

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

In the Matter of)	
)	File No. EB-05-SE-211
American General Finance, Inc.)	NAL/Acct. No. 200632100015
Licensee of Earth Stations E950320,)	FRN # 0013399076
E950321, E950322, E950323)	
Evansville, Indiana		

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 27, 2006

Released: June 29, 2006

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find American General Finance, Inc. ("AGF"), licensee of Ku-band¹ satellite earth stations E950320, E950321, E950322, and E95323, in Evansville, Indiana, apparently liable for a forfeiture in the amount of \$20,000 for unauthorized modifications made to its Very Small Aperture Terminal ("VSAT") network, in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended, ("Act")² and Sections 25.102(a) and 25.117(a) of the Commission's Rules ("Rules").³

II. BACKGROUND

2. AGF is a large consumer finance company that has a licensed fixed satellite VSAT network,⁴ which consists of a hub earth station with call sign E950320, and three associated remote earth stations with call signs E950321, E950322, E950323. On June 2, 2005, AGF filed with the Commission's International Bureau a request for Special Temporary Authority ("STA")⁵ for each of the four stations. AGF had previously modified each station's operation such that each station's operation was no longer consistent with its authorization. Through each STA request, AGF sought temporary authority to continue operation of each station with the unauthorized modified facilities. AGF also included information indicating that it had failed to seek authority for a transfer of control from its parent company,

¹ 11.7-12.2 and 14.0-14.5 GHz bands.

² 47 U.S.C. § 301.

³ 47 C.F.R. §§ 25.102(a) and 25.117(a).

⁴ AGF uses the VSAT network to manage, distribute and collect information among its headquarters and its branch offices, and to facilitate administration of lending, financing and other credit transactions with its customers.

⁵ Filings from Elizabeth Park, Counsel for AGF, to the International Bureau, Federal Communications Commission (June 2, 2005).

American International Group, in 2001.⁶ Also on June 2, 2005, AGF filed a renewal of license application for each of the four stations in advance of each station's license expiration date of July 14, 2005.

3. In each STA request, AGF disclosed that “[d]ue to an inadvertent misunderstanding on the part of AGF’s technical staff, AGF failed to file a request for modification at the time it made [certain] changes to its facilities.”⁷ AGF stated that it regretted its oversight in changing its network operations without first requesting authority from the Commission to do so, and that “it has taken measures to ensure future compliance with the Commission’s rules.”⁸ On June 8, 2005, in another correspondence with the International Bureau, AGF admitted that it became aware of these oversights “[d]uring the course of preparing renewal applications for these licenses”⁹

4. In the June 8, 2005 correspondence, AGF described the three modifications it made without Commission approval as follows. In January, 2003, it added three emission designators to each of its four stations (“modification 1”); in January, 2003, it also added remote antennas in Puerto Rico and the U.S. Virgin Islands at stations E950322 and E950323 (“modification 2”); and, in October, 2004, it began deploying 98 cm antennas at station E950321 (“modification 3”).¹⁰

5. The International Bureau granted the STAs for all four stations for 60 days on July 14, 2005,¹¹ and granted all four license renewal applications on July 15, 2005.¹² On the same date, July 15, 2005, the International Bureau referred the case to the Enforcement Bureau for investigation and possible enforcement action. On July 29, 2005, AGF filed four modification applications which the International Bureau granted on September 30, 2005. Both the STAs and the modification applications¹³ were granted “without prejudice to any future enforcement action against the company in connection with unauthorized operation of its radio facilities.”¹⁴

⁶ The unauthorized transfer of control admission will be referred to the Investigations and Hearings Division of the Enforcement Bureau for appropriate action.

⁷ See Attachment A to each STA that AGF filed, *supra*, n. 5.

⁸ *Id.*

⁹ E-Mail from Elizabeth Park, counsel for AGF, to the Satellite Division, International Bureau, Federal Communications Commission (June 8, 2005).

¹⁰ *Id.*

¹¹ See File No. SES-STA-20050602-00677, SES-STA-20050602-00678, SES-STA-20050602-00679, and SES-STA-20050602-00680. The International Bureau renewed all the STAs on September 13, 2005, for 30 days under File Nos. SES-STA-20050909-01244, SES-STA-20050909-01245, SES-STA-20050909-01246, and SES-STA-20050909-01247.

¹² See File Nos. SES-RWL-20050625-00755, SES-RWL-20050625-00756, SES-RWL-20050625-00757, and SES-RWL-20050625-00758.

¹³ See File Nos. SES-MOD-20050802-01027, SES-MOD-20050802-01028, SES-MOD-20050802-01029 and, SES-MOD-20050802-01030.

¹⁴ *Supra*, notes 11 and 13.

III. DISCUSSION

6. 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, under Section 25.117(a) of the Rules, Commission approval is required before a modification may be implemented which affects the parameters or terms and conditions of a Part 25 radio station authorization.¹⁵ In its STA applications and correspondence, AGF acknowledges that its personnel made the unauthorized modifications listed above. The effect of modification 1, adding unauthorized emission designators to each of the four stations, was to increase impermissibly the bandwidth of its emissions. With modification 2, adding remote terminals in Puerto Rico and the U.S. Virgin Islands, AGF expanded its area of operation without authorization. Modification 3, deploying unauthorized 98 cm antennas, violated the Commission's two degree spacing policy and thereby creates the potential for causing interference.¹⁶ Thus, all three modifications affected the parameters or terms and conditions of AGF's authorizations. Therefore, AGF's failure to obtain prior Commission approval before implementing the modifications violated Section 25.117(a) of the Rules.

7. Section 503(b) of the Act,¹⁷ and Section 1.80(a) of the Rules,¹⁸ 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,¹⁹ and "repeatedly" means more than once.²⁰ Based upon the record before us, AGF apparently willfully and repeatedly violated Section 301 of the Act and Sections 25.102(a) and 25.117(a) of the Rules by the modifications made to its stations without Commission authority. We therefore find that a forfeiture penalty is warranted.

8. The Commission's *Forfeiture Policy Statement*²¹ and Section 1.80(b) of the Rules

¹⁵ None of the exceptions to the requirement of prior Commission approval for modifications, as described in Section 25.118 of the Rules, 47 C.F.R. § 25.118, apply here.

¹⁶ See 47 C.F.R. § 25.134. This section explains the licensing provisions of VSAT networks.

¹⁷ 47 U.S.C. § 503(b).

¹⁸ 47 C.F.R. § 1.80(a).

¹⁹ 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,' ... 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" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991) ("*Southern California*") (discussing legislative history regarding applicability of Section 312(f)(1) definition of "willful" to Section 503(b)).

²⁰ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, provides that "[t]he term 'repeated,' ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." See *Southern California*, *supra*, 6 FCC Rcd at 4388.

²¹ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17114 (1997), recon. denied (1999) ("*Forfeiture Policy Statement*").

establish a base forfeiture amount of four thousand dollars (\$4,000) for unauthorized emissions and construction or operation at an unauthorized location, and five thousand dollars (\$5,000) for use of unauthorized equipment.²² We believe that AGF's unauthorized modifications justify the following proposed forfeitures. For AGF's addition of unauthorized emission designators, which increased the bandwidth of its emissions for all four stations (modification 1), we propose a \$4,000 forfeiture for each violation, or \$16,000. For AGF's expansion of its area of operation at two of its stations by adding remote antennas in Puerto Rico and the U.S. Virgin Islands without authorization, we propose a \$4,000 forfeiture for each station, or \$8,000 (modification 2).²³ Lastly, for AGF's deployment of unauthorized 98 cm antennas (modification 3), we propose a \$5,000 forfeiture because the unauthorized antennas violated the Commission's two degree spacing policy and thereby created the potential for interference.²⁴ The proposed forfeiture amount for these four violations totals \$29,000.

9. In proposing a forfeiture, 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."²⁵ Considering the statutory factors as explained above, we find it appropriate to reduce the proposed aggregate forfeiture of \$29,000, based on the fact that AGF has a history of compliance²⁶ and that it voluntarily disclosed the violations to Commission staff.²⁷ Accordingly, on the basis of AGF's history of compliance and voluntary disclosure, we are downwardly adjusting the proposed forfeiture from \$29,000 to \$20,000.

IV. ORDERING CLAUSES

10. 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 American General Finance, Inc. **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for its apparent willful and repeated violations of Section 301 of the Act, and Sections 25.102(a) and 25.117(a) of the Rules.

²² 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4); *Section I. Base Amounts for Section 503 Forfeitures*.

²³ These violations occurred at earth stations E950322 and E950323.

²⁴ This violation occurred at earth station E950321.

²⁵ 47 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; *Forfeiture Policy Statement, supra*.

²⁶ *See, e.g., KGB, Inc.*, 13 FCC Rcd 16396, 16398 (1998)(reducing the proposed forfeiture from \$11,500 to \$9,200 for airing indecent material due to the broadcast licensee's history of overall compliance); *South Central Communications Corp.*, 18 FCC Rcd 700, 702 (Enf. Bur. 2003)(reducing the proposed forfeiture from \$10,000 to \$8,000 for antenna structure lighting violations due to the licensee's history of overall compliance).

²⁷ *See Petracom of Texarkana, LLC*, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur. 2004); *see also Criswell College*, 21 FCC Rcd 5106, 5109 (Enf. Bur., Spectrum Enf. Div., 2006); *Gilmore Broadcasting Corporation*, DA 06-1189 at ¶ 10 (Enf. Bur., Spectrum Enf. Div., June 5, 2006).

²⁸ 47 U.S.C. § 503(b).

²⁹ 47 C.F.R. § 0.111, 0.311 and 1.80.

11. **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*, American General Finance, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. 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 1A625, Washington, D.C. 20554.³¹

13. 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.

14. 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.

15. **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 counsel for American General Finance, Inc., Elizabeth Park, Esq., Latham & Watkins LLP, 555 11th St., N.W., Suite 1000, Washington, D.C. 20004.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Spectrum Enforcement Division
Enforcement Bureau

³⁰ 47 C.F.R. § 1.80.

³¹ See 47 C.F.R. § 1.1914.