

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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WASHINGTON, D.C.

In the Matter of)
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)

WT Docket 95-5

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REPLY COMMENTS OF AT&T CORP.

Mark C. Rosenblum
Kathleen F. Carroll
Ernest A. Gleit
AT&T Corp.
295 North Maple Avenue
Room 3261B3
Basking Ridge, N.J. 07920
908/221-3053

Cathleen A. Massey
Vice President - External Affairs
McCaw Cellular Communications, Inc.
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
202/223-9222

Its Attorneys

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REPLY COMMENTS OF AT&T CORP.

AT&T Corp. ("AT&T") hereby submits its reply comments in the above-referenced proceeding. AT&T urges the Commission to clarify the responsibilities of structure owners and tenant licensees. Specifically, AT&T requests that the FCC clarify that it will activate the "secondary" responsibility of tenant licensees only after exercising reasonable efforts to enforce the primary responsibility of structure owners. AT&T urges the Commission to adopt and disseminate a uniform notice to inform structure owners of their primary responsibilities. AT&T also requests that the FCC clarify that tenant licensees that do not have the legal ability to maintain their antenna structures do not bear compliance responsibilities.

AT&T urges the Commission to permit structure owners to delegate antenna structure registration and maintenance responsibilities by contract to tenant licensees or third parties. AT&T also reiterates its argument that requiring antenna structure registrants to renew their

registrations would be duplicative and unnecessary. In addition, AT&T requests that the Commission clarify that antennae affixed to landmarks are exempted from the painting and registration plate display requirements. Finally, AT&T urges the Commission to adopt a single form for registration and FAA clearance purposes.

I. The Commission Should Clarify The Responsibilities Of Structure Owners and Tenant Licensees

A. The Commission Should Activate The Secondary Responsibility of Tenant Licensees Only After Exercising Reasonable Efforts To Enforce The Primary Responsibility of Structure Owners

Many commenters agreed with AT&T's position that the registration and maintenance of antenna structures are exclusively the responsibility of the structure owners and are imputed to tenant licensees only upon the FCC's notification to these tenants of the owner's default and of the corresponding transfer of compliance responsibility to them.^{1/} Many other commenters^{2/} argued that the Commission should make the owner solely responsible for structure registration and maintenance, or otherwise mitigate the secondary responsibility

^{1/} See, e.g., Comments of Mitchell Energy & Development Corp. at 2; Comments of the National Association of Broadcasters at 4; Comments of Nationwide Communications, Inc. at 3; Comments of Wireless Cable Association International at 3.

^{2/} See, e.g., Comments of Alltel Mobile Communications, Inc. at 2; Comments of American Petroleum Institute at 3; Comments of GTE Service Corporation at 10-11; Comments of Mitchem and Development Corporation at 1.

of tenant licensees, consistent with the overriding goal of this proceeding to "reduc[e] burdens on the industry."^{3/}

AT&T urges the Commission to affirm that it will shift structure registration and maintenance responsibilities from defaulting owners to tenant licensees only as a last resort and following due diligence on the part of the FCC to enforce the structure owner's primary obligations. To that end, the Commission should implement procedures for the enforcement of structure owners' primary responsibility in advance of activating the tenant licensees' secondary responsibility. Structure owners should not be rewarded for defaulting on their registration and maintenance obligations with a prompt derogation of such responsibilities to tenants.

The Commission should establish a procedure for reminding owners of nonconforming structures of their obligations, and, if necessary, fine antenna structure owners for non-compliance. The FCC should provide tenant licensees with copies of any communication it has with non-complying structure owners. Keeping the tenant licensees apprised of owner non-compliance will likely enlist the voluntary assistance of such tenants in impelling the owner to comply, and serve as early warning to such licensees that the structure owner may be on the verge of default.

AT&T also urges the Commission to require antenna structure owners in default of their primary structure registration and maintenance responsibilities to reimburse tenant

^{3/} In the Matter of Streamlining the Commission's Antenna Structure Clearance Procedures and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking, and Lighting of Antenna Structures, Notice of Proposed Rulemaking, WT Docket No. 95-5 (rel. January 20, 1995)("Notice"), at 5.

licensees who assumed and satisfied those responsibilities in the owners' stead. Not requiring owners to reimburse tenant licensees for such expenses would constitute a reward for structure owners for failing to comply with their obligations under the proposed program.

B. The Commission Should Adopt a Uniform Notice to Inform Structure Owners Of Their Primary Responsibilities

AT&T supports AirTouch and U S West's proposal that the Commission notify antenna structure owners of their primary responsibilities under the proposed program by means of a uniform notice routed through tenant licensees.^{4/} If adopted, this proposal would eliminate the risks associated with the Commission's proposed reliance on tenant licensees to individually relate the elements of the proposed program to their structure landlords. A standardized FCC notice would ensure that all structure owners are given uniform information with respect to their registration and maintenance obligations, and would relieve tenant licensees of the risks of lawsuits brought by owners who claim that they were not adequately informed of their obligations.

C. Tenant Licensees That Do Not Have The Legal Ability To Maintain Their Antenna Structures Should Bear No Responsibility For Compliance With The Proposed Registration and Maintenance Rules

AT&T supports the requests of Capital Cities/ABC, Inc. and Sprint Corporation that the Commission clarify that tenant licensees are not responsible for tower lighting, painting and maintenance -- even secondarily -- where the licensees' underlying lease agreement with

^{4/} Joint Comments of AirTouch Communications, Inc. and U S WEST NewVector Group, Inc. at 3-4.

the structure owner prohibits such actions on the part of the licensee.^{5/} Absent such clarification, many tenant licensees will face the untenable position of deciding between complying with the FCC's rules by means of breaching their lease or abiding by their lease by means of violating the FCC's rules. The FCC should eliminate this lose-lose proposition by clarifying that secondary liability applies to only those tenant licensees who are legally capable of curing the structure owners' default. In addition, the Commission should clarify that a tenant licensee with no legal ability to cure its structure's compliance defects may remain sited on the noncomplying structure without incurring liability for noncompliance for the remainder of the lease term.^{6/}

II. The Commission Should Permit Owners to Delegate Antenna Structure Registration and Maintenance Responsibilities

In its Comments, AT&T proposed that the Commission permit tenant licensees to voluntarily assume the responsibilities for the registration, lighting, painting and maintenance of their structures.^{7/} Somewhat more broadly, CTIA recommends that the Commission permit antenna structure owners to assign responsibility for structure registration and

^{5/} Comments of Capital Cities/ABC, Inc., at 4-5; Comments of Sprint Corporation at 7.

^{6/} AT&T also supports the proposal of Vernon Telephone Cooperative, Inc. (VTC) that the Commission establish an expedited relocation authorization procedure through which tenant licensees could relocate to another antenna structure in the event that the structure owner is in default of its registration or maintenance obligations and refuses to correct the violations or allow the tenant licensees to take voluntary corrective action. Comments of VTC at 6-7. If no alternate tower is available, the FCC should waive any rules causing the loss of license because of discontinuance of operation. See, id. at 7.

^{7/} Comments of AT&T Corp. at 6-7.

maintenance by contract to third parties who may not necessarily be Commission licensees.^{8/}

We support this proposal.

GTE and the Association of Federal Communications Consulting Engineers (AFCCE) request that the Commission clarify the definition of "owner."^{9/} They observe that many licensees have antennae affixed to structures operated by site management companies or agents acting under "master lessor" agreements with sometimes many agencies holding ownership interests in subject structures. Some structures, in fact, have ownership interests distributed among dozens of parties. AFCCE recommends that the FCC clarify that "if the site is operated by a management entity that controls all site access under a long term lease or management agency agreement, the site management entity is the 'owner'...."^{10/} AT&T agrees. A site management company or master lessor is likely to be more familiar with the subject structure and its dimensions, location, and operations than the structure's owners. In many instances, such management entities alone control access to the structure in general and to the antennae sites in particular. Moreover, as AFCCE observes, the ownership of certain complex real estate developments may change often, while the management entities controlling the everyday operations of such structures change less frequently.^{11/}

^{8/} Comments of Cellular Telecommunications Industry Association ("CTIA") at 4.

^{9/} Comments of GTE at 13; Comments of Association of Federal Communications Consulting Engineers at 2.

^{10/} AFCCE Comments at 2.

^{11/} Id.

III. The Commission Should Not Require Registrants To Renew Their Registrations Periodically

The Commission should reject proposals to incorporate a renewal mechanism into the proposed registration program.^{12/} Such a requirement would be duplicative, and therefore contrary to the objective of this proceeding to alleviate excessive compliance burdens. The proposed registration program already requires structure owners to ensure that the information on-file at the FCC is correct.^{13/} Structure registrants are required to submit proposed FCC Form 854 upon any changes to the height, coordinates, ownership, painting or lighting of the subject structure.^{14/} Hence, the Commission should not require the renewal of antenna structure registrations.^{15/}

^{12/} See, e.g., Comments of Bell Atlantic Mobile Systems at 3; Comments of Motorola at 10-11.

^{13/} See Notice at ¶ 7.

^{14/} Notice at Appendix C, Proposed FCC Form 854, Box 2.

^{15/} For similar reasons, AT&T also opposes Motorola's recommendation that the FCC require tower registrants to notify the Commission when construction of a tower has been completed. Comments of Motorola at 11. Motorola believes that requiring such notifications "will permit the Commission to purge from its data base [sic.] records on towers that for some reason are not constructed -- thus improving the integrity and value of the data base [sic.]." Id. We disagree. Structure owners are already required to notify the FCC of any changes in registered structure data. Not constructing a structure as registered constitutes a change requiring notification. Requiring structure owners to also file notices of construction, therefore, would be superfluous.

IV. Antennas Affixed To Structures Accorded Landmark Status Should Be Granted Waivers Of The Proposed Painting And Registration Plate Display Requirements

In its Notice, the FCC proposes to amend Part 17 of the FCC rules to incorporate by reference the recommendations found in certain FAA Advisory Circulars.^{16/} Given the differences between the current FAA Advisory Circulars and Part 17, the FCC proposes to grandfather the existing painting and lighting requirements of existing structures for ten years, through January 1, 2006.^{17/}

AT&T agrees with Smith and Powstenko's observation that the requirement that structures conform to the FAA Advisories in 2006 would pose an untenable dilemma for owners of structures that have been declared landmarks by the appropriate local, state or federal agencies, and were lit and painted according to FAA and FCC directions tailored in accordance to such landmark status.^{18/} AT&T supports Smith and Powstenko's request that the Commission grandfather permanently -- not only through 2006 -- those structures that have been adjudged, lit and painted as landmarks. Absent such grandfathering, structure registrants would again face with the lose-lose proposition of having to decide between complying with the FCC rules or another legal requirement, in this instance a landmark preservation dictate.

^{16/} Notice at ¶ 18.

^{17/} Id. at ¶ 19.

^{18/} Comments of Smith and Powstenko at 8-9.

V. The Commission Should Streamline the Form Applicable to Antenna Structure Clearance and Registration

A. The FCC Should Adopt A Uniform FCC/FAA Notification and Registration Form

AT&T supports the proposal of the Aeronautical Charting Division (ACD) and GTE for the Commission to implement a standard form combining the functions of the FAA's 7460 notification form and the proposed FCC Form 854.^{19/} Under the proposed registration program, structure owners would have to file a Form 7460 with the FAA for notification before the commencement of construction. Structure owners would also have to submit an FCC Form 854 to the FCC, containing much of the same information already submitted to the FAA, for structure registration. The FCC would then issue an FCC Form 854R bearing the structure's registration number and the painting and lighting requirements prescribed by the FAA on the basis of the submission of the 7460. This bifurcated and duplicative notification and registration process would be contrary to the Commission's objective of reducing the paperwork burden on the industry.^{20/}

The Commission should adopt a single form for structure owners to use for both notifying the FAA of proposed construction and registering such construction with the FCC. This might require coordination with the FAA, which the FCC should seek in order to minimize the paperwork burden on antenna structure owners. Such a unified form could be processed by the FAA and FCC successively, and would request all of the dimensional and

^{19/} Comments of the Aeronautical Charting Division of the National Oceanic and Atmospheric Administration at 3; Comments of GTE at 5.

^{20/} Notice at ¶ 16.

locational data requested by the current FAA Form 7460. Once the form is filed with the FCC, Commission staff would enter the relevant structure data into the common database. Once entered, the FCC could then share the data electronically with the FAA, which would then prescribe lighting and marking requirements electronically. Upon reviewing and associating the FAA's requirements with the proposed construction entry in the database, the Commission would issue the FCC Form 854R, bearing the FAA's marking and lighting requirements and the structure registration number.

Such a consolidated process would streamline the proposed construction notification and registration process significantly, consistent with the "streamlining" objectives of this proceeding. In fact, the effect of not making the proposed Form 854 a unified FAA/FCC form would be to increase the paperwork burden on new structure registrants, a result that would be clearly at odds with the Commission's intentions.

B. The Commission Should Not Require An Anti-Drug Abuse Act Certification On The Registration Form

AT&T agrees with GTE's argument that the Anti-Drug Abuse Act of 1988 does not apply to the proposed registration program.^{21/} The Anti-Drug Abuse Act of 1988 requires applicants for federal authorizations to certify that neither the applicant nor any party to the application is subject to a denial of Federal benefits under Section 5301.^{22/} Registration of antenna structures is not a "benefit," does not yield an FCC "authorization," and is not done

^{21/} See GTE Comments at 20.

^{22/} See 21 U.S.C. § 862; In the Matter of Amendment of Part 1 of the Commission's Rules to Implement Section 5301 of the Anti-Drug Abuse Act of 1988, 6 FCC Rcd. 7551, 7553 (1991).

by means of an "application." As GTE notes in its comments, the Commission has recognized that informational filings, like Licensee Qualification Reports and Ownership Reports, do not confer a benefit or authorization and, therefore, do not require Anti-Drug Abuse Act certifications.

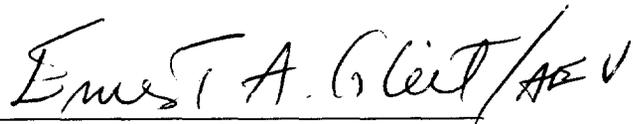
Certifying compliance with the Anti-Drug Abuse Act of 1988 is exceedingly burdensome and time-consuming. To certify, applicants must often screen stockholders, directors, officers, and other individuals for drug use. Such a requirement may act as a significant disincentive to many structure owners, who are not Commission licensees, to comply with the requirements of the proposed registration program. The Commission should, therefore, delete the certification from the proposed FCC Form 854.

Conclusion

For the foregoing reasons, AT&T urges the Commission to adopt its proposed streamlined antenna structure registration and clearance program, modified to the extent recommended in AT&T's initial comments and this Reply.

Respectfully submitted,

AT&T CORP.

A handwritten signature in black ink that reads "Ernest A. Gleit" followed by a stylized monogram "AEG" and a checkmark.

Mark C. Rosenblum
Kathleen F. Carroll
Ernest A. Gleit
295 North Maple Avenue
Room 3261B3
Basking Ridge, N.J. 07920
908/221-3053

Cathleen A. Massey
Vice President - External Affairs
McCaw Cellular Communications, Inc.
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
202/223-9222

Its Attorneys

April 20, 1995

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CERTIFICATE OF SERVICE

I, Margo Adams, hereby certify that copies of the foregoing Reply Comments of AT&T Corp. were delivered by first-class mail, postage prepaid on this 20th day of April, 1995, to the parties listed below.



Margo Adams

Mr. William F. Caton*
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Robert H. Schwaninger, Jr.
Brown and Schwaninger
1835 K Street, N.W.
Suite 650
Washington, D.C. 20006
(Attorneys for Dean Brothers Publishing)

R. Michael Senkowski
Katherine M. Holden
Stephen J. Rosen
Wiley, Rein and Fielding
1776 K Street, N.W.
Washington, D.C. 20006
(Attorneys for Motorola)

John A. Prendergast
Richard D. Rubino
Blooston, Mordkofsky,
Jackson & Dickens
2120 L Street, N.W.
Suite 300
Washington, D.C. 20037
(Attorneys for Vernon Telephone
Company)

Michael F. Altschul
Vice President and General Counsel
Cellular Telecommunications
Industry Association
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036

Kathryn A. Zachem
Kelley A. Baione
Wilkinson, Barker, Knauer & Quinn
1735 New York Avenue, N.W.
Washington, D.C. 20006
(Attorneys for AirTouch and US West)

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

Edward W. Hummers, Jr.
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street
11th Floor
Rosslyn, VA 22209
(Attorney for Nationwide
Communications, Inc.)

Henry L. Baumann
Executive Vice President
and General Counsel
National Association of Broadcasters
1771 N Street, N.W.
Washington, D.C. 20036

Donald G. Everist
Association of Federal Communications
Consulting Engineers

P.O. Box 19333
20th Street Station
Washington, D.C, 20036-0333

Dvora Wolff Rabino
Capital Cities/ABC, Inc.
77 West 66th Street
New York, New York 10023
(Attorney for Capital Cities/ABC, Inc.)

Carol W. Beaver
Chief, Aeronautical Charting Division
United States Department of Commerce
National Oceanic and Atmospheric
Administration
National Ocean Service
Coast and Geodetic Survey
Silver Spring, MD 20910

Neil M. Smith
Smith and Postenko
Suite 502
1233 Twentieth Street, N.W.
Washington, D.C. 20036

Glenn S. Rabin
Federal Regulatory Counsel
ALLTEL Mobile Communications, Inc.
655 15th Street, N.W.
Suite 220
Washington, D.C. 20005

Wayne V. Black
John Reardon
Keller and Heckman
1001 G Street
Suite 500 West
Washington, D.C. 20001
(Attorneys for American Petroleum
Institute)

Minnie M. Adams
Vice President - Corporate Services
Mitchell Energy & Development Corp.
P.O. Box 4000
The Woodlands, TX 77387-4000

John T. Scott, III
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(Attorneys for Bell Atlantic Mobile
Systems, Inc.)

Jay C. Keithley
Leon M. Kestenbaum
Nancy R. McCabe
1850 M Street, N.W.
Suite 1100
Washington, D.C. 20036
(Attorneys for Sprint Corporation)

* By hand.