

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

In the Matter of)	File No.: EB-SED-13-00008891 ¹
)	
AT&T Inc., Parent Company of)	NAL/Acct. No.: 201532100002
New Cingular Wireless PCS, LLC and)	
AT&T Mobility Puerto Rico, Inc.)	FRN: 0005193701

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 29, 2015

Released: January 29, 2015

By the Commission: Commissioner Pai concurring and issuing a statement; Commissioner O’Rielly concurring in part, dissenting in part and issuing a statement.

I. INTRODUCTION

1. We propose a \$640,000 penalty against AT&T Inc. (AT&T) for apparently operating numerous wireless stations throughout the United States without authorization over a multiyear period and failing to provide required license modification notices to the Commission. Through its subsidiaries, AT&T operated numerous common carrier fixed point-to-point microwave stations at variance from the stations’ authorizations for periods ranging from approximately three and a half years to five years. As a sophisticated Commission licensee, AT&T should have reviewed its newly acquired licenses in a timely manner to ensure that it was operating the stations within the terms of their authorizations. We take this action as part of our duty to prevent unauthorized radio operations from potentially interfering with authorized radio communications in the United States and to facilitate the efficient administration of the radio spectrum. AT&T’s apparent violations continued for a number of years, including for a substantial time after it should have become aware of its unauthorized operations, thus warranting a significant penalty.

2. Specifically, as detailed herein, AT&T apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act),² and Sections 1.903(a), 1.947(a), and 1.947(b) of the Commission’s rules (Rules).³

II. BACKGROUND

3. In October 2011, the Wireless Telecommunications Bureau (Wireless Bureau) referred to the Enforcement Bureau for investigation and possible enforcement action whether AT&T Mobility Puerto Rico, Inc.⁴ was operating common carrier fixed point-to-point microwave station WQBI706 without authorization and whether it was operating microwave station WPSN556 on an unauthorized

¹ This investigation was initiated under File No. EB-11-SE-107 and subsequently assigned File No. EB-SED-13-00008891. Any future correspondence with the Commission concerning this matter should reflect the new case number.

² 47 U.S.C. § 301.

³ 47 C.F.R. §§ 1.903(a), 1.947(a)–(b).

⁴ The licenses at issue in the initial investigation were licensed to AT&T Mobility Puerto Rico, Inc. The investigation ultimately expanded to include licenses held by New Cingular Wireless PCS, LLC. Both entities are indirect, wholly-owned subsidiaries of AT&T Inc. We use the term AT&T to refer to AT&T Inc., including these two wholly-owned subsidiaries.

frequency.⁵ On October 13, 2011, AT&T filed a request for Special Temporary Authority (STA) with the Wireless Bureau to operate station WPSN556 on frequency 11622.5 MHz,⁶ explaining that it discovered that it was not operating the station on its licensed frequency of 11132.5 MHz.⁷ In addition, AT&T filed a request for STA with the Wireless Bureau to operate station WQBI706,⁸ stating that it learned that the license covering this station was canceled on January 25, 2010, and the station was operating on an unauthorized frequency under the station's previous license.⁹ AT&T subsequently filed amendments and modification applications regarding these stations that were ultimately granted by the Wireless Bureau.¹⁰

4. The Enforcement Bureau sent a Letter of Inquiry (LOI) to AT&T on May 11, 2012,¹¹ regarding possible violations associated with AT&T's operation of stations WQBI706 and WPSN556. AT&T responded on June 8, 2012,¹² and supplemented its response on June 29, 2012.¹³ Subsequently, the Enforcement Bureau and AT&T entered into settlement negotiations with respect to this investigation. In September 2013, AT&T disclosed verbally to Enforcement Bureau staff that AT&T discovered inconsistencies between the licensed parameters and the constructed facilities of a large number of common carrier fixed point-to-point microwave licenses that it acquired from 2009 through 2012 throughout the contiguous United States and Puerto Rico. The majority of these licenses were acquired

⁵ Common carrier fixed point-to-point microwave service is defined as “[a] common carrier public radio service rendered on microwave frequencies by fixed and temporary fixed stations between points that lie within the United States or between point to its possessions or to points in Canada or Mexico.” 47 C.F.R. § 101.3.

⁶ Commission records indicate that on October 7, 2011, the Wireless Bureau granted a verbal STA to allow AT&T to operate station WPSN556 on frequency 11622.5MHz, with instructions to AT&T to submit a written request for STA on or before October 17, 2011.

⁷ See Universal Licensing System (ULS) File No. 0004911100 (Oct. 13, 2011). The Wireless Bureau granted the STA on November 2, 2011, under call sign WQOK987, until April 30, 2012.

⁸ Commission records indicate that on October 7, 2011, the Wireless Bureau granted a verbal STA to allow AT&T to operate station WQBI706 on frequency 11132.5 MHz, with instructions to AT&T to submit a written request for STA on or before October 17, 2011.

⁹ See ULS File No. 0004911088 (Oct. 13, 2011). The Wireless Bureau granted the STA on November 2, 2011, under call sign WQOK988, until April 30, 2012.

¹⁰ On November 8, 2011, AT&T filed an amendment application for station WPSN556 which sought to correct the frequency on the path between WPSN556 and Yeguado, Puerto Rico, and also sought to change the receive call sign for the Yeguado path to WPZL569, which was co-located with WQBI706 at the Yeguado site. See ULS File No. 0004782257 (Nov. 8, 2011). The Wireless Bureau granted this application on January 4, 2012. See *Wireless Telecommunications Bureau Site-By-Site Action*, Public Notice, Report No. 7444 (Jan. 11, 2012). On November 22, 2011, AT&T filed an application to modify station WPZL569 (which was co-located with station WQBI706 at Yeguado), by adding frequency 11132.5 MHz. See ULS File No. 0004964108. The Wireless Bureau granted this application on February 7, 2012. See *Wireless Telecommunications Bureau Site-By-Site Action*, Public Notice, Report No. 7535 (Feb. 15, 2012).

¹¹ See Letter from John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Michael P. Goggin, General Attorney, AT&T Mobility LLC (May 11, 2012) (on file in EB-SED-13-00008891).

¹² See Letter from William L. Roughton, Jr., General Attorney, AT&T Services, Inc., to Paul Noone, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau (June 8, 2012) (on file in EB-SED-13-00008891); see also note 13.

¹³ See Letter from William L. Roughton, Jr., General Attorney, AT&T Services, Inc., to Paul Noone, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau (June 29, 2012) (on file in EB-SED-13-00008891). AT&T requested confidential treatment regarding its LOI response and supplemental LOI response. The request for confidentiality remains pending. The analysis and text of this item relies on publicly available information.

by AT&T through its acquisition of Centennial Communications Corporation¹⁴ and its acquisition of certain licenses from Verizon Wireless, which Verizon Wireless sold as part of its acquisition of ALLTEL Corporation.¹⁵ AT&T reportedly discovered these issues in the course of a review it conducted to transition the licenses into its site and license compliance system. In light of this information, the Enforcement Bureau expanded its investigation to include the apparent unauthorized operations of these additional AT&T licenses.

5. Almost a year after disclosing apparent unauthorized operations to Enforcement Bureau staff, AT&T reported that its review of the acquired licenses was nearly complete.¹⁶ According to AT&T, of the approximately 691 licenses reviewed that were acquired since 2009, 320 did not require any corrective filings and 131 were canceled because they were no longer operating or needed.¹⁷ However, nine of the 131 licenses were canceled after AT&T obtained new licenses because its frequency coordination study determined that operation of the acquired licenses posed a risk of interference.¹⁸ Of the remaining 240 licenses, AT&T explained that 190 required the filing of a minor modification application to bring the station into compliance, and 50 required the filing of a major modification application to bring the station into compliance.¹⁹ Thus, AT&T canceled seven of the nine licenses, as well as filed 14 major modification applications and six minor modification applications after January 30, 2014. Five major modification applications and two minor modification applications, however, have yet to be filed.

III. DISCUSSION

A. Operation at Variance from Authorizations

6. Section 301 of the Act and Section 1.903(a) of the Rules each prohibits the use or operation of any apparatus for the transmission of energy or communications or signals by radio except under, and in accordance with, a Commission-granted authorization.²⁰ Section 1.947(a) of the Rules

¹⁴ See *Applications of AT&T Inc. and Centennial Commc 'ns Corp. for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, Memorandum Opinion and Order, 24 FCC Rcd 13915 (2009).

¹⁵ See *Applications of Cellco P'ship d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444 (2008); *Applications of AT&T Inc. and Cellco P'ship d/b/a Verizon Wireless for Consent to Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, Memorandum Opinion and Order, 25 FCC Rcd 8704 (2010).

¹⁶ See Letter from Jacquelyne Flemming, Assistant Vice President – External Affairs/Regulatory, AT&T Services, Inc., to John Poutasse, Division Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Aug. 5, 2014) (AT&T Letter) (on file in EB-SED-13-00008891).

¹⁷ *Id.*

¹⁸ *Id.* In subsequent settlement discussions with Enforcement Bureau staff, AT&T agreed to treat the nine cancellations as major modifications for purposes of the investigation. See Email from Jacquelyne Flemming, Assistant Vice President – External Affairs/Regulatory, AT&T Services, Inc., to Pamela Hairston, Assistant Division Chief; JoAnn Lucanik, Deputy Division Chief; and Paul Noone, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau (Sept. 5, 2014, 15:24 EDT) (on file in EB-SED-13-00008891).

¹⁹ AT&T originally indicated that 189 licenses required the filing of a minor modification and 51 required a major modification. AT&T Letter. On December 24, 2014, however, AT&T filed a minor modification application for one of the licenses (call sign WPSR702) that it originally indicated required a major modification. See *id.*; ULS File No. 0006595685 (Dec. 24, 2014). The application is pending as of Jan. 28, 2015. By filing a minor rather than a major application filing, AT&T actually needed to file 190 minor modification applications and 50 major modification applications.

²⁰ 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

states that all “major modifications” to microwave stations require prior Commission approval.²¹ Section 1.929(d) of the Rules sets forth the types of modifications that are considered major, such as changes to antenna locations by more than 5 seconds in latitude or longitude, increases in transmit antenna height by more than 3 meters, changes in transmit antenna polarization, and changes in transmit antenna azimuth by greater than 1 degree.²²

7. AT&T acknowledges that it operated 59 of its common carrier fixed point-to-point microwave stations at variance from the stations’ licenses for periods ranging from three and a half years to over four years.²³ The 59 licenses include the 50 licenses that required major modification applications as well as the nine licenses that would have required the filing of major modification applications had the licenses not been canceled. Of these 59 stations, 14 were operated at variance from the stations’ licenses until the requisite modification applications were filed after January 30, 2014; five are still operating at variance as the major modification application has yet to be filed; and seven were operated at variance from the stations’ licenses until they were canceled after January 30, 2014. Accordingly, we find that AT&T apparently willfully²⁴ and repeatedly²⁵ operated 59 of its common carrier fixed point-to-point microwave stations at variance from their authorized parameters in violation of Section 301 of the Act and Sections 1.903(a) and 1.947(a) of the Rules.²⁶

²¹ 47 C.F.R. § 1.947(a).

²² 47 C.F.R. § 1.929(d).

²³ See AT&T Letter. AT&T originally acknowledged the operation of 60 licenses (9 canceled and 51 that required major modification applications) as well as 189 additional licenses that required notification to the Commission for minor modifications were at variance with the licenses. *Id.* AT&T, however, filed a minor modification application in lieu of a major modification application for one of the pending licenses originally designated as major. See note 20 *supra*.

²⁴ Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. See *S. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992) (*Southern California*).

²⁵ Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, provides that “[t]he term ‘repeated,’ . . . means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2); see *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 9 (2001); *Southern California*, 6 FCC Rcd at 4388, para. 5.

²⁶ 47 U.S.C. § 301; 47 C.F.R. §§ 1.903(a), 1.947(a). We also find that, based on the STA requests and license modification applications filed for stations WPSN556 and WQBI706 as detailed *supra* para. 3, AT&T operated WQBI706 without authorization, in violation of Section 301 of the Act, and operated WPSN556 on an unauthorized frequency, in violation of Section 301 of the Act and Sections 1.903(a) and 1.947(a) of the Rules. However, these violations occurred outside the applicable one-year statute of limitations under Section 503(b) of the Act. 47 U.S.C. § 503(b). While the forfeiture is based on violations that occurred “within the past year,” as discussed *infra* in paragraph 11, Section 503 of the Act does not bar the Commission from assessing whether AT&T’s conduct prior to that time period apparently violated the Act and Rules or considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period. *Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 FCC Rcd 1820, 1825, para. 14 (2006), *forfeiture ordered* (*Behringer NAL*), Forfeiture Order, 22 FCC Rcd 10451(2007) (forfeiture paid) (*Behringer Forfeiture Order*); *Globcom Inc. d/b/a Globcom Global Commc’ns*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19903, para. 23 (2003), *forfeiture ordered*, Order of Forfeiture, 21 FCC Rcd 4710 (2006). Earlier events may be used to “shed light on the true character of matters occurring within the limitations period.” *E. Broad. Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37, 38, para. 3 (1967) (quoting *Local Lodge 1424 v. NLRB*, 362 U.S. 411, 416 (1960)).

B. Failure to Notify the Commission of Modifications

8. Section 1.929(k) sets forth changes that are considered minor, such as changes to the licensee's contact person. In addition, any change not specifically listed as major is considered minor, such as but not limited to changes in transmit antenna location by 5 seconds or less in latitude or longitude or both, decreases or increases in transmit antenna height by 3 meters or less, and changes in antenna structure type.²⁷ While minor modifications do not require prior Commission approval, Section 1.947(b) of the Rules does require notice to the Commission within 30 days of implementing the changes.²⁸ AT&T admitted that it did not file timely notifications for 190 of its common carrier fixed point-to-point microwave licenses, eight of which were not timely filed within the past calendar year.²⁹ Accordingly, we find that AT&T apparently willfully and repeatedly violated Section 1.947(b) of the Rules with regard to each of these licenses.³⁰

C. Proposed Forfeiture

9. 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.³¹ Based on the record before us, and as explained above, AT&T's apparent violations of Section 301 of the Act and Sections 1.903(a) and 1.947(a)–(b) of the Rules are both willful and repeated.³²

10. Section 503(b)(2)(B) of the Act authorizes a forfeiture assessment against a common carrier up to \$160,000 for each violation, or for each day of a continuing violation, up to a maximum of \$1,575,000 for a single act or failure to act.³³ In determining the appropriate forfeiture amount, we are required 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.”³⁴ Section 1.80(b) of the Rules sets a base forfeiture of \$4,000 for unauthorized emissions, using an unauthorized frequency, and construction or operation at an

²⁷ 47 C.F.R. § 1.929(k).

²⁸ 47 C.F.R. § 1.947(b).

²⁹ *See supra* para. 5.

³⁰ 47 C.F.R. § 1.947(b).

³¹ 47 U.S.C. § 503(b); *see* 47 C.F.R. § 1.80(a).

³² 47 U.S.C. § 301; 47 C.F.R. §§ 1.903(a), 1.947(a)–(b).

³³ 47 U.S.C. § 503(b)(2)(B); *see also* 47 C.F.R. § 1.80(b)(2). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(B) of the Act (\$100,000 per violation or per day of a continuing violation and \$1,000,000 per any single act or failure to act). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), requires the Commission to adjust its forfeiture penalties periodically for inflation. *See* 28 U.S.C. § 2461 note (4). The Commission most recently adjusted its penalties to account for inflation in 2013. *See Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 28 FCC Rcd 10785 (Enf. Bur. 2013); *see also Inflation Adjustment of Monetary Penalties*, 78 Fed. Reg. 49,370–01 (2013) (setting Sept. 13, 2013, as the effective date for the increases).

³⁴ 47 U.S.C. § 503(b)(2)(E); *see also* 47 C.F.R. § 1.80(b)(8); *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17100–01, para. 27 (1997) (*Forfeiture Policy Statement*), *recons. denied*, 15 FCC Rcd 303 (1999).

unauthorized location, and a base forfeiture amount of \$3,000 for failure to file required forms or information.³⁵

11. Section 503(b)(6) of the Act empowers the Commission only to assess forfeitures for violations that occurred within the year preceding the issuance of a Notice of Apparent Liability for Forfeiture.³⁶ In that regard, the Enforcement Bureau's investigation determined that AT&T engaged in unauthorized operations at 26 of its common carrier fixed point-to-point microwave stations within the past year, in violation of Section 301 of the Act and Sections 1.903(a) and 1.947(a) of the Rules.³⁷ In addition, the investigation determined that AT&T failed to notify the Commission regarding minor modifications of eight of its stations within the past year, in violation of Section 1.947(b) of the Rules.³⁸ In light of these findings, we propose assessing a base forfeiture of \$4,000 for each of AT&T's 26 apparent unauthorized operation violations, resulting in a forfeiture of \$104,000. We also propose assessing a base forfeiture of \$3,000 for each of AT&T's eight apparent failures to notify the commission regarding minor modifications, resulting in an additional proposed forfeiture of \$24,000. Thus, we propose an aggregate base forfeiture amount of \$128,000 for AT&T's apparent violations within the past calendar year of our action today.

12. Given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, we conclude that a significant upward adjustment of the aggregate base forfeiture is warranted. First, we are particularly concerned that AT&T's apparent unauthorized operations continued for an extended period of time.³⁹ Second, the unauthorized operations involved a large number of stations.⁴⁰ Of the 59 licenses for which AT&T filed, has yet to file, or canceled in lieu of filing major modification applications, AT&T operated 26 of the stations at variance from the stations' authorizations for more than four years, 26 stations for approximately four years, and seven stations for approximately three and a half years. Of the 21 licenses for which AT&T filed major modification applications or canceled since January 30, 2014, AT&T operated 19 at variance from the stations' authorizations for more than four years, and two stations operated for almost four years. Of the five stations for which AT&T has yet to file the major modification applications, all have been operating at variance for more than four and a half years. Of the 190 licenses for which AT&T filed or has yet to file minor modification applications, AT&T operated three of the stations for more than five years, including two for which no modification applications have been filed, 17 of the stations for more than four years, 81 stations for more than three years, and 89 stations for more than two years.

13. Consistent with Section 301 of the Act, licensees who find themselves out of compliance with the licensing requirements should immediately cease unauthorized operation or seek temporary operating authority before continuing to operate.⁴¹ Although correction to the public record should be

³⁵ 47 C.F.R. § 1.80(b); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17099, para. 22 (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”).

³⁶ 47 U.S.C. § 503(b)(6).

³⁷ 47 U.S.C. § 301; 47 C.F.R. §§ 1.903(a), 1.947(a). The unauthorized operations at the remaining 33 stations occurred more than one year ago.

³⁸ 47 C.F.R. § 1.947(b). The failure to file timely minor modifications for the remaining 182 stations occurred more than one year ago.

³⁹ *See Behringer NAL*, 21 FCC Rcd at 1827, para. 22.

⁴⁰ *See Sabrina Javani D/B/A EZ Business Loans*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 7921, 7926, para. 9 (2012) (finding upward adjustments appropriate where a significant number of violations are present).

⁴¹ *See, e.g., Union Oil Co. of Cal.*, Notice of Apparent Liability for Forfeiture 27 FCC Rcd 13806, 13810–11, paras. 10–11 (2012) (upward adjustment of the base forfeiture because of extended duration of the violation) (forfeiture (continued....))

encouraged, we cannot condone such an untimely review, especially in light of the quantity of licenses at issue and the substantial period that passed before AT&T became aware of the violations.⁴² AT&T, a sophisticated Commission licensee with an extensive telecommunications portfolio, must conduct a more timely technical review of newly acquired licenses. Delay of up to five years to correct filings from acquisitions simply is not acceptable.⁴³ Moreover, we find that the egregiousness and quantity of the apparent violations — 50 major modifications, nine canceled licenses, and 190 minor modifications — and the delay of several years — three and a half to five years — should be accounted for in setting the proposed forfeiture amount, resulting in an upward adjustment.⁴⁴

14. We also recognize that AT&T is a multi-billion dollar global enterprise.⁴⁵ In this respect, the Commission has determined that large or highly profitable companies should expect the assessment of higher forfeitures for violations of the Act and the Rules.⁴⁶ Thus, to ensure that the forfeiture liability serves as an effective deterrent and not simply a cost of doing business for AT&T, a significant upward adjustment of the base forfeiture amount is warranted.

15. We decline to downwardly adjust the proposed forfeiture. First, even if AT&T was unaware of the violations when it acquired the licenses and needed time to review the licenses for compliance, AT&T is a sophisticated licensee that was well aware of the fundamental licensing

(...continued from previous page)

paid) (*Union Oil*); *Midessa Television Ltd. P'ship*, Notice of Apparent Liability for Forfeiture, FCC 14-159, para. 11 (Oct. 14, 2014) (upward adjustment for the base forfeiture because of extended duration of the violation).

⁴² Although a large number of violations are not actionable due to the expiration of the statute of limitations period, the Commission has determined such violations may be relevant in determining adjustments to base forfeiture levels in setting the forfeiture amount. See *Enserch Corp.*, Forfeiture Order, 15 FCC Rcd 13551, 13554, para. 11 (2000) (noting that the Commission can consider facts that occurred outside the statute of limitations period in assessing an appropriate forfeiture amount).

⁴³ The Commission expects its licensees to timely file required forms and notifications. See e.g., *Globalcom, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 3479, 3485–86, para. 17 (2010) (imposing a \$100,000 forfeiture for Globalcom's failure to make two required regulatory filings on time, where the filings were up to five months late), *consent decree ordered*, Order and Consent Decree, 29 FCC Rcd 2593 (2014)); *ADMA Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 838, 851, para. 31 (2009) (imposed a \$150,000 forfeiture for ADMA's failure to make three required regulatory filings on time, where the filings were up to six months late), *consent decree ordered*, Order and Consent Decree, 26 FCC Rcd 4152 (2011).

⁴⁴ See 47 U.S.C. § 503(b)(2)(E); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100–01; 47 C.F.R. § 1.80(b)(8) and note to paragraph (b)(8).

⁴⁵ AT&T, Inc. reported revenue of approximately \$128.8 billion for the fiscal year ending Dec. 31, 2013. See AT&T Inc. 2013 Annual Report at 7, available at http://www.att.com/Investor/ATT_Annual/2013/downloads/ar2013_annual_report.pdf.

⁴⁶ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099–17100, paras. 23–24 (cautioning all entities and individuals that, independent from the uniform base forfeiture amounts, the Commission will take into account the violator's ability to pay in determining the amount of a forfeiture to guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business, and noting that such entities should expect the forfeiture amount set out in a Notice of Apparent Liability for Forfeiture against them may in many cases be above, or even well above, the relevant base amount); *GCI Commc'ns Corp.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 12991, 12994, para. 9 (Enf. Bur. 2013) (doubling base forfeiture based on company's ability to pay); *Am. Movil, S.A.B. de C.V., Parent of Puerto Rico Tel. Co., Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8672, 8676, para. 10 (Enf. Bur. 2011) (same). It is also well-established Commission policy to consider the revenues of a violator's parent company in determining the violator's ability to pay. See, e.g., *SM Radio, Inc.*, Order on Review, 23 FCC Rcd 2429, 2433, para. 12 (2008) (citations omitted); *Tesla Exploration, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 9808, 9811, para. 10 & n. 20 (2012); *Union Oil*, 27 FCC Rcd at 13810, para. 10.

requirements imposed by Section 301 of the Act and Section 1.903(a) of the Rules.⁴⁷ Furthermore, regardless of whether AT&T is a sophisticated licensee, it is responsible for knowing the terms of its licenses and conforming to the requirements of the Rules.⁴⁸ Second, notwithstanding AT&T's disclosure of the violations related to the acquired licenses during the pendency of the Commission's investigation, any initial transition issues related to AT&T's acquisition of the licenses do not explain the delay in filing the conforming applications.⁴⁹ Third, regarding AT&T's disclosure and subsequent license review, "corrective measures implemented after [the] Commission has initiated an investigation . . . do not nullify or mitigate past violations."⁵⁰ Based on all the evidence and the forfeiture adjustment factors, including the egregiousness based on the number of licenses involved, the duration of the violations, prior violations, and AT&T's ability to pay, we propose a total forfeiture of \$640,000 for AT&T's apparent unauthorized operations and failure to provide required notices to the Commission.

IV. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311, and 1.80 of the Rules,⁵¹ AT&T Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of six hundred forty thousand dollars (\$640,000) for apparent willful and repeated violation of Section 301 of the Act and Sections 1.903(a) and 1.947(a)-(b) of the Rules.⁵²

17. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,⁵³ within thirty (30) calendar days after the release date of this Notice of Apparent Liability for Forfeiture, AT&T Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

18. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. AT&T Inc. shall send electronic notification of payment to Pamera Hairston at Pamera.Hairston@fcc.gov, Paul Noone at Paul.Noone@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁵⁴ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that AT&T Inc. should follow based on the form of payment it selects:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-

⁴⁷ See 47 U.S.C. § 301; 47 C.F.R. § 1.903(a); see also *Union Oil*, 27 FCC Rcd at 13811, para. 11 (noting that sophisticated licensees are "well aware" of fundamental licensing requirements).

⁴⁸ *Union Oil*, 27 FCC Rcd at 13811, para. 11 (citing, e.g., *Lakewood Broad. Serv., Inc.*, Memorandum Opinion and Order, 37 FCC 2d 437, 438, para. 6 (1972)).

⁴⁹ See *Union Oil*, 27 FCC Rcd at 13811, para. 11 (finding that initial transition issues associated with the acquisition of a license cannot excuse an extended period of unauthorized operation).

⁵⁰ See, e.g., *Behringer Forfeiture Order*, 22 FCC Rcd at 10459, para. 19.

⁵¹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁵² 47 U.S.C. § 301; 47 C.F.R. §§ 1.903(a), 1.947(a)-(b).

⁵³ 47 C.F.R. § 1.80.

⁵⁴ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

19. 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, S.W., Room 1-A625, Washington, D.C. 20554.⁵⁵ If AT&T Inc. has questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

20. 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 Rules.⁵⁶ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Account Number referenced in the caption. This statement also must be emailed to Pamera Hairston at Pamera.Hairston@fcc.gov and to Paul Noone at Paul.Noone@fcc.gov.

21. 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 submitted.

⁵⁵ See 47 C.F.R. § 1.1914.

⁵⁶ 47 C.F.R. §§ 1.16, 1.80(f)(3).

22. **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 Jacquelyne Flemming, Assistant Vice President – External Affairs/Regulatory, and Michael P. Goggin, General Attorney, AT&T Services, Inc., 1120 20th Street, N.W., Suite 1000, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**CONCURRING STATEMENT OF
COMMISSIONER AJIT PAI**

Re: AT&T Inc., Parent Company of New Cingular Wireless PCS, LLC and AT&T Mobility Puerto Rico, Inc., File No. EB-SED-13-00008891

In this Notice of Apparent Liability for Forfeiture (NAL), the Commission proposes to fine AT&T \$640,000 for alleged violations related to the operation of 34 fixed, point-to-point microwave stations. It appears that the company operated at least some of those stations at variance from their authorizations, so it is certainly appropriate to move forward with an NAL. Nonetheless, there's a troubling lack of transparency in today's item. As a result, I am only voting to concur.

Some of the item's omissions are glaring. For example, the NAL itself does not identify the 34 stations at issue. Nor does it describe how those facilities allegedly failed to comply with our rules. These are pretty basic points that we should be able to include when we're proposing to fine a company over a half a million dollars after a multi-year investigation.

The missing information is also critical to determining the appropriate base forfeiture. Indeed, depending on the ways in which the stations failed to comply with our rules, the base forfeitures mentioned in the item might actually be too low.

Defining the alleged conduct at issue is also key to determining whether any upward or downward adjustments are appropriate. The NAL proposes to *quintuple* the base forfeiture amount, citing, among other things, the "egregiousness" of the conduct. But it's difficult to assess how egregious it was because critical information about the company's conduct remains unknown. And it's difficult to square that determination with the fact that the licensee voluntarily brought these issues to the FCC's attention in the course of bringing licenses it had acquired from third parties into its license management and compliance system. Therefore, I cannot conclude at this point that such a large upward adjustment is warranted.

Given the item's omissions, my office reached out to Commission staff over two weeks ago. We asked repeatedly thereafter to see the missing data. Thankfully, my office was given some of this information yesterday. While it shows that the FCC still doesn't know the ways in which all 34 stations allegedly failed to comply with our rules, I am comfortable that there is an adequate factual basis for us to move forward with an NAL and give the licensee an opportunity to respond to the allegations. I look forward to working with my colleagues as the record develops.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY
CONCURRING IN PART, DISSENTING IN PART**

Re: AT&T Inc., Parent Company of New Cingular Wireless PCS, LLC and AT&T Mobility Puerto Rico, Inc., EB-SED-13-00008891

For the Commission's enforcement process to retain credibility and actual functionality, such as it is designed to deter future incidents and justly penalize violators, the public must have faith that the calculations of forfeiture amounts are transparent and consistent. Although I have seen some improvements in determining base forfeitures, it is our implementation of upward and downward adjustments that continues to trouble me, because there has been a lack of hard justifications for the adjustment amounts. Today's Notice of Apparent Liability (NAL) fines AT&T a base forfeiture of \$128,000, which is then upwardly adjusted by 400 percent to \$640,000.

First, it appears that AT&T did potentially violate some rules. Therefore, I can support the issuance of an NAL but only concur with the proposed base forfeiture amount. Specifically, the item does not contain sufficient information about the precise violations that are within the statute of limitations. The item neither describes the exact nature of the wrongdoing, nor does it disclose when each of these violations occurred and when they were rectified. Instead, it just states that 34 licenses were not in compliance with the Commission's rules within the last year.¹ My staff and I received supplemental information from the Enforcement Bureau to try to determine the extent of the violations. This seemed to suggest violations ranging from changes in site elevation and transmitter locations to failure to update contact information, but the information is incomplete. If this NAL proceeds to a forfeiture order, I would expect a more fulsome discussion of the actual violations.

This brings me to my second point: it is hard to fathom how a 400 percent upward adjustment is warranted on so few facts. The Commission calculates this additional penalty by increasing the base forfeiture by 100 percent for each of the following: (1) "the egregiousness based on the number of licenses involved," (2) "the duration of the violation," (3) "prior violations," and (4) "AT&T's ability to pay." But, the NAL does not provide specific information to support the majority of these increases; except for the general discussion of possible violations associated with licenses acquired by AT&T from third parties between 2009 and 2012, many of which are outside the statute of limitations.

I am left to conclude that a portion of the hefty upward adjustment may, in fact, be a penalty for these additional violations that do not fall within the statute of limitations period. There is Commission precedent that allows violations that occur outside the statute of limitations period to be used to measure the culpability of the licensee and inform the forfeiture amount. But there is no discussion of prior violations by AT&T in this document. I have to ask whether the violations referenced are related to a previous consent decree entered into by AT&T, which is not even mentioned in the item, or the alleged violations of which many are outside the statute of limitations. If the upward adjustment is based on "apparent" violations that are outside the statute of limitations, I would have deep concerns as the Commission did not verify or act upon these potential violations. Given the scope of the issue at hand, it seems comparable to a traffic cop issuing a speeding ticket and then trying to increase the size of the fine because the motorist admitted to speeding last week when no cops were around. Overall, this does not appear to be aligned with the spirit and purpose of a statute of limitations.

¹ The order states that AT&T engaged in unauthorized operations on 26 point-to-point microwave licenses requiring major modification applications and failed to timely notify the Commission of eight minor modifications.

If the Commission is attempting to signal that it intends to be aggressive on enforcement actions, it also needs to be right and just.

Therefore, I concur in part and dissent in part.