

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

In the Matter of)	
)	
Shared Data Networks, LLC)	File No. EB-04-SE-385
Satellite Earth Stations, Call Signs E900105,)	NAL/Acct. No. 200632100001
E900106, and E900107)	FRN # 0003827888
Charlotte, North Carolina)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 17, 2005

Released: November 22, 2005

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find Shared Data Networks, LLC (“SDN”), licensee of satellite earth stations, E900105, E900106, and E900107, Charlotte, North Carolina, apparently liable for a forfeiture in the amount of nineteen thousand dollars (\$19,000) for operating without Commission authority and failing to file timely renewal applications for its three earth stations 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. SDN operates a Very Small Aperture Terminal (“VSAT”) system, comprised of earth stations E900105, E900106, and E900107. SDN’s authorizations for each of its earth stations specified license terms that commenced on March 23, 1990 and expired on March 23, 2000.³ In December of 2004, SDN’s counsel contacted the Commission’s International Bureau (“IB”) and disclosed that SDN failed to timely renew the licenses for its three earth stations and was operating without Commission authority. Thereafter, on January 11, 2005, SDN requested special temporary authority (“STA”) to continue operations and filed an application to reinstate its licenses. IB granted SDN’s STA on February 14, 2005,⁴ and reinstated its licenses on April 11, 2005.⁵

3. IB referred this case to the Enforcement Bureau (“Bureau”) for investigation and possible enforcement action. The Bureau’s Spectrum Enforcement Division issued SDN a letter of inquiry

¹47 U.S.C. § 301.

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

³See File Nos. SES-LIC-19891221-00072, SES-LIC-19891221-00063, and SES-LIC-19891221-00064.

⁴See File No. SES-STA-20050111-00031 (granted February 14, 2005).

⁵See File No. SES-LIC-20050111-00030 (granted April 11, 2005).

(“LOI”) on March 9, 2005,⁶ and a follow-up LOI on August 18, 2005.⁷

4. In its responses,⁸ SDN admitted that it failed to timely renew its earth station licenses and that it continued to operate its stations without Commission authority. According to SDN, it believed that its renewal applications were timely filed and that its licenses remained in effect.⁹ SDN claimed that it first became aware that its station licenses expired in November of 2004.¹⁰ SDN also claimed that it took immediate steps to retain counsel, consult with Commission staff, prepare and file “an application for licensing of its VSAT operations, along with a request for special temporary authority to operate pending action on its application for a new VSAT license,” and thereby bring its stations into compliance with the Commission’s licensing requirements.¹¹

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. Section 25.121(c) provides that the license term for an earth station is specified in the instrument of authorization.¹² Section 25.121(e) of the Rules requires the licensee of an earth station to file its renewal application “no earlier than 90 days, and no later than 30 days, before the expiration date of the license.”¹³ Absent a timely filed renewal application, an earth station license automatically terminates at the end of the license period.¹⁴

6. As stated previously, SDN’s authorizations specified that the license terms would expire on March 23, 2000. SDN admitted that it failed to file its renewal applications during the requisite 30-90 day period prior to March 23, 2000. Moreover, SDN admitted that it continued to operate these stations without Commission authority from March 23, 2000 (when its licenses expired) until February 14, 2005 (when its STA was granted). Thus, it appears that SDN violated Section 25.121(e) of the Rules by

⁶See Letter from Kathryn Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Larry W. Jones, President and CEO, Shared Data Networks, LLC (March 9, 2005).

⁷See Letter from Kathryn Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Larry W. Jones, President and CEO, Shared Data Networks, LLC (August 18, 2005).

⁸See Letter from Larry W. Jones, President and CEO, Shared Data Networks, to Ava Holly Berland, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (September 1, 2005) (“Follow-up Response”); Letter from Larry W. Jones, President and CEO, Shared Data Networks, to Ava Holly Berland, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (March 22, 2005) (“Response”).

⁹See Further Response at 1; Response at 1.

¹⁰See Response at 2. .

¹¹*Id.* at 2.

¹²See 47 C.F.R. § 25.121(c).

¹³47 C.F.R. § 25.121(e).

¹⁴47 C.F.R. § 25.161.

failing to timely file renewal applications, and violated Section 301 of the Act and Section 25.102(a) of the Rules by continuing to operate its stations without Commission authority.

7. Section 503(b) of the Act,¹⁵ and Section 1.80(a) of the Rules,¹⁶ 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.¹⁷ Based upon the record before us, it appears that SDN’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)(D) 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.”¹⁸ Having considered the statutory factors, we find it appropriate to downwardly adjust the proposed aggregate forfeiture from \$22,500 to \$19,000 based on SDN’s voluntary disclosure of its violations.

9. Section 1.80(b) of the Rules sets a base forfeiture amount of ten thousand dollars (\$10,000) for operation of a station without Commission authority and three thousand dollars (\$3,000) for failure to file the required forms or information (e.g., timely file a renewal application).¹⁹ As the Commission recently held, a licensee’s failure to 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.²⁰ Accordingly, we herein propose separate forfeiture amounts for SDN’s separate violations.

10. We propose a \$18,000 forfeiture for SDN’s continued operations of its three earth stations beyond March 23, 2000 (\$6,000 for operating each station). In proposing \$6,000 for each station’s unauthorized operations, 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

¹⁵47 U.S.C. § 503(b).

¹⁶47 C.F.R. § 1.80(a).

¹⁷See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991); see also *WCS Communications, Inc.*, 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).

¹⁸47 U.S.C. § 503(b)(2)(D). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17110 (1997), recon. denied (1999).

¹⁹47 C.F.R. 1.80(b).

²⁰See *Discussion Radio, Inc.*, 19 FCC Rcd 7433, 7438 (2004) (assessing a proposed forfeitures of \$5,000 and \$1,500 against a broadcaster who both operated its station for 14 months without Commission authority and failed to timely file its renewal application).

thus downwardly adjusts the \$10,000 base forfeiture amount accordingly.²¹ We also recognize that the \$6,000 proposed forfeiture amount is higher than those assessed against other licensees who operated with expired licenses.²² However, we believe that the circumstances warrant a higher forfeiture amount, given that SDN's unauthorized operations spanned almost a five-year period, a significantly greater period than those presented in other cases.²³ The higher \$6,000 forfeiture for each station relates to SDN's apparent violations that occurred within the past year, but takes into account that those apparent violations were continuous in nature.²⁴ Additionally, consistent with precedent,²⁵ we propose a \$4,500 forfeiture for SDN's failure to file the renewal applications for its three stations (\$1,500 for each failure to file) within the time period specified in Section 25.121(e) of the Rules. Thus, we propose an aggregate forfeiture of \$22,500 (\$18,000 for unauthorized operation and \$4,500 for failure to file timely renewal applications).

11. We find that a downward adjustment of this proposed aggregate forfeiture amount to \$19,000 is warranted because SDN made voluntary disclosures to Commission staff without undue delay and undertook corrective measures -- after learning of its violations, *but* prior to any Commission inquiry or initiation of enforcement action.²⁶ We do not find, however, that SDN's lack of awareness presents a mitigating factor warranting a further downward adjustment. As a Commission licensee, SDN's 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 authorizations and maintain operating

²¹See *Discussion Radio, Inc.*, 19 FCC Rcd at 7438 (proposing a \$5,000 forfeiture for operating a station for 14 months beyond the expiration of its license).

²²*Id.* See also *Verizon Southwest, Inc.*, 16 FCC Rcd 2247 (Enf. Bur., Technical and Public Safety Div., 2001) (proposing a \$5,000 forfeiture for operating a station for over 2 years beyond the expiration of its license).

²³*Id.*

²⁴Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6) prohibits the assessment of a forfeiture for violations that occurred more than a year prior to the NAL, but does not bar us from taking into account the continuous nature of violations in determining the appropriate enforcement action and/or forfeiture amount. See, e.g., *Globcom, Inc. d/b/a Globcom Global Communications*, 18 FCC Rcd 19893, 19903 ¶ 23 (2003), *rev. pending*; *Roadrunner Transportation, Inc.*, 15 FCC Rcd 9669, 9671-71 ¶ 8 (2000); *Cate Communications Corp.*, 60 RR 2d 1386, 1388 ¶ 7 (1986); *Eastern Broadcasting Corp.*, 10 FCC 2d 37, 37-38 ¶ 3 (1967); *Bureau D'Electronique Appliquee, Inc.*, 20 FCC Rcd 3445, 3447-48 ¶¶ 8-9 (Enf. Bur., Spectrum Enf. Div., 2005), *response pending*.

²⁵See *Discussion Radio, Inc.*, 19 FCC Rcd at 7438 (proposing a \$1,500 forfeiture for failure to file a timely renewal application for a broadcast station); see also *Self Communications, Inc.*, 15 FCC Rcd 18661, 18664-65 (WTB, Public Safety and Private Wireless Div., 2000) (proposing a \$1,500 forfeiture for failure to file a timely renewal application for a 218-219 MHz service); *Vincent Communications, Inc.*, 15 FCC Rcd 8432 (WTB, Enf. and Consumer Info. Div., 1999) (proposing an aggregate \$4,500 forfeiture for failure to timely renewal applications for three paging stations), *forfeiture ordered*, 15 FCC Rcd 18263 (Enf. Bur. 2000); *Snider Communications Corp.*, 14 FCC Rcd 20047, 20048 (WTB, Enf. and Consumer Info. Div., 1999) (proposing an aggregate \$21,000 forfeiture for failure to file timely renewal applications for 14 paging stations). See also *American Paging, supra* (imposing separate forfeitures for the unauthorized operation of two transmitters).

²⁶See, e.g., *Radio One Licenses, Inc.*, 18 FCC Rcd 15964, 15965 ¶ 4 (2003), *recon. denied*, 18 FCC Rcd 25481 (2003); *Emery Telephone*, 13 FCC Rcd 23854, 23858 (1998), *recon. denied*, 15 FCC Rcd 7181 (1999); *Petracom of Texarkana, LLC*, 19 FCC Rcd 8096, 8097-98 ¶¶ 5-6 (Enf. Bur. 2004); *American Family Association*, 17 FCC Rcd 181135, 18137 (Enf. Bur. 2002), *recon. denied*, 18 FCC Rcd 2413 (Enf. Bur. 2003); but see *American Paging, Inc.*, 12 FCC Rcd 10417, 10420 (WTB, Enf. and Consumer Info. Div., 1997) (finding that the mitigating effect of voluntary disclosure was abrogated by the licensee's delay).

authority for its three earth stations.²⁷

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to pursuant to Section 503(b) of the Act²⁸ and Sections 0.111, 0.311 and 1.80 of the Rules,²⁹ SDN **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of nineteen thousand dollars (\$19,000) for its apparent willful and repeated violations 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,³⁰ within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, SDN **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. Requests for payment of the full amount of the NAL under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.³¹

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.

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.

²⁷See *Discussion Radio*, 19 FCC Rcd 7433, 7437 (2004); *William S. Mills*, 15 FCC Rcd 20071, 20072 (Enf. Bur. 2000); see also *Peacock's Radio and Wild's Computer Service, Inc.*, 16 FCC Rcd 15016, 15017 (2001).

²⁸47 U.S.C. § 503(b).

²⁹47 C.F.R. § 0.111, 0.311 and 1.80.

³⁰47 C.F.R. § 1.80.

³¹See 47 C.F.R. § 1.1914.

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 Larry W. Jones, President and CEO, Shared Data Networks, LLC, 11101 Nations Ford Road, Charlotte, NC 28270 and to counsel for Shared Data Networks, Karis A. Hastings, Esq., Hogan & Hartson LLP, 555 Thirteenth Street, NW, Washington, D.C. 20004.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Spectrum Enforcement Division
Enforcement Bureau