, 29 FCC Rcd 9242 (Enf. Bur 2014).

³³ T-Mobile Licenses, LLC, is a subsidiary of T-Mobile US, Inc. T-Mobile US, Inc. reported revenue of approximately \$29,564,000,000 for the year ending Dec. 31, 2014. See T-Mobile US, Inc., 2014 Annual Report at 25, available at <http://investor.t-mobile.com/Cache/1500070818.PDF?Y=&O=PDF&D=&fid=1500070818&T=&iid=4091145#page=30&zoom=auto,-7,742>.

³⁴ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099–17100, paras. 23–24 (cautioning all entities and individuals that, independent from the uniform base forfeiture amounts, the Commission will take into account the 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 entities should expect the forfeiture amount set out in a Notice of Apparent Liability for Forfeiture against them may in many cases be above, or even well above, the relevant base amount); *GCI Commc'ns Corp.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 12991, 12994, para. 9 (Enf. Bur. 2013) (doubling base forfeiture based on company's ability to pay); *Am. Movil, S.A.B. de C.V., Parent of Puerto Rico Tel. Co., Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8672, 8676, para. 10 (Enf. Bur. 2011) (same). It is also well-established Commission policy to consider the revenues of a violator's parent company in determining the violator's ability to pay. See, e.g., *SM Radio, Inc.*, Order on Review, 23 FCC Rcd 2429, 2433, para. 12 (2008) (citations omitted); *Tesla Exploration, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 9808, 9811, para. 10 & n. 20 (2012).

³⁵ See *AMFM Radio Licenses NAL*, 18 FCC Rcd at 22771, para. 7 (identifying a broken chain with a weathered "no trespassing" sign as an ineffective means of stopping access to a RF exposure area of concern).

³⁶ See, e.g., *Sutro Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 15274, 15277, para. 10 (2004) (stating that the Commission will generally reduce a forfeiture "based on the good faith corrective efforts of a violator when (continued...)

Rules, and the statutory factors to the instant case, we conclude that T-Mobile is apparently liable for a forfeiture in the amount of sixty thousand dollars (\$60,000).

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Section 1.80 of the Rules, T-Mobile License, LLC, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of sixty thousand dollars (\$60,000) for willful and repeated violations of Section 1.1310 of the Rules.³⁷

16. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, T-Mobile License, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 19 below.³⁸

17. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. T-Mobile License, LLC, shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.³⁹ 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 that should be followed based on the form of payment selected:

- 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.

18. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁴⁰ Questions regarding payment procedures should

(...continued from previous page)

those corrective efforts were taken prior to Commission notification of the violation").

³⁷ 47 U.S.C. § 503(b); 47 C.F.R. §§ 1.80, 1.1310.

³⁸ 47 C.F.R. § 1.80.

³⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁴⁰ See 47 C.F.R. § 1.1914.

be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

19. 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 1.16 and 1.80(f)(3) of the Rules.⁴¹ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Western Region, San Diego Office, 4542 Ruffner Street, Suite 370, San Diego, CA 92111, and include the NAL/Acct. No. referenced in the caption. The statement must also be e-mailed to WR-Response@fcc.gov.

20. 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 principles (GAAP); 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.

21. **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 T-Mobile License, LLC, 12920 SE 38th St., Bellevue, WA 98006, and to David H. Solomon, Esq., Wilkinson Barker Knauer, LLP, 1800 M Street, N.W., Suite 800N, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

James T. Lyon
District Director
San Diego Office
Western Region
Enforcement Bureau

⁴¹ 47 C.F.R. §§ 1.16, 1.80(f)(3).