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

In the Matter of	)	
	)	File Number: EB-07-DV-0334
The Starfish Television Network	)	
Midvale, Utah	)	NAL/Acct. No.: 200832800006
	)	FRN: 0016514879
	)	

FORFEITURE ORDER

Adopted: July 15, 2009 **Released: July 17, 2009**

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("*Order*"), we issue a monetary forfeiture in the amount of one thousand, one hundred dollars ($1,100) to The Starfish Television Network ("Starfish"), Midvale, Utah, for willful and repeated violations of Section 301 of the Communications Act of 1934, as amended, ("Act")[1] and Section 25.102(a) of the Commission's Rules ("Rules").[2] On July 31, 2008, the Enforcement Bureau's Denver Office issued a *Notice of Apparent Liability for Forfeiture* ("*NAL*") in the amount of $5,000 to Starfish for operating its fixed satellite earth station without Commission authorization.[3] Starfish filed a response ("*Response*") on September 15, 2008.[4] In this *Order*, we consider Starfish's arguments that it operated in good faith and relied on outside companies to handle the licensing process, and that the forfeiture should be reduced because of Starfish's inability to pay.

II. BACKGROUND

2. On April 28, 2008, in response to a complaint, agents from the Enforcement Bureau's Denver Office visited the Starfish facility, located at 6952 South High Tech Drive, in Midvale, Utah, to conduct an interview with Starfish's Chief Operating Officer ("COO"). The conversation revealed that Starfish was operating a fixed earth station in the 6 GHz band, "C-Band,"[5] without an authorization from the Commission. According to the COO, the Starfish fixed earth station began transmitting a compressed digital television signal on April 18, 2007. In addition, the COO explained that the uplink is transmitting to the Galaxy 11's transponder 19. In response to questions from the Denver agents, the COO produced a document showing that Starfish was operating the fixed earth station with a center frequency of 6299.5 MHz.

3. During the April 28, 2008, interview, Starfish personnel contacted the company that they had contracted with to file the FCC application for the earth station authorization with the Commission, to

[1] 47 U.S.C. § 301.

[2] 47 C.F.R. § 25.102(a).

[3] *Notice of Apparent Liability for Forfeiture,* NAL/Acct. No. 200832800006 (Enf. Bur., Western Region, Denver Office, released July 31, 2008).

[4] Starfish requested and received an extension of time to file its *Response* from the Denver Office,

[5] 3700 – 4200 and 5925 – 6425 MHz bands.

check the status of their authorization application. Starfish personnel indicated that the licensing company explained that the licensing process had not been completed, apparently due to an item regarding frequency coordination, but that they would look into the licensing issue and get back to Starfish that same day. The COO stated that Starfish's engineering consultant had filed the station authorization paperwork with the licensing company about six to eight months earlier.

4. Still on April 28, 2008, learning that the uplink was operating in the C-Band (6 GHz), FCC Agents conducted an analysis of signals coming from the Starfish uplink equipment and detected an RF signal on a center frequency of approximately 6299.5 MHz, operating with an occupied bandwidth of approximately 2.5 MHz.[6] After determining the operating center frequency of the Starfish uplink, FCC agents met with the COO, the engineering consultant and a staff engineer. The agents issued a Notice of Unlicensed Operation (NOUO) to the COO. The COO signed the NOUO. The COO stated that apparently the licensing company had issues with one of the companies that they notified with the frequency coordination and that licensing company did not follow-up after this and the FCC license application was stalled and not submitted.

5. On April 29, 2008, the Denver agents returned to the Starfish uplink transmitter location to monitor the RF output of the uplink. The agents observed an RF signal operating on a center frequency of about 6299.5 MHz and with an occupied bandwidth of approximately 2.5 MHz.[7]

6. On April 30, 2008, the Denver Office received a response from the COO to the NOUO to Starfish. The COO acknowledged his failure to follow up with licensing company to ensure that the earth station authorization was approved and granted by the Commission and enclosed a copy of the Application for new Earth Station Authorizations, FCC Form 312, submitted for The Starfish Television Network along with a Payment Confirmation for The Starfish Television Network dated April 28, 2008.

7. A review of Commission records revealed that the Starfish application for authorization for its earth station was published in a Commission Public Notice on May 7, 2008.[8] Further review revealed that Starfish's application for authorization of its earth station was granted effective June 9, 2008.[9]

8. On July 31, 2008, the Denver Office issued a *NAL* in the amount of $5,000 to Starfish, finding that Starfish apparently willfully and repeatedly violated Section 301 of the Act[10] and Section 25.102 of the Rules[11] by operating its fixed satellite earth station without Commission authorization. In its *Response,* Starfish argues that it operated in good faith and relied on outside parties concerning the licensing process, and that the forfeiture amount should be reduced because of Starfish's demonstrated inability to pay.

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[6] Measurements were made using the Agilent E4440A, PSA Series Spectrum Analyzer, 3 Hz – 26.5 GHz and Antenna Research, DRG-118/A, 1-18 GHz, Horn Antenna.

[7] Measurements were made using the Agilent E4440A, PSA Series Spectrum Analyzer, 3 Hz – 26.5 GHz and Antenna Research, DRG-118/A, 1-18 GHz, Horn Antenna.

[8] In the *FCC Public Notice, Satellite Radio Applications Services*, Report No. SES-01030, dated May 7, 2008, The Starfish Television Network is found on page 3 of 8 with a reference number of SES-LIC-20080428-00496. The application requests a frequency band of 6165 – 6425 MHz and emission of 3M00G7W for the location at 6952 Hightech Drive, Suite C, Midvale, UT, with coordinates of 40º 37' 30.90" north latitude, 111º 53' 53.40" west longitude.

[9] *FCC Public Notice, Satellite Radio Applications Services*, Report No. SES-01041, dated June 11, 2008

[10] 47 U.S.C. § 301.

[11] 47 C.F.R. § 25.102(a).

III. DISCUSSION

9. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,[12] Section 1.80 of the Rules,[13] and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement"*).[14] In examining Starfish's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.[15]

10. 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.[16] On April 28, 2008, investigation by Denver agents revealed that Starfish was operating on 6299.5 MHz, a frequency not authorized for its use by the Commission. Starfish received a NOUO from the Denver agents warning it against continuing to operate on channels for which it did not hold a valid station authorization. Again, on April 29, 2008, the Denver agents found Starfish operating on 6299.5 MHz without a Commission authorization. Starfish's Chief Operations Officer admitted to operating a fixed satellite earth station on 6299.5 MHz from The Starfish Television Network located at 6952 South High Tech Drive, Midvale, Utah, without a valid authorization issued by the FCC.

11. In its *Response,* Starfish does not dispute that it operated a fixed satellite earth station on 6299.5 MHz without a license, but argues that it acted in good faith to obtain a license prior to the Denver Office inspection. Reductions based on good faith efforts to comply generally involve situations where violators demonstrate that they initiated measures to correct or remedy violations prior to a Commission inspection or investigation.[17] We accept Starfish's explanation concerning its efforts to have its fixed satellite earth station licensed and, consequently, we find that Starfish's efforts warrant a good faith reduction of the proposed forfeiture amount and we reduce the proposed forfeiture from $5,000 to $4,000. Because Starfish operated the fixed satellite earth station without a license, as required by the Act and our Rules, we decline to cancel the forfeiture.

12. Starfish also argues that it relied on outside entities and contractors to complete the license process. While we do not dispute this statement, we find that it does not support a reduction on the forfeiture amount. The Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors,[18] and has "consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations."[19]

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[12] 47 U.S.C. § 503(b).

[13] 47 C.F.R. § 1.80.

[14] 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

[15] 47 U.S.C. § 503(b)(2)(E).

[16] 47 U.S.C. § 301, 47 C.F.R. § 25.102(a).

[17] *See Radio One Licenses, Inc.,* 18 FCC Rcd 15964, 15965 (2003), *recon. denied,* 18 FCC Rcd 25481 (2003).

[18] *See Eure Family Limited Partnership,* 17 FCC Rcd 21861, 21863 – 64 (2002).

[19] *See American Paging, Inc. of Virginia*, 12 FCC Rcd 10417, 10420 (Wireless Bur., Enf. and Cons. Inf. Div., 1997) (quoting *Triad Broadcasting Company, Inc.*, 96 FCC 2d 1235 (1984)).

13. Starfish also asks that the forfeiture amount be reduced or cancelled because of Starfish's inability to pay. To support this claim, Starfish, which was in existence for less than a year prior to the issuance of the *NAL,* supplies records concerning its revenues, expenses, assets, liabilities and equity. Generally, when analyzing a financial hardship claim, the Commission has looked to gross revenues as a reasonable and appropriate yardstick in determining whether a licensee is able to pay the assessed forfeiture.[20] However, when a licensee has been in operation for such a brief period of time, the Commission has determined that it is necessary to look at other factors other than gross revenues to determine ability to pay a proposed forfeiture.[21] The Commission has required licensees to supply information regarding what resources are available to the licensee other than revenue including, but not limited to, lines of credit and liquid assets.[22] We have reviewed the documentation by Starfish, and looked at the totality of Starfish's particular financial circumstances, in evaluating its inability to pay claim.[23] Taking into account this information, including Starfish's stated revenues, we are satisfied that the data demonstrates that Starfish does not have access to the resources necessary to pay the full proposed forfeiture amount. While we find that Starfish willfully and repeatedly violated Section 301 of the Act[24] and Section 25.102(a) of the Rules,[25] based upon its inability to pay, we conclude that pursuant to Section 503(b) of the Act and the *Forfeiture Policy Statement*, reduction of the $4,000 forfeiture to $1,100 is warranted.

IV. ORDERING CLAUSES

14. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, The Starfish Television Network, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of $1,100 for willfully and repeatedly violating Section 301 of the Act and Section 25.102(a) of the Rules.[26]

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.[27] 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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account

[20] *See PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992).

[21] *A-O Broadcasting Corporation,* 31 Comm. Reg (P&F) 411 (2003) at para. 24.

[22] *Id.*

[23] *SM Radio, Inc.*, 23 FCC Rcd 2429, 2432 (2008); *Radio X Broadcasting Corporation*, 21 FCC Rcd 12209, 12216 (2006).

[24] 47 U.S.C. § 301.

[25] 47 C.F.R. § 25.102(a).

[26] 47 U.S.C. §§ 301, 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 25.102(a).

[27] 47 U.S.C. § 504(a).

number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to The Starfish Television Network, at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau