

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

In the Matter of )
AT&T Wireless Services, Inc. ) File No. EB-02-SD-012
Washington, DC ) NAL/Acct. No. 200232940002
) FRN # 0006-1660-29
)

FORFEITURE ORDER

Adopted: October 29, 2002

Released: October 31, 2002

By the Commission:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we assess a forfeiture in the amount of one hundred seventeen thousand dollars (\$117,000) against AT&T Wireless Services, Inc. ("AT&T Wireless") for seven willful and/or repeated violations of Section 303(q) of the Communications Act of 1934, as amended ("Act"),<sup>1</sup> and Part 17 of the Commission's Rules ("Rules") relating to antenna structure construction, marking and lighting.<sup>2</sup> The noted violations involve AT&T Wireless's failure on one occasion to register an existing antenna structure in willful violation of Section 17.4(a)(2); failure on three occasions to post the Antenna Structure Registration ("ASR") number in a conspicuous location so that it is visible near the base of the antenna structure in willful violation of Section 17.4(g); failure on one occasion to maintain good visibility of antenna structures that are required to be painted in willful and repeated violation of Section 17.50; and failure on two occasions to maintain the required obstruction lighting on an antenna structure in willful and repeated violation of Section 17.51(b).<sup>3</sup>

II. BACKGROUND

2. The Commission's antenna structure construction, marking and lighting requirements operate in concert with Federal Aviation Administration ("FAA") regulations to ensure that antenna structures do not present hazards to air navigation. Generally, our rules require that antenna structures located close to airports or that are greater than 200 feet in height comply with painting and lighting

<sup>1</sup> 47 U.S.C. § 303(q) (Antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission.)

<sup>2</sup> 47 C.F.R. § 17.1 et seq.

<sup>3</sup> 47 C.F.R. §§ 17.4(a)(2), 17.4(g), 17.50 and 17.51(b).

specifications designed to ensure air safety.<sup>4</sup> We also require antenna structure owners to register such antenna structures with the Commission and post ASR numbers at the base of antenna structures to allow for easy contact if problems arise.<sup>5</sup> Because of the substantial public safety issues involved, we further require antenna structure owners to monitor lights daily or install automatic alarm systems to ensure lights function properly.<sup>6</sup> Antenna structure owners are required to maintain lighting equipment and replace or repair inoperative lights, indicators and control and alarm systems as soon as practicable.<sup>7</sup> Additionally, antenna structure owners are required immediately to notify the FAA when major antenna structure lights are inoperative and cannot be repaired within 30 minutes.<sup>8</sup> The FAA then issues a Notice to Airmen (“NOTAM”) for a period of 15 days advising aircraft that there is an antenna structure at a specific location with a temporary light outage.

3. Commission field agents regularly inspect antenna structures to determine compliance with the antenna structure construction, marking and lighting requirements and promptly respond to complaints of unlit towers. During routine inspections of antenna structures owned by AT&T Wireless, from April 20, 2000 to December 7, 2000, Commission field agents discovered nine antenna structures that did not have the ASR numbers posted as required. These violations resulted in a \$14,000 monetary forfeiture against AT&T Wireless issued on March 19, 2001,<sup>9</sup> which AT&T Wireless paid in full on April 16, 2001.

4. Subsequently, in the course of further routine inspections and investigations, Commission field agents uncovered a significant number of new violations of the Commission’s antenna structure rules by AT&T Wireless.<sup>10</sup> On April 25, 2002, the Commission issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) finding AT&T Wireless apparently liable for a \$153,000 forfeiture for nine apparent violations of the antenna structure rules: one failure to register an existing antenna structure (Section 17.4(a)(2)); four failures to post the ASR number in a conspicuous location so that it is visible near the base of the antenna structure (Section 17.4(g)); one failure to comply with the FAA’s painting and lighting specifications for antenna structures (Section 17.23);<sup>11</sup> one failure to maintain good visibility of antenna structures that are required to be painted (Section 17.50); and two failures to maintain the

---

<sup>4</sup> 47 C.F.R. § 17.21.

<sup>5</sup> 47 C.F.R. § 17.4.

<sup>6</sup> 47 C.F.R. § 17.47.

<sup>7</sup> 47 C.F.R. § 17.56.

<sup>8</sup> 47 C.F.R. § 17.48.

<sup>9</sup> *AT&T Wireless Services, Inc.*, 16 FCC Rcd 814 (Enf. Bur. 2001), *forfeiture ordered*, 16 FCC Rcd 6805 (Enf. Bur. 2001).

<sup>10</sup> See *Public Notice, Enforcement Bureau Field Offices List of Actions Taken*, DA 01-1314 (rel. May 31, 2001); *Public Notice, Enforcement Bureau Field Offices List of Actions Taken*, DA 01-1644 (rel. July 12, 2001); *Public Notice, Enforcement Bureau Field Offices List of Actions Taken*, DA 01-1756 (rel. July 25, 2001); *Public Notice, Enforcement Bureau Field Offices List of Actions Taken*, DA 01-2948 (rel. December 21, 2001); and *Public Notice, Enforcement Bureau Field Offices List of Actions Taken*, DA 02-197 (rel. January 28, 2002).

<sup>11</sup> 47 C.F.R. § 17.23.

required obstruction lighting on the antenna structures (Section 17.51(b)).<sup>12</sup> The total base forfeiture amount for the nine violations was \$51,000. However, the Commission expressed concern that AT&T Wireless continued to violate the antenna structure rules despite a forfeiture assessment one year earlier for nine instances of failure to comply with the ASR posting rules and found that these continuing violations evinced a pattern of non-compliance and apparent disregard for these safety-related rules. The Commission therefore concluded that a significant upward adjustment of the base forfeiture amount was warranted and tripled the base forfeiture amount for AT&T Wireless's apparent violations from \$51,000 to \$153,000.

5. AT&T Wireless filed a response to the *NAL* on May 28, 2002. In its response, AT&T Wireless disputes that violations occurred in many of the instances cited in the *NAL* and requests that the Commission reduce the total base forfeiture amount to \$6,500. AT&T Wireless also argues that the Commission's decision in the *NAL* to triple the aggregate base forfeiture amount was unwarranted.

### III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>13</sup> Section 1.80 of the Rules,<sup>14</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999). In examining AT&T Wireless's response to the *NAL*, Section 503(b) 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>15</sup> The Commission will issue a forfeiture order if it finds by a preponderance of the evidence that AT&T Wireless has violated the Act or the Rules.<sup>16</sup> As set forth in detail below, we conclude that, based on this standard, AT&T Wireless is subject to a forfeiture.

#### A. AT&T Wireless's Challenges to Violations

7. AT&T Wireless disputes a number of the violations cited in the *NAL*. We address AT&T Wireless's arguments with respect to the specific violations in turn below.

Center Township, Pennsylvania – File No. EB-02-PA-043

8. On January 24, 2002, an agent from the Commission's Philadelphia, Pennsylvania Field Office ("Philadelphia Office") inspected a Center Township, Pennsylvania antenna structure owned by AT&T Wireless (ASR No. 1026350). The agent observed that the white obstruction lighting on the tower was not operating. On January 31, 2002, the Philadelphia Office issued a Notice of Violation ("NOV")

---

<sup>12</sup> *AT&T Wireless Services, Inc.*, 17 FCC Rcd 7891 (2002).

<sup>13</sup> 47 U.S.C. § 503(b).

<sup>14</sup> 47 C.F.R. § 1.80.

<sup>15</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>16</sup> *See, e.g., SBC Communications, Inc.*, 17 FCC Rcd 7589, 7591 (2002); *Tuscola Broadcasting Co.*, 76 FCC 2d 367, 371 (1980).

citing AT&T Wireless for failure to conform to the FAA's painting and lighting specifications in violation of Section 17.23 of the Rules. In its February 13, 2002, response to the NOV, AT&T Wireless confirmed that the obstruction lighting was out at the time of the inspection. AT&T Wireless stated that an employee noticed the outage on January 30, 2002 and discovered that the automatic monitoring system that alerts AT&T Wireless when a light is out did not pick up the outage because a relay on the tower malfunctioned. AT&T Wireless further stated that it called the FAA to open a NOTAM the same day, and that it repaired the light outage and the malfunctioning relay on the following day and then closed the NOTAM. In the *NAL*, the Commission cited AT&T Wireless for apparently failing to exhibit obstruction lighting on its Center Township tower continuously in willful and repeated violation of Section 17.51(b) and, prior to the upward adjustment, proposed a \$10,000 forfeiture for this violation.<sup>17</sup>

9. In its response to the *NAL*, AT&T Wireless argues that it does not believe that it violated the tower lighting rules at the Center Township site and that the proposed forfeiture should therefore be cancelled. AT&T Wireless asserts that a conflict in the rules places antenna structure owners in a "Catch-22" situation because Section 17.51(b) requires continuous operation of obstruction lights, while Section 17.47(a) recognizes that lights will sometimes malfunction and therefore requires either daily observation of the lights or use of an automatic alarm system. In addition, AT&T Wireless asserts that it complied fully with the tower lighting requirements but could not prevent the brief light outage. Specifically, AT&T Wireless states that it installed an automatic alarm system, but this system did not pick up the light outage because there was a malfunction in a relay on the tower that causes alarms to be transmitted to the local switch and to its national network operations center. Further, AT&T Wireless states that it inspected the tower and the alarm system "regularly." AT&T Wireless also states that an AT&T Wireless employee noticed the outage on January 30, 2002, the day before the NOV was issued, and took steps to remedy the outage within one day.

10. We find no merit in AT&T Wireless's arguments. AT&T Wireless's bare assertion that it inspected the tower and alarm system "regularly," without more specific evidence of such a practice, is insufficient to establish its compliance with the tower lighting requirements. Accordingly, we conclude that AT&T Wireless willfully and repeatedly violated Section 17.51(b) by failing to exhibit white obstruction lighting on its Center Township towers and that AT&T Wireless has presented no basis for canceling or reducing the \$10,000 forfeiture proposed in the *NAL* for this violation.

Woodland, California - File No. EB-00-SF-478

11. On September 15, 2000, agents from the Commission's San Francisco, California Field Office ("San Francisco Office") inspected a Woodland, California antenna structure owned by AT&T Wireless (ASR No. 1014047). The agents observed that coaxial cable on two sides of the tower reduced good visibility of the structure. On June 8, 2001, the San Francisco Office issued an NOV citing AT&T Wireless for failure to maintain good visibility of the tower in violation of Section 17.50 of the Rules. In its June 18, 2001, response to the NOV, AT&T Wireless stated that it was in the process of having all of

---

<sup>17</sup> The Commission noted that Section 17.23, which was cited by the Philadelphia Office in the NOV, generally requires antenna structure owners to comply with the FAA's painting and lighting specifications and thus clearly covered the observed violation. However, the Commission cited AT&T Wireless in the *NAL* for violation of Section 17.51(b), which specifically requires antenna structure owners to exhibit all high intensity and medium intensity obstruction lighting continuously.

the coaxial cable on the tower painted in aviation orange and white as described in the current FAA Advisory Circular on Obstruction Marking and Lighting and that it anticipated that the painting would be completed by June 29, 2001. In the *NAL*, the Commission cited AT&T Wireless for apparently failing to maintain good visibility of the Woodland tower in willful and repeated violation of Section 17.50 and, prior to the upward adjustment, proposed a \$10,000 forfeiture for this violation.

12. In its response to the *NAL*, AT&T Wireless does not dispute that it violated Section 17.50. However, it disagrees with the Commission's conclusion in the *NAL* that this violation falls within the one-year statute of limitations in Section 503(b)(6)(B) of the Act.<sup>18</sup> AT&T Wireless states that the Commission became aware of the presence of the coaxial cable on the tower when it inspected the tower on September 15, 2000, yet it did not commence forfeiture proceedings until April 25, 2002. The Commission nevertheless determined in the *NAL* that the violation of Section 17.50 was within the one-year statute of limitations because the violation continued until the painting of the coaxial cable was completed in June 2001. AT&T Wireless acknowledges that the statute of limitations accrues at the time of the violation, as opposed to when the agency has knowledge of the violation. Furthermore, AT&T Wireless does not dispute that this violation was continuing. Nevertheless, AT&T Wireless maintains that the Commission's view that the statute of limitations is satisfied in this case because the violation was continuing undermines Congress's objective in establishing deadlines for regulatory enforcement action. We disagree. The underlying objective of the statute of limitations – to protect a person from liability for stale claims – is not implicated where, as here, a violation is continuing.

13. AT&T Wireless also argues that a \$10,000 forfeiture is excessive in this situation. In this regard, AT&T Wireless asserts the tower itself was painted in aviation orange and white, that it does not believe that the unpainted coaxial cable severely reduced the tower's visibility, and that it is unlikely that the Field Office would have waited nine months to alert AT&T Wireless to the problem if the unpainted cable truly created a safety hazard. Additionally, AT&T Wireless states that it acted promptly when it received the NOV to have the cables painted in less than three weeks. AT&T Wireless further asserts that the Commission's rules establish \$10,000 as the fine for "failure to comply with prescribed lighting or marking" and that this amount would therefore be imposed when an owner failed to paint its tower altogether or otherwise created a true hazard to air safety. AT&T Wireless states that there is no indication that air safety was ever compromised by the unpainted cable and that the \$10,000 forfeiture proposed in the *NAL* should therefore be cancelled.

14. Since AT&T Wireless does not deny that the coaxial cable on its Woodland tower was not painted from September 15, 2000 until June 29, 2001, we conclude that it willfully and repeatedly violated Section 17.50 of the Rules by failing to maintain good visibility of the tower. We disagree with AT&T Wireless's argument that a \$10,000 forfeiture for this violation is excessive. The fact that the tower itself was painted in aviation orange and white does not mitigate this violation. Three agents from the San Francisco Office observed the tower and determined that the coaxial cable obscured good visibility of the tower. Moreover, while it would have been preferable for the Field Office to have taken action here more promptly, it is AT&T Wireless's responsibility as a tower owner to ensure that its towers comply with the painting requirements and avoid the continuing violation that occurred. We also think it

---

<sup>18</sup> Section 503(b)(6)(B) provides that the Commission may not issue a forfeiture against a person who does not hold a broadcast license if the violation charged occurred more than one year prior to the date of issuance of the required notice of apparent liability. 47 U.S.C. § 503(b)(6)(B).

is irrelevant that there is no indication that air safety was actually compromised by the unpainted cable. The potential hazard to air navigation presented by the unpainted cable raises serious safety of life concerns justifying a \$10,000 forfeiture. Finally, AT&T Wireless's remedial actions to correct the violation are not a mitigating factor.<sup>19</sup>

Holly Hill, Florida – File No. EB-02-TP-054

15. On February 7, 2002, and again on February 8, 2002, an agent from the Commission's Tampa, Florida Field Office ("Tampa Office") inspected a Holly Hill, Florida antenna structure. On both occasions, the agent observed that there was no ASR number posted at the site and that the red obstruction lighting on the tower was operating, but the white obstruction lighting on the tower was not in operation. Subsequent investigation revealed that the tower was registered to AT&T Wireless (ASR No. 1203757), that the FAA's painting and lighting specifications for the tower require both red and white obstruction lighting, and that there was no NOTAM in effect for the tower. In the *NAL*, the Commission cited AT&T Wireless for apparently failing to post the ASR number in a conspicuous place so that it is readily visible near the base of the tower in willful violation of Section 17.4(g) of the Rules and failing to exhibit the required white obstruction lighting on the tower in willful and repeated violation of Section 17.51(b) of the Rules.<sup>20</sup> The Commission, prior to the upward adjustment, proposed a \$2,000 forfeiture for the posting violation and a \$10,000 forfeiture for the lighting violation.

16. In its response to the *NAL*, AT&T Wireless concedes that it did not have the ASR number posted at the Holly Hill site at the time of the inspection. However, AT&T Wireless asserts that the \$10,000 forfeiture proposed for failure to exhibit white obstruction lighting on the tower should be cancelled. AT&T Wireless states that it has an automatic alarm system for this tower and its switches and/or network operations center pick up alarms when lights on the tower malfunction. AT&T Wireless further states that it has examined its logs for the Holly Hill site and no alarms were received for this tower since January 1, 2002. AT&T Wireless indicates that after the *NAL* was released, it dispatched a technician to the site on April 29, 2002, and the technician observed that all lights were operating correctly and that the alarm system was in proper operating condition. AT&T Wireless asserts that it cannot explain the discrepancy between its records and observations and those of the Commission's field agent. AT&T Wireless states that it is conceivable that there were some intermittent light problems but maintains that the alarm would have been triggered in that case. AT&T Wireless also suggests that it is possible that the lights were operational but not easily seen from the ground. AT&T Wireless argues that since two and a half months passed between the Tampa Office's observations and issuance of the *NAL*, it cannot now defend itself against charges for a violation that was not continuing at the time of the *NAL* and for which it has no record of having occurred.

17. Since AT&T Wireless admits that it did not have the ASR number posted at the Holly Hill site at the time of the inspection, we conclude that it willfully violated Section 17.4(g) of the Rules. Based on the record before us, we also conclude that AT&T Wireless willfully and repeatedly violated Section 17.51(b) of the Rules by failing to exhibit white obstruction lighting on the tower. The fact that AT&T Wireless has no record of the lighting violation does not justify cancellation of the proposed

---

<sup>19</sup> See *Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973).

<sup>20</sup> The Tampa Office did not issue an NOV to AT&T Wireless for these violations.

forfeiture. AT&T Wireless's suggestion that the lights were operational but not easily seen from the ground is unsupported by the record. The inspecting agent observed the tower from the ground at the Holly Hill site and also drove away from the site in a couple of directions and observed the tower from a distance. Using this method, the agent observed that the white obstruction lighting was not operational. Under these circumstances, we find no basis for canceling the \$10,000 forfeiture proposed for this violation.

Bluffdale, Utah – File No. EB-01-DV-382

18. On August 14, 2001, agents from the Commission's Denver, Colorado Field Office ("Denver Office") inspected a Bluffdale, Utah antenna structure owned by AT&T Wireless (ASR No. 1039565). The agents observed that a side intermediate light on the southwestern side of the tower was flashing, rather than steady burning as required by the tower's ASR. On November 19, 2001, the Denver Office issued an NOV citing AT&T Wireless for failure to conform to the FAA's painting and lighting specifications for the tower in violation of Section 17.23 of the Rules and failure to correct the improper functioning of a steady burning side intermediate light in violation of Section 17.48(b) of the Rules. In its December 20, 2001, response to the NOV, AT&T Wireless admitted that a side intermediate light on the tower was flashing, rather than steady burning, and stated that it had taken steps to repair the light. In the *NAL*, the Commission cited AT&T Wireless for apparently failing to conform to the FAA's painting and lighting specifications for the Bluffdale tower in willful and repeated violation of Section 17.23 and, prior to the upward adjustment, proposed a base forfeiture of \$10,000 for this violation.

19. In its response to the *NAL*, AT&T Wireless asserts, for the first time, that the Bluffdale tower was registered voluntarily (i.e., the structure was less than 200 feet in height and passed the "slope test" used to determine whether a structure will interfere with the approach or departure space of a nearby airport and therefore FAA notification of the structure was not required)<sup>21</sup> and indicates that it terminated the registration for this tower on December 19, 2001.<sup>22</sup> AT&T Wireless argues that since it was not required to register this tower, we should not impose a forfeiture for the violation cited in the *NAL*. We agree with AT&T Wireless and we will cancel the forfeiture proposed for this violation.<sup>23</sup> We remind AT&T Wireless, however, that the Commission has previously stated that antenna structures which do not require notification to the FAA should not be registered.<sup>24</sup>

---

<sup>21</sup> See 47 C.F.R. § 17.7.

<sup>22</sup> AT&T Wireless did not mention the fact that the Bluffdale tower was voluntarily registered or that it had terminated the registration for this tower in its response to the NOV.

<sup>23</sup> See e.g., *AT&T Wireless Services, Inc.*, 16 FCC Rcd 6805, 6806 (Enf. Bur. 2001); *VoiceStream PCS I License L.L.C.*, 16 FCC Rcd 7584, 7585 (Enf. Bur. 2001) (both canceling a forfeiture proposed for failure to post an antenna structure registration number because the tower was voluntarily registered).

<sup>24</sup> See *Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking and Lighting of Antenna Structures*, 11 FCC Rcd 4272 4279 (1995) ("*Streamlining*").

Tyler, Texas – File No. EB-01-DL-696  
Okeechobee, Florida – File No. EB-02-TP-012  
Malabar, Florida – File No. EB-01-TP-488

20. On November 15, 2001, the FCC's Dallas, Texas Field Office issued an NOV citing AT&T Wireless for failing to post its ASR number on or near the base of its Tyler, Texas antenna structure in violation of Section 17.4(g) of the Rules. On December 3, 2001, and January 14, 2002, respectively, the Tampa Office issued NOVs citing AT&T Wireless for failing to post its ASR numbers on or near the base of its Malabar, Florida and Okeechobee, Florida antenna structures in violation of Section 17.4(g) of the Rules. In the *NAL*, the Commission cited AT&T Wireless for apparently failing to post its ASR number at these three tower sites in willful violation of Section 17.4(g) of the Rules and, prior to the upward adjustment, proposed forfeitures of \$2,000 for each of these violations. In its response to the *NAL*, AT&T Wireless asserts that the \$2,000 forfeiture proposed for the Malabar, Florida site should be cancelled because there was no violation of Section 17.4(g) at this site. In this regard, AT&T Wireless states that while the ASR number was not visible from outside the Malabar, Florida tower compound, the ASR number was affixed to the base of the tower and could be easily seen at the base of the tower. AT&T Wireless acknowledges that the ASR numbers were not posted at the Tyler, Texas and Okeechobee, Florida tower sites at the time of the inspections, although it states that it believes that the ASR numbers were originally attached to these towers and suggests that ASR placards sometimes disappear because of weather conditions or vandalism.

21. We agree with AT&T Wireless that the \$2,000 forfeiture proposed for the Malabar, Florida site should be cancelled. Section 17.4(g) requires that the ASR number be posted in a conspicuous location so that it is readily visible on or near the base of the tower, and it now appears that the ASR number was in fact affixed to the base of the Malabar, Florida tower. However, we conclude that AT&T Wireless willfully violated Section 17.4(g) by failing to post the ASR numbers on or near the base of the Tyler, Texas and Okeechobee, Florida towers and that AT&T Wireless has provided no basis for canceling or reducing the forfeitures proposed in the *NAL* for these violations. AT&T Wireless presents no evidence that the ASR numbers were originally posted at the Tyler, Texas and Okeechobee, Florida tower sites or that the ASR numbers were missing from these sites due to either vandalism or weather. Moreover, it proffers no evidence that it periodically inspected its ASR number postings to learn of any that are missing.

Fellsmere, Florida – File No. EB-01-TP-502

22. On December 21, 2001, the Tampa Office issued an NOV citing AT&T Wireless for failing to register its Fellsmere, Florida tower in violation of Section 17.4(a)(2) of the Rules. In the *NAL*, the Commission cited AT&T Wireless for apparently failing to register its Fellsmere, Florida tower in willful violation of Section 17.4(a)(2) of the Rules and, prior to the upward adjustment, proposed a \$3,000 forfeiture for this violation. In its response to the *NAL*, AT&T Wireless admits that the Fellsmere tower was not registered at the time of the inspection. It argues, however, that the forfeiture for this violation should be reduced to \$1,500 because, although not registered, the tower received an FAA determination of "no hazard" in 1991 (based on the required lighting and marking) and has been lighted and marked in accordance with Commission and FAA requirements since that time. AT&T Wireless asserts that, when the Commission adopted the tower registration rules in 1996, AT&T Wireless inadvertently overlooked this tower in the course of filing ASRs for the hundreds of towers it owned.



23. We conclude that AT&T Wireless failed to register its Fellsmere, Florida tower in willful violation of Section 17.4(a)(2) of the Rules. In addition, we find no basis for reduction of the \$3,000 forfeiture proposed in the *NAL* for this violation. AT&T Wireless has provided no support for its assertion that its failure to register the tower was inadvertent. Moreover, AT&T Wireless's compliance with related lighting and marking rules does not render the failure to register less significant; had the lights failed, the FCC still may not have known who to contact because of the lack of registration. Furthermore, as we stated in the *NAL*, we have repeatedly advised antenna structure owners that all existing antenna structures subject to our rules must be registered *immediately* or the owners face a monetary forfeiture or other enforcement action.<sup>25</sup>

## B. Calculation of Forfeiture Amount

24. In addition to its specific challenges to the violations cited in the *NAL*, AT&T Wireless also argues that the Commission's decision in the *NAL* to triple the aggregate base forfeiture amount was unwarranted. First, AT&T Wireless states that the Commission's decision to triple the base forfeiture amount stemmed from its belief that AT&T Wireless had committed three very serious violations of the tower lighting rules. AT&T Wireless maintains, however, that it did not violate the tower lighting rules in any of the instances cited in the *NAL*. Additionally, AT&T Wireless argues that the Commission's apparent belief that AT&T Wireless is indifferent to the need to comply with the antenna structure rules is far from the truth, as evidenced by AT&T Wireless's thorough internal procedures and its prompt efforts to cure violations brought to its attention. In this regard, AT&T Wireless asserts that its longstanding policy has been to adhere strictly to the antenna structure rules and that it previously registered towers on a regular basis even when not required to do so under the rules. AT&T Wireless further asserts that since it was sanctioned last year for several ASR number posting violations, it has taken a number of steps to better ensure that its compliance policy and the specifics of the Commission's rules are communicated effectively to the relevant personnel. Specifically, AT&T Wireless states that it has designated three employees in its Washington, D.C. legal office to oversee compliance efforts and to serve as liaisons for all questions from the field about the tower structure rules, that this group has prepared and distributed memoranda and e-mails detailing the registration, posting and lighting requirements on numerous occasions, and that it has reinstated its "FCC 101" courses for its employees across the country, the curriculum of which includes antenna structure compliance.

25. We are not persuaded by AT&T Wireless's arguments that our decision in the *NAL* to triple the aggregate base forfeiture amount was unwarranted. As explained in detail above, we disagree with AT&T Wireless's claim that it did not violate the tower lighting rules in any of the three instances cited in the *NAL*. Although we have cancelled one of the lighting violations because the tower was

---

<sup>25</sup> Antenna structure owners were required to register existing antenna structures during a two-year filing period between July 1, 1996 and June 30, 1998. *Streamlining*, 11 FCC Rcd at 4281. Subsequent to the expiration of the filing period, the Commission staff issued a Public Notice warning antenna structure owners to register any unregistered antenna structures subject to our requirements immediately or face possible monetary forfeitures or other enforcement action. *Public Notice*, "No-Tolerance Policy Adopted for Unregistered Antenna Structures," 1999 WL 10060 (WTB rel. January 13, 1999). In addition, in June and July 1999, the Wireless Telecommunications Bureau sent letters to licensees informing them that the Commission had no valid registration for their antenna site and that owners and, to the extent they were liable, tenants could face monetary forfeitures for structures that remained unregistered.

voluntarily registered, we have concluded that AT&T Wireless did willfully and repeatedly violate the tower lighting rules in two of the instances cited in the *NAL*. Coupled with the painting and posting violations in this case and AT&T Wireless's past history of posting violations, we continue to believe that these serious lighting violations support a substantial upward adjustment of the base forfeiture amount.

26. Moreover, while AT&T Wireless asserts that its longstanding policy has been to adhere strictly to the antenna structure rules and that it has taken various steps to improve its compliance with these rules, we are not convinced that AT&T Wireless had an effective antenna structure compliance program in place at the time of these violations. Nor do we think that AT&T Wireless's efforts to cure violations brought to its attention due in part to the failure of its current system to provide timely notifications demonstrate strict compliance with the rules. All licensees and Commission regulatees are expected to promptly take corrective action when violations are brought to their attention. We also note that nothing in AT&T Wireless's description of its compliance plan indicates any efforts to do follow-up checks regarding its compliance with registration and posting rules.

27. More importantly, we find it troubling that AT&T Wireless apparently continues to violate the antenna structure rules. During the period just prior to the issuance of the *NAL*, the Commission's Field Offices issued three additional NOV's to AT&T Wireless as a result of routine tower inspections, two for ASR number posting violations and one for failure to notify the Commission of completion of construction of an antenna structure.<sup>26</sup> In its responses to these NOV's, AT&T Wireless admitted that the ASR numbers were not posted at the times of the inspections and that it failed to notify the Commission when it completed construction of the tower. Furthermore, since issuance of the *NAL*, the Field Offices have issued two more NOV's to AT&T Wireless, one for an ASR number posting violation and failure to notify the Commission of completion of construction of an antenna structure and one for failure to paint coaxial cable attached to the face of a tower.<sup>27</sup> In its response to the NOV issued for a posting violation and failure to notify the Commission of completion of construction, AT&T acknowledged that there was no ASR number posted at the time of the inspection and that it failed to notify the Commission of completion of construction of the tower. In its response to the NOV issued for failure to paint the coaxial cable, AT&T Wireless acknowledges that the cable was not painted. The Enforcement Bureau continues to investigate these apparent violations, and we note that there has been no adjudication in these cases. Nevertheless, these additional apparent violations reinforce our conclusion in the *NAL* that AT&T Wireless's continuing violations evince a pattern of non-compliance with and

---

<sup>26</sup> On March 12, 2002, the FCC's Chicago, Illinois Field Office issued an NOV to AT&T Wireless for failing to post the ASR number on or near the base of an antenna structure (ASR No. 1045450) located in Gary, Indiana. (File No. EB-02-CH-116). On April 2, 2002, the FCC's Anchorage, Alaska Resident Agent Office ("Anchorage Office") issued an NOV to AT&T Wireless for failing to notify the Commission of completion of construction of an antenna structure (ASR No. 1223858) located in Willow, Alaska. (File No. EB-02-AN-018). On April 8, 2002, the FCC's San Francisco Office issued an NOV to AT&T Wireless for failing to post the ASR number on or near the base of an antenna structure (ASR No. 1014135) located in Rio Vista, California. (File No. EB-02-SF-137). These NOV's were issued too late to be included in the *NAL*.

<sup>27</sup> On August 16, 2002, the Anchorage Office issued an NOV to AT&T Wireless for failing to post the ASR number on or near the base of an antenna structure (ASR No. 1222996) and to notify the Commission of completion of construction of an antenna structure located in Kenai, Alaska. (File No. EB-02-AN-072). On August 19, 2002, the Denver Office issued an NOV to AT&T Wireless for failing to paint the coaxial cable attached to the face of an antenna structure (ASR No. 1032069) located in Colorado Springs, Colorado (File No. EB-02-DV-117).

apparent disregard for these safety-related rules. We accordingly affirm our decision in the *NAL* to triple the total base forfeiture amount for all of AT&T Wireless's violations.

28. As discussed above, we have concluded that it is appropriate to cancel the forfeiture amounts proposed in the *NAL* for one lighting violation (\$10,000) and for one ASR number posting violation (\$2,000). The base forfeiture amounts for the remaining violations total \$39,000 (\$10,000 for each of the three instances of violations of the lighting and marking rules, \$3,000 for the failure to register an antenna structure, and \$2,000 for each of the three ASR number posting violations). We continue to believe that it is appropriate to triple the aggregate base forfeiture amount for these violations. Accordingly, we conclude that AT&T Wireless is liable for a forfeiture in the amount of \$117,000 for willful and repeated violations of Section 303(q) of the Act and Sections 17.50 and 17.51(b) of the Rules and willful violations of Sections 17.4(a)(2) and 17.4(g) of the Rules.

#### IV. ORDERING CLAUSES

29. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, AT&T Wireless Services, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one hundred seventeen thousand dollars (\$117,000) for willfully and repeatedly violating Section 303(q) of the Act and Sections 17.50 and 17.51(b) of the Rules and willfully violating Sections 17.4(a)(2) and 17.4(g) of the Rules.

30. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200232940002 and FRN # 0006-1660-29. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, DC 20554.<sup>28</sup>

31. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability shall be sent by Certified Mail Return Receipt Requested to David Jatlow, Vice President, Regulatory Affairs, AT&T Wireless Services, Inc. at Fourth Floor, 1150 Connecticut Avenue, N.W., Washington, DC 20036, and to Sara Leibman, Esq., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., 701 Pennsylvania Avenue, N.W., Suite 900, Washington, D.C. 20004.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

---

<sup>28</sup> See 47 C.F.R. § 1.1914.