

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

In the Matter of
DWireless & More Inc.
Bayamón, Puerto Rico
File No.: EB-FIELDSCR-20-00030473
NAL/Acct. No.: 202032020005
FRN: 0029486008

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: May 07, 2020

Released: May 07, 2020

By the Acting Field Director, Enforcement Bureau:

I. INTRODUCTION

1. The Federal Aviation Administration (FAA) uses terminal doppler weather radar stations to detect wind shear and other dangerous weather conditions near airports. Interference to these radar stations is unacceptable and, in certain circumstances, could be potentially life threatening. DWireless & More Inc. (DWireless) provides wireless internet service in Puerto Rico. DWireless was apparently operating Unlicensed National Information Infrastructure (U-NII) devices in an unauthorized manner that caused interference to an FAA terminal doppler weather radar station in San Juan, Puerto Rico. This operation was in apparent willful violation of section 301 of the Communications Act of 1934, as amended (Act),1 and sections 15.1(b) and 15.407(h)(2) of the Commission’s rules.2 Accordingly, we propose a penalty of \$25,000 against DWireless.

II. BACKGROUND

2. Legal Framework. Section 301 of the Act states that “[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio” within the United States or its territories without a license granted by the Commission.3 Part 15 of the Commission’s rules provides an exception to this general section 301 license requirement and sets forth conditions under which devices (intentional radiators) may operate without an individual license.4 Pursuant to section 15.1(b) of the Commission’s rules, however, “operation of an intentional . . . radiator that is not in accordance with the regulations in this part must be licensed.”5

3. In 2003, the Commission allocated additional spectrum for unlicensed use by U-NII devices in the 5 GHz band as a means of promoting competitive wireless broadband services.6 In particular, some wireless Internet service providers rely U-NII devices to provide point-to-point broadband connections within their networks. U-NII device operators are authorized to operate radio transmitters in specific portions of the 5 GHz band on an unlicensed basis, but they must comply with

1 47 U.S.C. § 301.

2 47 CFR §§ 15.1(b), 15.407(h)(2).

3 47 U.S.C. § 301.

4 47 CFR §§ 15.1, et seq.

5 See 47 CFR § 15.1(b) (emphasis added).

6 See Revision of Parts 2 and 15 of the Commission’s Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band, Report and Order, 18 FCC Rcd 24484 (2003).

technical rules specific to U-NII devices to prevent harmful interference to radar stations (including the FAA's terminal doppler weather radar system) operating in the same portions of the 5 GHz band in which U-NII devices are permitted to operate.<sup>7</sup> To enable this spectrum sharing while avoiding harmful interference to government radar stations, the Commission requires, pursuant to section 15.407(h)(2) of its rules, that U-NII devices operating in the 5.25 – 5.35 GHz (U-NII-2A) and 5.47 – 5.725 GHz (U-NII-2C) bands have Dynamic Frequency Selection radar detection functionality, which allows them to detect the presence of radar systems and automatically avoid operating on the same channel as those nearby radar systems.<sup>8</sup> Without Dynamic Frequency Selection enabled, a U-NII device operating on this shared spectrum can cause harmful interference to government radar stations.

4. *Factual Background.* On May 9, 2018, the Enforcement Bureau (Bureau) issued a written warning to DWireless, a wireless internet service provider, regarding unauthorized operation of U-NII devices causing interference to the San Juan terminal doppler weather radar station.<sup>9</sup> On May 18, 2018, the Bureau received an e-mail from DWireless stating that it verified that all of its equipment was in accordance with regulations.<sup>10</sup>

5. As part of the Bureau's ongoing coordination efforts with the FAA, on May 30, 2019, the FAA reported to the Bureau that its terminal doppler weather radar station serving the San Juan International Airport was receiving interference to the South-Southeast of the radar station (i.e., on a 150° azimuth True North).<sup>11</sup> According to the FAA, the San Juan terminal doppler weather radar station operates on 5.610 GHz and was receiving interference from a source operating on that frequency or an adjacent frequency.

6. On June 6, 2019, Bureau personnel used direction-finding techniques and identified a potential source of interference to the terminal doppler weather radar system on the roof of the Condominio San Francisco in Bayamón, Puerto Rico (Transmitter Site).<sup>12</sup> The Transmitter Site lies along the San Juan terminal doppler weather radar station's 150° True North azimuth. Bureau personnel then contacted the building's manager, who provided information that led to a Bureau agent's determination that the antenna causing interference from the Transmitter Site belonged to DWireless.<sup>13</sup>

7. After identifying the antenna as a possible source of interference to the San Juan terminal doppler weather radar station, the Bureau's agent traveled to DWireless' corporate offices while other Bureau personnel remained at the Transmitter Site.<sup>14</sup> At DWireless' offices, the president of DWireless accessed the configuration settings of the company's U-NII equipment using an online management tool.<sup>15</sup> The Bureau's agent observed that DWireless' system included the following Ubiquiti devices: a Rocket Prism 5AC Gen2 (Access Point) and a Power Beam 5AC Gen2 (Station, and with the Access

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<sup>7</sup> See 47 CFR § 15.407.

<sup>8</sup> See 47 CFR § 15.407(h)(2).

<sup>9</sup> Letter from Ronald Ramage, Regional Director, Region Two, FCC Enforcement Bureau, to DWireless & More Inc. (May 9, 2018) (on file in EB-FIELDSCR-20-00030473).

<sup>10</sup> E-mail from Tamara Redonda, DWireless & More Inc., to Office of the Field Director (May 18, 2018, 19:52 ET) (on file in EB-FIELDSCR-20-00030473) (Redonda E-mail) ("As requested, we have verified all of our equipment and network and we certify that they are all in accordance with the request and regulations.") (Translated from Spanish).

<sup>11</sup> See Field Agent's Investigation Report (on file in EB-FIELDSCR-20-00030473).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

Point, collectively, the Ubiquiti Devices).<sup>16</sup> The agent further observed that while the Access Point correctly listed Puerto Rico as the country code, the Station was configured to operate with its country codes set to “Licensed,” and that neither the Access Point nor the Station had Dynamic Frequency Selection enabled.<sup>17</sup> The Ubiquiti Devices were configured to operate on a 40 MHz channel centered on 5.585 GHz.<sup>18</sup> After making these observations, the Bureau’s agent instructed DWireless to alter the configuration of the Ubiquiti Devices to operate on a different frequency.<sup>19</sup> DWireless complied, whereupon the Bureau personnel monitoring the antenna at the Transmitter Site reported an immediate cessation of interference on the 40 MHz channel centered on 5.585 GHz.<sup>20</sup>

### III. DISCUSSION

8. We find that DWireless has apparently willfully violated section 301 of the Act and has also apparently violated sections 15.1(b) and 15.407(h)(2) of the Commission’s rules.<sup>21</sup> Specifically, on June 6, 2019, a Bureau agent and other Bureau personnel observed that DWireless was operating the Ubiquiti Devices on 5.585 GHz (i.e., within the U-NII-2C band) and that it had configured them to operate without the required Dynamic Frequency Selection capability enabled. DWireless’ misconfiguration of the Ubiquiti Devices apparently violated section 15.407(h)(2) of the Commission’s rules. Because DWireless was operating the Ubiquiti Devices on 5.585 GHz without Dynamic Frequency Selection enabled, it did not satisfy the section 15.1(b) condition for unlicensed operation—namely that devices must be operated in accordance with the applicable provisions of part 15 of the Commission’s rules.<sup>22</sup> Accordingly, because DWireless holds no license from the Commission permitting operation on 5.585 GHz without Dynamic Frequency Selection, we find that its operation of the Ubiquiti Devices without Dynamic Frequency Selection enabled apparently violated section 301 of the Act and sections 15.1(b) and 15.407(h)(2) of the Commission’s rules.<sup>23</sup>

#### A. Proposed Forfeiture

9. 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.”<sup>24</sup> Here, section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against DWireless of up to \$20,489 for each day of a continuing violation, up to a statutory maximum of \$153,699 for a single act or failure to act.<sup>25</sup> 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.”<sup>26</sup> In addition, the Commission has established forfeiture guidelines; they establish

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> 47 U.S.C. § 301; 47 CFR §§ 15.1(b), 15.407(h)(2).

<sup>22</sup> 47 CFR §§ 15.1(b), 15.407(h)(2).

<sup>23</sup> 47 U.S.C. § 301; 47 CFR §§ 15.1(b), 15.407(h)(2).

<sup>24</sup> 47 U.S.C. § 503(b).

<sup>25</sup> See 47 U.S.C. § 503(b)(2)(D); 47 CFR §§ 1.80(b)(7), (9); see also *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 34 FCC Rcd 12824 (EB 2019).

<sup>26</sup> 47 U.S.C. § 503(b)(2)(E).

base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.<sup>27</sup> 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.<sup>28</sup>

10. Pursuant to the Commission's *Forfeiture Policy Statement* and section 1.80 of the Commission's rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.<sup>29</sup> Because on June 6, 2019, DWireless apparently operated the Ubiquiti Devices on 5.585 GHz without having Dynamic Frequency Selection enabled and without a license, as required when operating outside of the parameters set forth in part 15 of the Commission's rules,<sup>30</sup> we find that DWireless' conduct resulted in two separate apparent violations of section 301 of the Act and sections 15.1(b) and 15.407(h)(2) of the Commission's rules. These two apparent violations yield an aggregate base forfeiture of \$20,000.<sup>31</sup>

11. 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, any history of prior offenses, ability to pay, and other such matters as justice may require. Based on the prior warning that the Bureau issued to DWireless on May 9, 2018, coupled with the company's statement on May 18, 2018 that all of its equipment was in accordance with regulations,<sup>32</sup> we conclude that DWireless' apparent violations of section 301 of the Act and sections 15.1(b) and 15.407(h)(2) were egregious and warrant an upward adjustment of \$5,000.<sup>33</sup> We therefore propose an aggregate forfeiture of \$25,000 for DWireless' apparent violations of section 301 of the Act and sections 15.1(b) and 15.407(h)(2) of the Commission's rules.

## B. Reporting Requirement

12. To preserve the integrity of the FAA's terminal doppler weather radar station serving the San Juan International Airport, we also find that DWireless should certify its compliance with the requirements at issue in this matter. We therefore order DWireless to submit a statement signed under penalty of perjury by an officer or director of the company stating that each U-NII device that it operates is currently operating in compliance with the Commission's rules and the equipment's applicable authorizations. This statement must be provided to the Enforcement Bureau at the address listed in paragraph 16 within thirty (30) calendar days of the release date hereof.

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<sup>27</sup> 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

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

<sup>29</sup> *The Commission's Forfeiture Policy Statement and Amendment to Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80.

<sup>30</sup> *See* 47 CFR § 15.1(b).

<sup>31</sup> *See, e.g., Towerstream Corporation, Middletown, Rhode Island*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 11604 (2013) (*Towerstream NAL*) (applying a \$10,000 base forfeiture for the unauthorized operation of a U-NII device and upwardly adjusting the proposed forfeiture to the statutory maximum because the violations were intentional, caused substantial harm to terminal doppler weather radar systems, and followed multiple prior violations), *terminated in* Order, 31 FCC Rcd 8530 (EB 2016).

<sup>32</sup> Redonda E-mail; *see supra* para. 4.

<sup>33</sup> *See generally Towerstream NAL.*

#### IV. CONCLUSION

13. We have determined that DWireless apparently willfully violated section 301 of the Act and sections 15.1(b) and 15.407(h)(2) of the Commission's rules.<sup>34</sup> As such, DWireless is apparently liable for a forfeiture of \$25,000.

#### V. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act<sup>35</sup> and section 1.80 of the Commission's rules,<sup>36</sup> DWireless & More Inc. is hereby **NOTIFIED** of their **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Twenty-Five Thousand Dollars (\$25,000) for willful violations of section 301 of the Act<sup>37</sup> and sections 15.1(b) and 15.407(h)(2) of the Commission's rules.<sup>38</sup>

15. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,<sup>39</sup> within thirty (30) calendar days of the release of this Notice of Apparent Liability for Forfeiture DWireless & More Inc., **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 **Error! Reference source not found.** below.

16. **IT IS FURTHER ORDERED** that DWireless & More Inc. **SHALL SUBMIT** a written statement, as described in paragraph 12, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to the Federal Communications Commission, Enforcement Bureau, Office of the Field Director, 445 12th Street, SW, Washington, DC 20554, with a copy sent by email to [field@fcc.gov](mailto:field@fcc.gov).

17. DWireless & More Inc. shall send electronic notification of payment to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at [field@fcc.gov](mailto:field@fcc.gov) on the date said payment is made. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),<sup>40</sup> or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:<sup>41</sup>

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov) on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s)

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<sup>34</sup> 47 U.S.C. § 301; 47 CFR §§ 15.1(b), 15.407(h)(2).

<sup>35</sup> 47 U.S.C. § 503(b).

<sup>36</sup> 47 CFR § 1.80.

<sup>37</sup> 47 U.S.C. § 301.

<sup>38</sup> 47 CFR §§ 15.1(b), 15.407(h)(2).

<sup>39</sup> 47 CFR § 1.80.

<sup>40</sup> Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

<sup>41</sup> For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

captioned above (Payor FRN).<sup>42</sup> For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

- Payment by credit card must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

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, SW, Room 1-A625, Washington, DC 20554.<sup>43</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto: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 Commission’s rules.<sup>44</sup> The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Office of the Field Director and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to [david.marks@fcc.gov](mailto:david.marks@fcc.gov) and [field@fcc.gov](mailto:field@fcc.gov).<sup>45</sup>

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 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.

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<sup>42</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>43</sup> See 47 CFR § 1.1914.

<sup>44</sup> 47 CFR §§ 1.16, 1.80(f)(3).

<sup>45</sup> Any entity that is a “Small Business Concern” as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, “Oversight of Regulatory Enforcement,” in addition to other rights set forth herein.

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 Mr. Julio Batista Pagan, President, DWireless & More Inc., Urb. Santa Rosa, 20-36 Ave. Aguas Buenas, Bayamón, Puerto Rico 00959-6621.

FEDERAL COMMUNICATIONS COMMISSION

Ronald Ramage  
Acting Field Director  
Enforcement Bureau