

Federal Communications Commission

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

In the Matter of)	
)	File No. EB-09-AT-0030
Verizon Wireless (VAW) LLC)	
)	NAL/Acct. No. 200932480002
Owner of an Antenna Structure in Hartwell, GA)	
Alpharetta, GA)	FRN 0006945687
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: September 18, 2009

By the District Director, Atlanta Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Verizon Wireless (VAW) LLC (“Verizon”), owner of an antenna structure¹ located at 2128 Reed Creek Road, in Hartwell, GA, apparently willfully and repeatedly violated Sections 17.4(a) and 17.21(a) of the Commission’s Rules (“Rules”) by failing to register its antenna structure with the Commission and failing to paint and light that antenna structure.² We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),³ that Verizon is apparently liable for a forfeiture in the amount of thirteen thousand dollars (\$13,000).

II. BACKGROUND

2. On August 18, 2009, in response to a complaint of an unlit tower, agents from the Commission’s Atlanta Field Office of the Enforcement Bureau (“Atlanta Office”) inspected an antenna structure located at 2128 Reed Creek Road in Hartwell, GA. Prior to inspecting the tower, the agents confirmed that no antenna structure located at that address was registered in the Commission’s Antenna Structure Registration (“ASR”) database. The agents determined that the antenna structure exceeded 200 feet in height. The agents observed that the structure did not have any obstruction marking or lighting and that there was no ASR number posted at the structure base.⁴ The agents contacted the land owner, who identified the tower owner as Verizon.

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

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

² 47 C.F.R. §§ 17.4(a), 17.21(a).

³ 47 U.S.C. § 503(b).

⁴ See 47 C.F.R. § 17.4(g).

4. On August 20, 2009, Verizon confirmed that the antenna structure was constructed on or about March 2004 and that Verizon had owned the tower since its construction. Verizon also stated that it filed for a determination of no hazard from the Federal Aviation Administration (“FAA”) for a planned addition of a lightning rod to the tower, which would increase its height to 206 feet above ground level.

III. DISCUSSION

5. Section 503(b) of the 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. 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.⁵ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁶

6. Section 17.4(a) of the Rules⁷ requires that effective July 1, 1996, the owner of any proposed or existing antenna structure that requires notice of proposed construction to the FAA register the structure with the Commission. Section 17.7(a) of the Rules⁸ requires that notification to the FAA must be made for any construction or alteration of an antenna structure more than 200 feet in height above ground level.⁹ Verizon’s antenna structure in Hartwell, GA required notice of proposed construction to the FAA, because it was more than 200 feet in height. Because it was constructed after 1996, Verizon was required to register the structure with the Commission. There is no evidence that Verizon ever registered the structure with the Commission. Based on the evidence before us, we find that Verizon apparently willfully and repeatedly violated Section 17.4(a) of the Rules by failing to register its antenna structure in Hartwell, GA from the date the structure was constructed in March 2004 until August 18, 2009.

7. Section 17.21(a) of the Rules¹⁰ requires that antenna structures be painted and lighted when they exceed 60.9 meters (200 ft.) in height above ground level or they require special aeronautical study. Section 17.6 of the Rules¹¹ states that the antenna structure owner is responsible for maintaining the painting and lighting of an antenna structure. Verizon’s antenna structure exceeded 200 feet above ground level and thus was required to be painted and lighted. Verizon, as the owner of the antenna structure, is responsible for the structure obstruction marking and lighting. On August 18, 2009, Verizon’s antenna structure was not painted or lighted, and there is no evidence that the structure had ever been painted or lighted since its construction in 2004. Based on the evidence before us, we find that Verizon apparently willfully and repeatedly violated Section 17.21(a) of the Rules by failing to paint or

⁵ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁶ 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.”

⁷ 47 C.F.R. § 17.4(a).

⁸ 47 C.F.R. § 17.7(a).

⁹ *But see* 47 C.F.R. § 17.14 (listing exemptions from the notification to FAA requirement for structures near natural terrain of equal or greater height and structures or objects approved by the Administrator of the FAA for use as navigational aids). None of the exemptions listed in Section 17.14 of the Rules apply to the structure in Hartwell, GA.

¹⁰ 47 C.F.R. § 17.21(a).

¹¹ 47 C.F.R. § 17.6.

light its antenna structure in Hartwell, GA from the date the structure was constructed in March 2004 until August 18, 2009.

8. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("*Forfeiture Policy Statement*"), and Section 1.80 of the Rules, the base forfeiture amount for failure to comply with prescribed painting and/or marking is \$10,000 and for failure to file required forms or information is \$3,000. 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.¹² Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Verizon is apparently liable for a \$13,000 forfeiture.

IV. ORDERING CLAUSES

9. 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, Verizon Wireless (VAW) LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of thirteen thousand dollars (\$13,000) for violations of Sections 17.4(a) and 17.21(a) of the Rules.¹³

10. **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, Verizon Wireless (VAW) LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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, Verizon will send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, 3575 Koger Blvd, Ste 320, Duluth, GA 30096 and must include the NAL/Acct. No. referenced in the caption.

13. 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;

¹² 47 U.S.C. § 503(b)(2)(E).

¹³ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 17.4(a), 17.21(a).

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

14. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Verizon Wireless (VAW) LLC, at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Douglas Miller
District Director
Atlanta Office
South Central Region
Enforcement Bureau