

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

In the Matter of	)	
	)	
American Tower Corporation	)	File No. EB-00-TP-132
	)	
Boston, MA	)	NAL/Acct.No. 200132700004

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted:** January 11, 2001

**Released:** January 16, 2001

By the Commission:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture, we find American Tower Corporation (“ATC”), Boston, MA, apparently liable for a forfeiture in the amount of two hundred twelve thousand dollars (\$212,000) for 36 violations of Section 17.4(a), Section 17.4(a)(1), Section 17.4(g), Section 17.45, and Section 17.57, of the Commission’s rules, relating to construction, marking and lighting of antenna structures.<sup>1</sup> Respectively, these sections require that radio 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 ownership changes. We find that during the period of March 1, 2000 through November 9, 2000 ATC failed to comply with each of these requirements in one or more instances. A list of the specific violations is attached. *See* Attachment 1.

**II. BACKGROUND**

2. The Commission’s antenna structure painting, lighting and registration 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 specifications designed to ensure air safety. We require antenna structure owners to register structures with the Commission and post registration numbers near the base of structures to allow for easy contact if problems arise. The Commission’s Rules requiring antenna structure registration for all antenna structures that may pose a hazard to air navigation have been in effect since July 1, 1998.<sup>2</sup> We have repeatedly advised antenna structure owners that all existing, unregistered antenna structures subject to our rules must be registered *immediately* or

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

<sup>2</sup> 47 C.F.R. § 17.4(a)(2).

the owners could face a monetary forfeiture or other enforcement action.<sup>3</sup>

3. Because of the substantial public safety issues involved, we further require antenna structure owners to monitor lights daily or have automatic alarm systems installed to ensure lights function properly. Finally, antenna structure owners are required immediately to notify the FAA when major antenna structure lights are inoperative and can not be repaired within 30 minutes. 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.

4. Commission field agents routinely inspect antenna structures to determine compliance with antenna structure painting and lighting requirements and respond to complaints of unlit towers. The FAA also routinely notifies Commission field offices when owners fail to either report that lights have been repaired within 15 days or request that a NOTAM be extended. In the course of these routine inspections and investigations of FAA reports our field agents uncovered a significant number of violations of the Commission’s antenna structure painting, lighting and registration requirements by American Tower Corporation.

5. Attachment 1 summarizes 36 instances between March 1, 2000 and November 10, 2000 where Commission field agents found violations by ATC in the course of either following up on reports from the FAA, during random inspections, or, in one case, in response to a report of an unlit tower. In each of these cases Notices of Violation were previously mailed to ATC listing more specific violation details and providing ATC with an opportunity to respond. The attachment lists the FCC case number, date of violation and rules violated. In 11 cases, ATC did not respond to the Notices of Violation during the time period provided.<sup>4</sup> On July 26, 2000, agents from the Commission’s Tampa and Atlanta Field Offices met with representatives of ATC to discuss, among other issues, ATC’s failure to file the required ownership changes for acquired antenna structures with the Commission. ATC’s representatives indicated that they would do a “sweep” of purchased antenna structures to ensure that the correct ownership information was on record with the Commission.

### III. DISCUSSION

6. Based on the evidence before us, we find that American Tower Corporation apparently willfully and repeatedly<sup>5</sup> violated Section 17.4(a), Section 17.4(a)(1), Section 17.4(g), Section

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<sup>3</sup> Antenna structure owners were required to register existing antenna structures as of July 1, 1998 and to register new antenna structures prior to construction. *Streamlining the Commission’s Antenna Structure Clearance Procedure*, 11 FCC Rcd 4272 (1995). 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 1999).

<sup>4</sup> In five of these 11 cases, ATC eventually responded, but only after follow-up by the Commission’s field agents.

<sup>5</sup> 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

17.45, and Section 17.57 of the Commission's Rules<sup>6</sup> by its failure to comply with the Commission's Rules regarding the construction, marking and lighting of antenna structures.

7. Section 503(b) of the Communications Act authorizes the Commission to assess a forfeiture of up to \$11,000 for each violation of the Act or of any rule, regulation or order issued by the Commission under the Act by a non-common carrier or other entity not specifically designated in Section 503 of the Act.<sup>7</sup> In exercising such authority, we are to 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 such other matters as justice may require."<sup>8</sup>

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")<sup>9</sup>, the base forfeiture amount is \$10,000 for ATC's lighting violation. The base forfeiture amount is \$3,000 for each of ATC's 26 instances of failure to file required forms or information (i.e. failure to file an application for antenna structure registration (two violations) and failure to notify the Commission of a change in ownership of an antenna structure (24 violations)).

9. The Commission's Forfeiture Policy Statement does not establish a base forfeiture amount for violating the Commission's rule requiring posting of antenna structure registration numbers. Therefore, we must determine what an appropriate amount should be for these violations.<sup>10</sup> We conclude that the appropriate amount for this violation is \$2,000. Posting the registration is an informational requirement similar to registration. The purpose of the posting requirement is to allow for expedited identification of and contact with the antenna structure owner in the event of a safety

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intent to violate any provision of this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). The term "repeated" means the commission or omission of an act more than once. 47 U.S.C. § 312(f)(2).

<sup>6</sup> 47 C.F.R. §§ 17.4(a), 17.4(a)(1), 17.4(g), 17.45, and 17.57.

<sup>7</sup> Section 503(b)(2)(C) provides for forfeitures up to \$10,000 for each violation by cases not covered by subparagraphs (A) or (B), which address forfeitures for violations by licensees and common carriers, among others. See 47 U.S.C. Section 503(b); 47 C.F.R. Section 1.80. The Commission amended its rules by adding a new subsection to its monetary forfeiture provisions that incorporates by reference the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996 (Pub. L 104-134, Sec. 31001, 110 Stat. 1321), enacted on April 26, 1996. Thus, the statutory maximum pursuant to section 503(b)(2)(C) increased from \$10,000 to \$11,000. See *Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 1038 (1997). See also *Amendment of Section 1.80 of the Commission's Rules*, FCC 00-347 (September 19, 2000).

<sup>8</sup> 47 U.S.C. Section 503(b)(2)(D).

<sup>9</sup> 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999).

<sup>10</sup> The fact that the Guidelines do not specify a base amount does not indicate that no forfeiture should be imposed. The Guidelines state that "any omission of a specific rule violation from the . . . [forfeiture guidelines] . . . should not signal that the Commission considers any unlisted violation as nonexistent or unimportant." *Forfeiture Policy Statement*, at 17,099 para. 22. The Commission retains the discretion, moreover, to depart from the Guidelines and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in section 503 of the Act. *Id.*

problem with the structure (*e.g.*, an unlit tower). The base forfeiture amount for failure to file an antenna structure registration form is \$3,000.<sup>11</sup> However, we believe that failure to post an antenna structure registration number is less serious than failure to file an antenna structure registration form and we find that the appropriate forfeiture amount for this violation is \$2,000 for each of ATC's nine instances of failing to post the antenna registration number. Thus, the total base forfeiture amount for all of ATC's violations is \$106,000.

10. We are concerned, however, with the large number of violations by ATC uncovered by field agents as demonstrated in Attachment 1. The violations at issue in this case are serious. Unlit and unmarked antenna structures can pose a threat to air safety. For this reason, we believe it is important to insist upon full compliance with these rules, including those designed to enable us to readily locate antenna structure owners.

11. We are also concerned that ATC continues to violate our rules despite both oral and written warnings regarding the Commission's antenna structure requirements. In this regard, it is noteworthy that most of the failure to file ownership change violations were uncovered *after* our field agents' July 26, 2000 meeting with ATC's representatives. In fact, slightly more than half of the 36 violations listed in Attachment 1 were uncovered *after* this meeting. Moreover, the fact that these violations occurred in various states across the country suggests that ATC has not engaged in a "sweep" of its antenna structures as its representatives stated that it would. Accordingly, in light of the large number of violations and ATC's apparent disregard for the Commission's rules and processes, we believe that a significant upward adjustment of the forfeiture in this case is warranted. Applying the *Forfeiture Policy Statement* and statutory factors (*e.g.*, nature, extent and gravity of the violation and the culpability of the violator) to the instant case, we find ATC apparently liable for forfeiture in the amount of \$212,000.

12. Additionally, we are troubled that our field agents, in the context of routine enforcement responses and sample inspections, continue to uncover additional antenna structure rule violations by ATC. Therefore, we direct the Enforcement Bureau to conduct a further, more thorough investigation of ATC's overall level of compliance with the Commission's antenna structure painting, lighting and registration requirements and to take or recommend appropriate additional enforcement action against ATC.

#### IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>12</sup> and Section 1.80 of the Commission's Rules,<sup>13</sup> American Tower Corporation is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of two hundred twelve thousand dollars (\$212,000) for violating Section 17.4(a), Section 17.4(a)(1), Section 17.4(g), Section 17.45, and Section 17.57 of the Commission's Rules.<sup>14</sup>

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<sup>11</sup> See 47 C.F.R. Section 1.80(b)(4) Note (failure to file required forms or information).

<sup>12</sup> 47 U.S.C. § 503(b).

<sup>13</sup> 47 C.F.R. § 1.80.

<sup>14</sup> 47 C.F.R. §§ 17.4(a), 17.4(a)(1), 17.4(g), 17.45, and 17.57.

14. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules,<sup>15</sup> within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, American Tower Corporation SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

15. 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 the NAL/Acct. No. referenced above.

16. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – TPSD, NAL/Acct. No., and must include the NAL/Acct. Number.

17. 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 (“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.

18. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.<sup>16</sup>

19. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to American Tower Corporation, 116 Huntington Avenue, 11<sup>th</sup> Floor, Boston, MA 02116, ATTN: Doug C. Wiest, Chief Operating Officer.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

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<sup>15</sup> 47 C.F.R. § 1.80.

<sup>16</sup> See 47 C.F.R. § 1.1914.

## Attachment 1

Notices of Violation (NOVs) issued to ATC from March 1, 2000, to November 10, 2000.

Case Number	Date of Violation	Rule Violated	Tower City Registration Number	Comment
EB-00-PO-036	03/28/00	17.4(a)	Booneville, ID	Failed to register existing tower
EB-00-DT-492	07/03/00	17.4(a)(1)	Beaver Creek, MI	Failed to register tower before construction
EB-00-KC-148	09/18/00	17.4(g)	Troy, MO	Failed to post registration number
EB-00-DV-185	04/18/00	17.4(g)	Seibert, CO	Failed to post registration number
EB-00-DV-399	07/19/00	17.4(g)	Moriarty, MN	Failed to post registration number
EB-00-AT-635	06/23/00	17.4(g)	Kershaw, SC	Failed to post registration number
EB-00-NY-117	03/29/00	17.4(g)	Plainview, NY	Failed to post registration number
EB-00-AT-814	07/20/00	17.4(g)	Chattanooga, TN	Failed to post registration number
EB-00-DV-403	07/19/00	17.4(g)	Tijeras, NM	Failed to post registration number
EB-00-NY-501	10/18/00	17.4(g)	Shirley, NY	Failed to post registration number
EB-00-TP-581	08/09/00	17.4(g)	Jacksonville, FL	Failed to post registration number
EB-00-CF-548	10/12/00	17.45	Washington, DC	Failed to light tower during construction
EB-00-TP-334	05/11/00	17.57	Green Cove Springs, FL 1053949	Failed to change ownership
EB-00-TP-380	05/24/00	17.57	Palm Bay, FL 1040915	Failed to change ownership
EB-00-TP-391	04/24/00	17.57	Live Oak, FL 1039333	Failed to change ownership
EB-00-TP-498	07/07/00	17.57	Zephyrhills, FL 1047967	Failed to change ownership
EB-00-KC-080	06/07/00	17.57	Campbell, MO 1005485	Failed to change ownership
EB-00-DL-255	08/30/00	17.57	Tyler, TX 1059063	Failed to change ownership
EB-00-DL-256	08/30/00	17.57	Camp Hill, TX 1059059	Failed to change ownership
EB-00-DL-257	08/30/00	17.57	Longview, TX 1059439	Failed to change ownership
EB-00-DL-258	08/30/00	17.57	Marshall, TX 1060319	Failed to change ownership
EB-00-DL-260	08/30/00	17.57	Carrier, OK 1011570	Failed to change ownership
EB-00-TP-155	08/29/00	17.57	Croom, FL 1036013	Failed to change ownership

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EB-00-TP-194	08/02/00	17.57	Caniville, FL 1044466	Failed to change ownership
EB-00-TP-294	04/20/00	17.57	Lake City, FL 1051847	Failed to change ownership
EB-00-TP-544	08/10/00	17.57	Lacoochee, FL 1040912	Failed to change ownership
Eb-00-PA-258	08/04/00	17.57	Kittanning, PA 1061920	Failed to change ownership
EB-00-PA-422	06/08/00	17.57	Butler, PA 1042705	Failed to change ownership
EB-00-PA-423	06/08/00	17.57	Corry, PA 1053926	Failed to change ownership
EB-00-PA-424	06/08/00	17.57	Nickleville, PA 1042704	Failed to change ownership
EB-00-PA-431	11/01/00	17.57	Florence, NJ 1056132	Failed to change ownership
EB-00-TP-130	10/18/00	17.57	MacClenny, FL 1200479	Failed to change ownership
EB-00-TP-131	11/01/00	17.57	Crescent City, FL 1056866	Failed to change ownership
EB-00-TP-264	10/18/00	17.57	Ormond Beach, FL 1020470	Failed to change ownership
EB-00-TP-311	10/18/00	17.57	Indiantown, FL 1052320	Failed to change ownership
EB-00-TP-676	10/18/00	17.57	Monticello, FL 1054118	Failed to change ownership