

Federal Communications Commission

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

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

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: July 31, 2008

By the District Director, Denver Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that The Starfish Television Network ("Starfish"), Midvale, Utah, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended, ("Act")¹ and Section 25.102(a) of the Commission's Rules ("Rules")² for operating its fixed satellite earth station without Commission authorization. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),³ that Starfish is apparently liable for a forfeiture in the amount of five thousand dollars (\$5,000).

II. BACKGROUND

2. On April 28, 2008, in response to 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,"⁴ 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 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

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 25.102(a).

³ 47 U.S.C. § 503(b).

⁴ 3700 – 4200 and 5925 – 6425 MHz bands.

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.⁵ 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 return 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.⁶

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, 2008.⁷ Further review revealed that Starfish's application for authorization of its earth station was granted effective June 9, 2008.⁸

III. DISCUSSION

8. 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. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁹ The term "repeated"

⁵ 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.

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 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 request 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 40° 37' 30.90" north latitude, 111° 53' 53.40" west longitude.

⁸ *FCC Public Notice, Satellite Radio Applications Services*, Report No. SES-01041, dated June 11, 2008

⁹ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...."

(continued...)

means the commission or omission of such act more than once or for more than one day.¹⁰

9. 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.¹¹ 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, for approximately one year without a valid authorization issued by the FCC. Consequently, Starfish's violation was willful. The violation occurred for more than one day, therefore, it was repeated. Based on the evidence before us, we find that Starfish apparently willfully and repeatedly violated Section 301 of the Act and Section 25.102(a) of the Rules by operating an earth station in the fixed satellite service without the benefit of a license granted by the Commission.

10. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("*Forfeiture Policy Statement*"), and Section 1.80 of the Rules, the base forfeiture amount for operation of a station without an instrument of authorization is \$10,000.¹² In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹³ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Starfish's operation is not analogous to a "pirate" station operator, and, consequently, we downwardly adjust the proposed forfeiture amount to \$5,000.¹⁴ We conclude that Starfish is apparently liable for a \$5,000 forfeiture.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, The Starfish Television Network, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of five thousand dollars (\$5,000) for violations of Sections 301 of the Act and 25.102(a) of the Rules.¹⁵

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, The Starfish

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See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁰ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

¹¹ 47 U.S.C. § 301, 47 C.F.R. § 25.102(a).

¹² 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹³ 47 U.S.C. § 503(b)(2)(E).

¹⁴ See *Gateway Security Systems, Inc.*, 18 FCC Rcd 24026 (EB 2003).

¹⁵ 47 U.S.C. §§ 503(b), 301, 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 25.102(a).

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Television Network, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. 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 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. 20554.¹⁶ Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Denver District Office, 215 South Wadsworth Boulevard, Suite 303, Lakewood, Colorado, 80226, and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall be sent to WR-Response@fcc.gov.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to The Starfish Television Network.

FEDERAL COMMUNICATIONS COMMISSION

Nikki P. Shears
District Director
Denver District Office
Western Region
Enforcement Bureau

¹⁶ See 47 C.F.R. § 1.1914.