

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

In the Matter of)	File No. EB-07-SE-102
)	
Steamboat Ski & Resort Corporation)	NAL/Acct. No. 200732100042
Steamboat Springs, Colorado)	FRN # 0004-2539-93

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 14, 2007

Released: August 17, 2007

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find Steamboat Ski & Resort Corporation (“Steamboat”), licensee of Ku-Band fixed satellite earth station, call sign E960019 (“earth station”), Steamboat Springs, Colorado, apparently liable for a forfeiture in the amount of six thousand five hundred dollars (\$6,500) for operating its earth station without Commission authority and for failing to file a timely renewal application. Steamboat acted in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”),¹ and Sections 25.102(a) and 25.121(e) of the Commission’s Rules (“Rules”).²

II. BACKGROUND

2. Steamboat uses its earth station to broadcast ski news, weather conditions and resort events. Steamboat’s earth station authorization specified a license term that commenced on January 26, 1996, and expired on January 26, 2006.³ On January 16, 2007, Steamboat applied for special temporary authority (“STA”) to continue operating its earth station pending Commission action on a new license application.⁴ On January 17, 2007, the International Bureau granted Steamboat its requested STA to continue operating its earth station.⁵ On January 26, 2007, Steamboat filed an application for a new earth station authorization.⁶ On March 2, 2007, Steamboat filed an amendment to its pending license application reflecting new ownership — specifically, American Skiing Company’s (“ASC”) sale of Steamboat to Steamboat Acquisition Corp. (“Acquisition”).⁷ On March 6, 2007, the International Bureau

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 25.102(a) and 25.121(e).

³ File No. SES-LIC-19951011-00324.

⁴ File No. SES-STA-20070116-00115.

⁵ The STA was granted without prejudice to any future Commission enforcement action against the company in connection with any unauthorized operation of its radio facilities.

⁶ File No. SES-LIC-20070126-00139.

⁷ File No. SES-AMD-20070302-00288.

granted the license and amendment applications.⁸ Because it appeared that Steamboat may have operated the earth station after the expiration of its license, the International Bureau referred this case to the Enforcement Bureau for investigation and possible enforcement action. On April 13, 2007, the Enforcement Bureau's Spectrum Enforcement Division issued a letter of inquiry ("LOI") to Steamboat.⁹

3. In its May 14, 2007, response to the LOI,¹⁰ Steamboat explained that in the fourth quarter of 2006, while in the process of preparing due diligence materials for ASC's sale of Steamboat to Acquisition, ASC discovered that Steamboat's earth station license had expired on January 26, 2006, but did not relate the information to Steamboat until ten months later, on December 1, 2006.¹¹ Steamboat also stated that it paid the August 2006 regulatory fees, but "did not receive a renewal notice or notice that the fees it paid were for a license that had expired."¹² Steamboat further claimed that it "was under the false impression that its parent corporation, ASC, was primarily responsible for ensuring that the authorization was current."¹³ Steamboat admitted that it continued to operate its earth station beyond the license expiration date without Commission authorization — from January 26, 2006, the expiration date of its earth station license, to January 17, 2007, when the International Bureau granted Steamboat's STA request to continue operating its earth station.¹⁴

4. Steamboat explained that "upon learning that its earth station authorization had expired [it] sought an STA to resume operation."¹⁵ Steamboat stated that it operated its earth station pursuant to the STA, which was granted on January 17, 2007, until just prior to Acquisition's purchase of Steamboat, which was completed on March 1, 2007. At that time, Steamboat stated that it turned off its earth station and desisted operations pending receipt of Commission authorization pursuant to Steamboat's license application and the amendment to the license application.¹⁶ On March 6, 2007, the International Bureau granted Steamboat's license and amendment applications. At that time, Steamboat stated that it resumed use of its earth station under this new authorization. Thus, Steamboat asserted that its earth station has operated pursuant to proper Commission authorization since January 17, 2007 (*e.g.*, between January 17, 2007 and March 1, 2007, pursuant to STA, and from and after March 6, 2007, pursuant to new licensing authority granted by the Commission).

⁸ See *Satellite Communications Services Information Re: Actions Taken*, Public Notice, Report No. SES-00907 (IB rel. March 7, 2007). The new license was granted without prejudice to any future Commission enforcement action against the company in connection with any unauthorized operation of its radio facilities.

⁹ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Mr. David L. Herman, Steamboat Ski & Resort Corporation (April 13, 2007).

¹⁰ See Letter from David S. Prohofskey, Counsel to Steamboat Ski & Resort Corporation, to Jennifer Burton, Esq., Spectrum Enforcement Division, Enforcement Bureau (May 14, 2007) ("Response").

¹¹ *Id.* at 1.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 3.

¹⁶ See Letter from Jonathan E. Allen, Esq., Counsel to Steamboat Ski & Resort Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (Feb. 18, 2007) (requesting cancellation of the STA effective March 1, 2007).

III. DISCUSSION

5. Section 301 of the Act and Section 25.102(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by an earth station except under, and in accordance with a Commission granted authorization. Additionally, Section 25.121(e) of the Rules requires licensees to file renewal applications for earth stations “no earlier than 90 days, and no later than 30 days, before the expiration of the license.”¹⁷ Absent a timely filed renewal application, an earth station license automatically terminates.¹⁸

6. As a Commission licensee, Steamboat was required to maintain its authorization in order to operate its earth station. Steamboat concedes that it operated its earth station without Commission authority from January 26, 2006, the expiration date of its earth station license, to January 17, 2007, when the International Bureau granted Steamboat’s request for STA. By operating its earth station for approximately one year without authorization, Steamboat apparently violated Section 301 of the Act and Section 25.102(a) of the Rules. Steamboat also acted in apparent violation of Section 25.121(e) of the Rules by failing to file a timely renewal application.

7. Section 503(b) of the Act,¹⁹ and Section 1.80(a) of the Rules,²⁰ provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term “willful” means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission’s rules, and “repeatedly” means more than once.²¹ Based upon the record before us, it appears that Steamboat’s violations of Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Rules were willful and repeated.

8. In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act directs us to consider factors, such as “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.”²²

9. Section 1.80(b) of the Rules sets a base forfeiture amount of three thousand dollars (\$3,000) for failure to file required forms or information, and ten thousand dollars (\$10,000) for operation of a station without Commission authority.²³ The Commission has determined that a licensee’s failure to

¹⁷ 47 C.F.R. § 25.121(e).

¹⁸ 47 C.F.R. § 25.161(b).

¹⁹ 47 U.S.C. § 503(b).

²⁰ 47 C.F.R. § 1.80(a).

²¹ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992) (“*Southern California*”); see also *WCS Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 13 FCC Rcd 6691 (WTB, Enf. and Consumer Info. Div. 1998) (finding that a licensee’s inadvertent failure to file timely renewal applications constitutes a repeated violation that continues until the date the license is renewed).

²² 47 U.S.C. § 503(b)(2)(E); see also *Forfeiture Policy Statement*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

²³ 47 C.F.R. 1.80(b).

timely file a renewal application and its continued operations without authorization constitute separate violations of the Act and the Rules and warrant the assessment of separate forfeitures.²⁴ Accordingly, we propose separate forfeiture amounts for Steamboat's separate violations.

10. Consistent with precedent, we propose a forfeiture in the amount of one thousand five hundred dollars (\$1,500) for Steamboat's failure to file the renewal application for its earth station within the time period specified in Section 25.121(e) of the Rules.²⁵ Additionally, we propose a forfeiture in the amount of five thousand dollars (\$5,000) for Steamboat's unauthorized operation of its earth station for approximately one year. In proposing this forfeiture amount, we recognize that the Commission considers a licensee who operates a station with an expired license in better stead than a pirate broadcaster who lacks prior authority, and thus downwardly adjust the \$10,000 base forfeiture amount accordingly.²⁶ Thus, we propose an aggregate forfeiture amount of \$6,500 (\$1,500 for failure to file a timely renewal application and \$5,000 for unauthorized operation).

11. As a Commission licensee, Steamboat is charged with the responsibility for knowing and complying with the terms of its authorizations, the Act and the Rules, including the requirement to timely renew the authorization for its earth station.²⁷ In its defense, Steamboat offers several reasons for its failure to file a timely renewal application — none of which mitigates the violations or results in a downward reduction of the proposed forfeiture amount. Steamboat claims that it did not receive a renewal notice, but the obligation to file a timely renewal application attaches even where the Commission does not provide notification regarding license renewals.²⁸ Steamboat also alleges that it did not notice that the license had expired and that it erroneously believed that its parent company was responsible for renewing the license. Such lack of knowledge does not excuse a licensee from its obligation to operate in compliance with the rules.²⁹ Steamboat states that “upon learning that its earth

²⁴ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7438 (2004) (assessing proposed forfeitures of \$5,000 and \$1,500 against a broadcaster who operated its station for 14 months without Commission authority and failed to file a timely renewal application) (“*Discussion Radio*”).

²⁵ See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$1,500 forfeiture for failure to file a timely renewal application for a broadcast station); *La Carpa Corporation*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2744 (Enf. Bur., Spectrum Enf. Div. 2007) (proposing a \$1,500 forfeiture for failure to file a timely renewal application for a satellite earth station) (“*La Carpa*”); *Lazer Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8710 (Enf. Bur., Spectrum Enf. Div. 2006) (proposing a \$1,500 forfeiture for failure to file a timely satellite earth station renewal application) (“*Lazer Broadcasting*”).

²⁶ See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$5,000 forfeiture for operating a broadcast station for 14 months beyond the expiration of its license); *La Carpa*, 22 FCC Rcd at 2744 (proposing a \$5,000 forfeiture for operating an earth station without Commission authority for approximately nine months); *Lazer Broadcasting*, 21 FCC Rcd at 8711 (proposing a \$5,000 forfeiture for operating an earth station for approximately one year without Commission authority).

²⁷ See *Discussion Radio*, 19 FCC Rcd at 7439 (a Commission licensee is charged with knowledge of the full range of its obligations, including its duty to timely seek renewal of its license to maintain operating authority).

²⁸ See *World Radio Network*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 10631, 10633 (Enf. Bur., Spectrum Enf. Div. 2005) (the obligation for a satellite earth station licensee to timely file a renewal application attaches even where the Commission does not provide notification regarding license renewals); *Birkshire Communicators*, Forfeiture Order, 15 FCC Rcd 18242 (Enf. Bur. 2000) (if a licensee does not receive a renewal reminder notice where Commission stated that it would send one, the licensee is still obligated to file a timely renewal application).

²⁹ See 47 C.F.R. § 0.406; *Discussion Radio*, 19 FCC Rcd at 7439 (a Commission licensee is charged with knowledge of the full range of its obligations, including its duty to timely seek renewal of its license to maintain operating authority); *Empire Broadcasting*, Memorandum Opinion and Order, 25 FCC 2d 68, 69 (1970) (mere

station authorization had expired, Steamboat sought an STA to resume operation of the base station.³⁰ Although the Commission has considered voluntary disclosure to be a mitigating factor where the licensee brought a violation to the attention of the Commission immediately upon its discovery, Steamboat learned about the expiration of its authorization on December 1, 2006, but did not notify the Commission until 46 days later, when it filed the request for STA on January 16, 2007.³¹

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act³² and Sections 0.111, 0.311 and 1.80 of the Rules,³³ Steamboat **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of six thousand five hundred dollars (\$6,500) for the willful and repeated violation of Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Rules.

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,³⁴ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Steamboat **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank / LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. A request for full payment under an installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³⁵

15. The response, if any, 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/Acct. No. referenced in the caption.

oversight or failure to be aware of the Commission's requirements will not excuse licensee from its obligation to operate in compliance with the Commission's Rules); *Shared Data Networks*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18184, 18187 (Enf. Bur., Spectrum Enf. Div. 2005) (earth station licensee's lack of awareness of its responsibilities is not a mitigating factor warranting a downward adjustment in a proposed forfeiture amount).

³⁰ Response at 3.

³¹ See *Journal Broadcast Corp.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18211, 18214 (Enf. Bur., Spectrum Enf. Div. 2005) (rejecting a violator's claim of prompt, voluntary disclosure where a renewal application was filed nearly 60 days after the licensee learned that its earth station license had lapsed); *American Paging, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 10417, 10420 (WTB, Enf. and Consumer Info. Div. 1997) (finding that a downward adjustment for voluntary disclosure was unwarranted where the violator did not reveal its violation until approximately a month after it was discovered).

³² 47 U.S.C. § 503(b).

³³ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

³⁴ 47 C.F.R. § 1.80.

³⁵ See 47 C.F.R. § 1.1914.

16. 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.

17. **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 David S. Prohofsky, counsel for Steamboat, David S. Prohofsky, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, 333 West Wacker Drive, Chicago, Illinois 60606-1285.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau