

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

In the Matter of	)	
	)	
American Tower Corporation	)	File No. EB-00-TP-132
	)	NAL/Acct. No. 200132070004
Boston, MA	)	

**ORDER**

**Adopted: July 2, 2001**

**Released: August 2, 2001**

By the Commission:

1. In this Order, we adopt a Consent Decree terminating an enforcement proceeding initiated against American Tower Corporation (“ATC”) for apparent violations of Part 17 of the Commission’s Rules (the “Rules”) relating to construction, marking and lighting of antenna structures and a related investigation.

2. On January 16, 2001, the Commission issued to ATC a Notice of Apparent Liability for Forfeiture (“NAL”)<sup>1</sup> for 36 apparent violations of Sections 17.4(a), 17.4(a)(1), 17.4(g), 17.45 and 17.57 of the Rules.<sup>2</sup> Respectively, these sections require that antenna structure owners properly register existing antenna structures, register an antenna structure prior to construction, post antenna structure registration numbers, mark and light antenna structures, and report antenna structure ownership changes. After reviewing the facts and circumstances surrounding the alleged violations, the Commission found ATC apparently liable for a forfeiture in the amount of two hundred twelve thousand dollars (\$212,000). The Commission also directed the Enforcement Bureau to conduct a further investigation of ATC’s overall level of compliance with the Commission’s antenna structure painting, lighting and registration requirements.

3. The Commission staff and ATC have negotiated the terms of a Consent Decree that would resolve this matter and terminate this enforcement proceeding and the related investigation. A copy of the Consent Decree is attached hereto and incorporated by reference. As detailed in the Consent Decree, ATC has agreed, among other things, to institute a compliance plan and to make a voluntary contribution to the United States Treasury in the amount of three hundred thousand dollars (\$300,000).

4. Based on the record before us, we conclude that no substantial or material questions of fact exist as to whether ATC possesses the basic qualifications, including those related to character, to hold or obtain any FCC license or authorization.

5. After reviewing the terms of the Consent Decree, we find that the public interest would be served by approving the Consent Decree, rescinding the NAL and terminating the further investigation ordered in the NAL.

<sup>1</sup> *American Tower Corporation*, 16 FCC Rcd 1282 (2001).

<sup>2</sup> 47 C.F.R. §§ 17.4(a), 17.4(a)(1), 17.45 and 17.57.

6. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j) and 503(b) of the Communications Act of 1934, as amended,<sup>3</sup> that the attached Consent Decree IS ADOPTED.

7. IT IS FURTHER ORDERED that the January 16, 2001, Notice of Apparent Liability issued to ATC IS RESCINDED and that the further investigation ordered in the Notice of Apparent Liability IS TERMINATED.

8. ATC shall make its voluntary contribution to the United States Treasury by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, Forfeiture Collection Section, Finance Branch, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200132070004.

9. IT IS FURTHER ORDERED that the Secretary SHALL SIGN the Consent Decree on behalf of the Commission.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

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<sup>3</sup> 47 U.S.C. §§ 154(i), 154(j) and 503(b).

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**CONSENT DECREE****I. Introduction**

This Consent Decree is made and entered into by and between the Federal Communications Commission (“FCC”) and American Tower Corporation and its affiliates and subsidiaries (“ATC”), which own and manage antenna structures located throughout the United States.

**II. Background**

1. On January 16, 2001, the FCC issued a Notice of Apparent Liability to ATC in the amount of \$212,000 (the “NAL”), stating that it appeared that ATC had violated the provisions of 47 C.F.R. § 17.1 *et seq.*, (the “FCC Rules”) by failing to (1) timely register two antenna structures with the FCC; (2) file timely notifications of ownership changes for twenty four towers; (3) properly post the Antenna Structure Registration Number assigned by the FCC for nine towers; and (4) install and maintain temporary lighting on one tower. The forfeiture proposed in the NAL consisted of a \$106,000 base forfeiture, which was doubled by the FCC. The FCC also directed the Enforcement Bureau (“Bureau”) to conduct a further investigation of ATC’s compliance with the antenna structure rules.

2. ATC timely responded to the NAL on March 1, 2001.

3. Both prior to and since the issuance of the NAL, the Bureau has issued other Notices of Violation and Letters of Inquiry (collectively, “NOVs”) to ATC for other possible violations of the FCC’s Rules which were not included in the NAL (the “Other NOVs”). The Bureau has uncovered what it believes to be other potential violations of the FCC’s Rules which have not been cited in an NOV or NAL, and ATC has reported to the Bureau that it has examined its compliance with the Rules and identified certain other potential violations.

4. On April 4, 2001, ATC executives met with the Bureau to detail ATC’s compliance efforts through that date and present the Bureau with ATC’s compliance plan (the “Compliance Plan”). The Compliance Plan outlines the processes and procedures that ATC has been implementing in an effort to ensure compliance with the FCC’s Rules in the future.

**III. Definitions**

For the purposes of this Consent Decree, the following definitions shall apply:

- (a) “FCC” means the Federal Communications Commission.
- (b) “Bureau” means the FCC’s Enforcement Bureau.
- (c) “ATC” means American Tower Corporation on behalf of its affiliates and subsidiaries.
- (d) “NAL” means the Notice of Apparent Liability issued to ATC by the FCC on January 16, 2001.
- (e) “FCC’s Rules” means the FCC’s tower-related rules in 47 C.F.R. § 17.1 *et seq.*
- (f) “NOV” means a Notice of Violation or Letter of Inquiry.

- (g) “Other NOV’s” means NOV’s for other possible violations of the FCC’s Rules which have been issued both prior to and since the issuance of the NAL, and which were not included in the NAL.
- (h) “Other Potential Violations” means other possible violations of the FCC’s Rules uncovered by the Bureau or ATC prior to and since issuance of the NAL which have not been cited in an Other NOV or NAL, except for such violations which either have not been corrected or for which substantial and documented efforts at compliance (e.g., filing forms with governmental agencies or ordering parts from suppliers) have not been taken by the sixtieth day following the signing of this Consent Decree by both parties.
- (i) “Order” means an order of the FCC adopting this Consent Decree.
- (j) “Final Order” means an action by the FCC or by its staff pursuant to delegated authority (i) which has not been vacated, reversed, stayed, set aside, annulled or suspended, (ii) with respect to which no timely appeal, request for stay or petition for rehearing, reconsideration or review by any party or by the FCC on its own motion, is pending, and (iii) as to which the time for filing any such appeal, request, petition, or similar document or for the reconsideration or review by the FCC on its own motion under the Communications Act of 1934, as amended, and the FCC’s rules and regulations, has expired.
- (k) “Compliance Plan” means the processes and procedures developed by ATC in an effort to ensure continuing compliance with the FCC’s Rules, as summarized in an attachment to this Consent Decree.

#### IV. Agreement

5. ATC and the FCC agree to be legally bound by this Consent Decree.
6. ATC and the FCC agree that this Consent Decree does not constitute an adjudication of the merits, or any finding on the facts or law regarding any compliance or noncompliance by ATC with the FCC’s Rules arising out of the NAL, Other NOV’s or Other Potential Violations. ATC and the FCC agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, ATC does not admit any noncompliance, violation, or liability associated with or arising from the NAL, Other NOV’s or Other Potential Violations before the date of this Consent Decree.
7. In consideration of the actions of the FCC described in Paragraph 8 below:
  - (a) As part of its effort to ensure future compliance with the FCC’s Rules, ATC will implement the Compliance Plan, which is summarized in an attachment hereto. The Compliance Plan has five distinct components governing compliance relating to towers acquired by ATC through purchase or merger, towers constructed or modified by ATC, monitoring of tower lighting and painting, maintaining records of lighting outages and handling of NOV responses. ATC may modify the Compliance Plan as necessary to better ensure continuing compliance with the FCC’s Rules. ATC contemporaneously will notify, in writing, the Chief, Enforcement Bureau, Federal Communications Commission, Washington, D.C., of any modification to the Compliance Plan. The Commission, through the Chief, Enforcement

Bureau, may disapprove, in writing, any such modification within 25 calendar days of receipt of ATC's notification where it finds that the modification is inconsistent with the terms of the Consent Decree or the Commission's rules or policies.

(b) ATC will continue to conduct formal training sessions for its personnel with responsibilities involving FAA and FCC compliance. ATC will revise, as necessary, training materials to be distributed to its employees on FAA and FCC compliance matters. ATC will apprise employees of ATC's intention to take appropriate disciplinary action against employees who do not follow the Compliance Plan.

(c) ATC will make a voluntary contribution to the United States Treasury in the amount of Three Hundred Thousand Dollars (\$300,000) within ten days after the Order adopting this Consent Decree has become a Final Order. ATC will make this contribution without further protest or recourse by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, Forfeiture Collection Section, Finance Branch, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200132070004.

8. In express reliance upon the covenants and representations contained herein:

(a) The FCC will issue an order directing the Secretary to sign this Consent Decree and in which it will either vacate or rescind the NAL, terminate the investigation of the Other NOV's and Other Potential Violations, and terminate the further investigation directed by the FCC in Paragraph 12 of the NAL (the "Order"). Following issuance of the Order, the FCC will continue its routine inspections of ATC's antenna structures.

(b) In the absence of material new evidence (which shall not include the issuance of additional NOV's) concerning the Consent Decree, the NAL, Other NOV's or Other Potential Violations that implicates ATC's basic qualifications (e.g., disqualifying misrepresentation or lack of candor), the FCC will not use the fact of this Consent Decree, the NAL, the Other NOV's, the Other Potential Violations or the underlying facts, behavior, acts or omissions or which relate to them, for any purpose whatsoever relating to ATC and will treat the NAL, the Other NOV's and the Other Potential Violations as null, void and expunged from ATC's record for all purposes including, but not limited to, any future qualifications issue, future licensing proceeding or future transfer of control or assignment of license or permit involving ATC.

9. In consideration for the actions taken pursuant to Paragraphs 7 and 8, ATC and the FCC agree to the terms, conditions and procedures contained herein.

10. ATC agrees that the FCC has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

11. The FCC and ATC hereby waive their right to seek judicial review of this Consent Decree or the Order, or otherwise to contest or challenge their validity, provided that the Consent Decree is adopted without change, addition, or modification.

12. ATC and the FCC agree that the effectiveness of this Consent Decree is expressly conditioned upon issuance of the Order, provided that the Consent Decree is adopted without change, addition, or modification.

13. ATC and the FCC agree that in the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

14. If the United States on behalf of the FCC or ATC should bring an action to enforce the terms of this Consent Decree, the parties agree that they will not contest the validity of the Consent Decree, they will waive any statutory right to a trial *de novo* with respect to any matter upon which the Order is based (provided in each case that the Order is limited to adopting the Consent Decree without change, addition, or modification) and they will consent to a judgment incorporating the terms of this Consent Decree.

15. Each party to this Consent Decree shall bear its own attorney fees and costs and ATC agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, Title 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters discussed in this Consent Decree.

16. ATC agrees that any violation of this Consent Decree shall constitute a violation of an FCC order, entitling the FCC to exercise any rights and remedies attendant to the enforcement of an FCC order.

17. ATC and the FCC agree that the terms and conditions of Sections 7(a)-(b) of this Consent Decree shall remain in effect for thirty six (36) months from the effective date of this Consent Decree, which shall be the release date of the Order and that the terms and conditions of Section 8 shall survive the expiration of this Consent Decree. ATC and the FCC also agree that any provision of this Consent Decree which conflicts with any subsequent rule, order of general applicability, or other decision of general applicability adopted by the FCC will be superseded by such rule, order or other decision.

18. This Consent Decree represents the complete agreement between the parties to the Consent Decree and supersedes any other agreements, understandings and representations, if any. The parties represent, warrant and agree that the provisions of this Consent Decree are binding on each of them in accordance with their terms, and that the signatories hereto have been authorized by the parties to execute this Consent Decree on their behalf. This Consent Decree may be signed in counterparts and may be amended only by a written instrument signed by all the parties hereto.

FEDERAL COMMUNICATIONS COMMISSION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Magalie Roman Salas  
Secretary

AMERICAN TOWER CORPORATION, on behalf of itself and its affiliates and subsidiaries

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Steven B. Dodge  
Its Chief Executive Officer

**Summary of Part 17 Compliance Plan  
of  
American Tower Corporation**

As part of its effort to ensure compliance with the Communications Act of 1934, as amended, and the FCC's rules and regulations, ATC has developed and is in the process of implementing an enhanced regulatory Compliance Plan. The Compliance Plan will be overseen by ATC's Director of FCC Compliance, its Director of National Operations and its Chief Operating Officer and will be implemented by ATC's five Senior Regulatory Compliance Specialists ("FCC Specialists") and the developmental and operational personnel with compliance responsibilities in each of ATC's 20 areas.

The Compliance Plan addresses five specific areas of interaction with the FAA and FCC: tower acquisition (through purchase or merger), tower construction and modification, monitoring of lighting and painting, records of lighting outages, and NOV responses. The Compliance Plan also includes a significant training component and periodic internal audits to assess the effectiveness of the Compliance Plan. ATC may modify the Compliance Plan as necessary to better ensure continuing compliance with the FCC's Rules.

**Tower Acquisitions:** During pre-closing due diligence, ATC corporate personnel will obtain the TIN and Antenna Structure Registration Number of all towers being acquired. Ownership change filings will be completed by the corporate legal department immediately following consummation. Prior to closing, ATC will have field personnel inspect each tower to identify and require that the seller complete (or at least initiate) corrective measures to bring the towers into compliance before consummation.

**Construction/Alteration:** Responsibility for FAA and FCC compliance has been vested with the five FCC Specialists, although they may delegate completion of specific tasks to the appropriate area compliance specialist. Prior to construction or alteration of a tower, ATC will seek a "No Hazard" Determination from the FAA. If necessary, the tower will then be registered with the FCC. Once regulatory approvals have been obtained, the project or construction manager must obtain written approval from the appropriate FCC Specialist before construction may commence. Appropriate signs must be posted at this junction, and lighting must be installed at the appropriate points during construction. Within 24 hours after construction ceases or the tower reaches its greatest height, the construction project manager must again obtain written confirmation from the FCC Specialist confirming that all construction obligations have been satisfied. Then, if required, proper notice is given to the FAA and an "NT" filing is made with the FCC. Once development is completed, the tower is then turned over to the operational personnel.

**Monitoring of Lighting and Painting:**

Lighting on ATC towers is monitored by ATC's Network Operations Control Center ("NOCC"), or other third-party contractors. When a lighting outage is detected by the NOCC, a Notice to Airman ("NOTAM") is requested from the FAA if the outage cannot be corrected within 30 minutes. When a lighting outage is detected by a third party

contractor, that party contacts the NOCC, which then requests the NOTAM. Failure of the remote monitoring equipment or other communications failure will not relieve ATC of its responsibility for compliance with the lighting requirements. Once the NOTAM has been opened or a communications failure is being investigated, the NOCC opens a “trouble ticket” for the site in its database and contacts the operational personnel responsible for the site so that timely repairs can be made. If the problem cannot be fixed within the initial 15-day NOTAM period, the NOTAM is extended. When an outage or communications failure is repaired, the operational person responsible for the site notifies the NOCC, which internally closes the “trouble ticket” in its database. If applicable, the NOCC then notifies the FAA to close the NOTAM. As a check on this system, the NOCC operator closing a NOTAM must enter the initials of the FAA Flight Service Station personnel who answered the call. In addition, ATC will conduct periodic visual inspections of its towers to ensure that tower painting is properly maintained and that the Antenna Structure Registration Number is properly posted.

Records of Light Outages:

ATC will maintain records of all observed or otherwise known lighting outages or improperly functioning lights in accordance with Section 17.49 of the FCC’s Rules. These records will include the nature of the outage or improper functioning; the date or time the outage or improper functioning was observed or otherwise noted; the date and time of FAA notification, if applicable; and the date, time and nature of adjustments, repairs or replacements made.

NOV Responses:

ATC has updated the FCC’s Antenna Structure Registration Database to list its five FCC Specialists as contacts to help ensure NOV’s are timely received. The five FCC Specialists are responsible for timely responding to NOV’s, in consultation with the appropriate field personnel, ATC’s corporate legal department and outside FCC counsel.

Training:

All new company employees with FAA or FCC compliance responsibilities are routinely and formally trained by a designated trainer in ATC’s compliance procedures. ATC is refining its compliance memoranda, which covers topics including FAA Notification, FAA Antenna Structure Registration and Sign Posting, Painting and Lighting Requirements and NOTAM procedures. These memoranda and ATC’s training will be regularly refined as necessary and appropriate to effect improvements in compliance matters. In addition, at a minimum, employees with such responsibilities will receive refresher training annually.