

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

In the Matter of)	
)	
INTELSAT NORTH AMERICA LLC)	File No. EB-06-IH-2018
)	NAL Account No. 200632080167
Licensee of Various C-band and Ku-band)	FRN No. 0013088984
Geostationary Satellites)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 16, 2006

Released: August 16, 2006

By the Chief, Investigations and Hearings Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find that Intelsat North America LLC ("Intelsat"), licensee of various C-band and Ku-band Geostationary Satellites, apparently violated Section 1.17 of the Commission's rules (relating to truthful and accurate statements to the Commission) by making incorrect and/or misleading certifications without a reasonable basis for doing so in an application to relocate one of its satellites. Specifically, Intelsat erroneously certified to the Commission that it was relocating a satellite to 178.0° E.L. and that the satellite's operation at that location would be in accordance with all applicable coordination agreements, and the Commission relied on this certification in allowing Intelsat to modify its license. Intelsat apparently made the required certifications without reviewing the entire applicable collocation/coordination agreement for the proposed destination. The incorrect certification resulted in Intelsat relocating the satellite without having followed the proper procedures to obtain approval to do so. For the reasons explained below, because Intelsat failed to exercise the requisite diligence in the application process, we conclude that Intelsat is apparently liable for a forfeiture in the amount of \$11,000.

II. BACKGROUND

2. On August 17, 2005, Intelsat filed an application entitled, "Fleet Management Notice of Intelsat North America LLC of Modification of Authorization for INTELSAT 604" to relocate one satellite in its fleet from 157.0° E.L. to 178.0° E.L.¹ Intelsat filed this notice under the authority of Section 25.118 of the Commission's rules, which provides a streamlined procedure for satellite fleet operators to request authority to move satellites to alternative authorized locations provided that the licensee makes certain required certifications.² As part of its application, Intelsat certified to the Commission that it was moving its spacecraft to 178° E.L. and that it would "comply with all applicable coordination agreements at the newly occupied orbital location" and that it has "completed any necessary coordination of its space station at the new location

¹ See *Fleet Management Notice of Intelsat North America LLC of Modification of Authorization for INTELSAT 604*, IBFS File Number SAT-MOD-20050817-00161 filed August 17, 2005 ("August 17, 2005, Fleet Management Notice"). Intelsat operates a fleet of geostationary satellites in the C-band and the Ku-band. *Id.* at 1-2.

² 47 C.F.R. § 25.118.

with potentially affected space station operators.”³ Based on these certifications, the International Bureau, on September 16, 2005, modified Intelsat’s authorization to reflect this change in authorized location.⁴

3. On January 30, 2006, Intelsat filed a request for a Special Temporary Authority to stop the drift of its Intelsat 604 spacecraft and to now operate the satellite at 177.85° E.L. before reaching its authorized destination, 178.0° E.L.⁵ Intelsat made this request after discovering that a 2001 collocation/coordination agreement between Intelsat and Inmarsat, the operator of a nearby satellite, actually precluded Intelsat’s operation of its Intelsat 604 satellite at the 178.0° E.L. location.⁶ The International Bureau, on January 30, 2006, granted Intelsat’s request for special temporary authority but informed Intelsat that it was doing so without prejudice to any enforcement action that may be appropriate with respect to certifications made in the *August 17, 2005, Fleet Management Notice*.⁷

4. On June 21, 2006, the FCC’s Enforcement Bureau issued a letter of inquiry to Intelsat directing Intelsat to, *inter alia*, explain the basis for its August 17, 2005, certification that operation of its Intelsat 604 spacecraft at the 178.0° E.L. orbital location would be in accordance with applicable coordination agreements and state when it learned that such agreements precluded such operation.⁸ The letter of inquiry also directed Intelsat to provide copies of the coordination agreements at issue.⁹ On July 20, 2006, Intelsat responded to the letter of inquiry.¹⁰ In its response, Intelsat indicated that it was precluded from operating its Intelsat 604 spacecraft at the authorized destination by a 2001 collocation/coordination agreement with Inmarsat, the operator of a satellite that was in the vicinity of 178.0° E.L.¹¹ It further explained that the persons responsible for certifying that the operation at the proposed destination, 178.0° E.L., forgot about the collocation portion of Intelsat’s collocation/coordination agreement with Inmarsat.¹² This agreement provided for both the spacing between Intelsat and Inmarsat satellites and the technical parameters relating to frequency use by both satellites.¹³

³ *August 17, 2005, Fleet Management Notice*, Exhibit 2.

⁴ See Public Notice, “Policy Branch Information,” 20 FCC Rcd 15816, 15817-18 (2005).

⁵ Section 25.210(j) requires that the satellite operate within 0.05° of its assigned location. See 47 C.F.R. § 25.210(j). Intelsat’s request involved moving the Intelsat 604 spacecraft 0.15° from its assigned location.

⁶ See *Request for Special Temporary Authority Intelsat 604*, SAT-STA-20060130-00011 filed January 30, 2006.

⁷ Attachment to STA Grant dated January 30, 2006.

⁸ Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Intelsat North America LLC dated June 21, 2006.

⁹ See *id.* at 5.

¹⁰ See Letter from Robert L. Pettit, Esq., Wiley Rein & Fielding LLP, counsel for Intelsat North America LLC, to Jennifer Lewis, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated July 20, 2006 (“Response”). See also Letter from Robert L. Pettit, Esq., Wiley Rein & Fielding LLP, counsel for Intelsat North America LLC, to Jennifer Lewis, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated July 25, 2006 (transmitting two additional affidavits relating to the Response). Intelsat requested confidential treatment of its Response, including electronic mail and other documents relevant to the planning operation of its Intelsat 604 spacecrafts at the 178.0 E.L. location. We do not rule on Intelsat’s request at this time because it is unnecessary to do so for purposes of this Order. Consistent with the request, however, we limit ourselves to describing or characterizing the substance of the materials and providing record citations herein, rather than actually quoting the materials or otherwise incorporating them into the Order.

¹¹ See Response at 8.

¹² See *id.* at 10.

¹³ See *id.* at 9.

5. Finally, Intelsat states that, on January 31, 2006, the day after this error was discovered, Intelsat took steps to prevent any future errors of this type.¹⁴ Specifically, Intelsat states that appropriate employees, at the direction of Intelsat's general counsel, have prepared a chart identifying all orbital locations subject to collocation agreements for its use when considering future moves of this type.¹⁵

III. DISCUSSION

6. The Commission has adopted fleet management procedures to streamline the processing of satellite fleet management modifications.¹⁶ The procedures adopted under Section 25.118(e) of the Commission's rules allow a satellite operator to rearrange satellites in its fleet among its assigned orbital locations to reflect business and customer considerations where no other public interest factors are adversely affected.¹⁷ Accordingly, a space station operator may modify its license to this end without prior authorization, but upon 30 days prior notice to the Commission and to any potentially affected licensed spectrum user.¹⁸ To ensure that the streamlined procedure is used only in the most appropriate circumstances, the Commission requires the operator to certify that it meets nine specific requirements.¹⁹ Among the requirements are that the licensee certify that the satellite in question will be located at a location assigned to the licensee, that the satellite will operate in accordance with all applicable coordination agreements at the proposed destination, and that the satellite licensee has completed any necessary coordination of its satellite at the new location with other potentially affected space station operators.²⁰ In this case, if Intelsat had submitted accurate information (particularly with respect to its coordination agreements), which all Commission licensees are expected to do, its application for streamlined treatment would have been dismissed or denied. Instead, the Commission approved Intelsat's request for modification based on Intelsat's certifications, which apparently were untrue.

7. Based on our review of the record, we find that Intelsat apparently violated Section 1.17 of the Commission's rules²¹ by making erroneous certifications in the process of relocating its Intelsat 604 spacecraft. This rule provides in pertinent part:

(a) . . . no [Applicant for any Commission authorization] shall . . .

(2) in any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.²²

¹⁴ See *id.* at 12.

¹⁵ See *id.*

¹⁶ See *Amendment of the Commission's Space Station Licensing Rules and Policies*, Second Report and Order, 18 FCC Rcd 12507 (2003); see also Letter from Thomas S. Tycz, Chief, Satellite Division, to David K. Moskowitz, Esq., Executive Vice President and General Counsel, EchoStar Satellite LLC, 20 FCC Rcd 9156, 9157 (2005) (dated May 19, 2005).

¹⁷ See *Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd at 12509-10, ¶ 7.

¹⁸ See *id.* at 12511, ¶ 9.

¹⁹ See 47 C.F.R. § 25.118(e)(1)-(9).

²⁰ See 47 C.F.R. § 25.118(e)(1), (4)-(5).

²¹ 47 C.F.R. § 1.17.

²² *Id.*

Thus, Intelsat was required to have a reasonable basis to believe its certifications to the Commission in the *August 17, 2005, Fleet Management Notice* were correct and not misleading.²³ In this instance, however, Intelsat did not comply with this requirement.

8. While Intelsat concedes committing error in its submissions to the Commission, it contends that its actions do not rise to the level of a Section 1.17 violation for two reasons. First, Intelsat argues that its certifications to the Commission were technically correct.²⁴ Intelsat asserts that industry practice distinguishes between “collocation” and “coordination.”²⁵ Therefore, according to Intelsat, when the company’s employees referred only to the frequency coordination portion of the 2001 agreement in certifying that Intelsat was in compliance with all “coordination” agreements and had “coordinated” the new location with other satellite operators, those statements were literally true. We disagree. Intelsat’s interpretation of Section 25.118(e) would eliminate the need for coordination of the physical location of satellites altogether, a position altogether at odds with the purpose and goals of the rule provision. Regardless of any distinction in “industry practice” between “collocation” and “coordination,” we conclude that Intelsat’s employees reasonably should have reviewed the company’s entire agreement with Inmarsat before making the certifications to the Commission.

9. Second, Intelsat asserts that even if the Section 25.118 certification is read to encompass both coordination of frequencies and location, Section 1.17 of the Commission’s rules does not create strict liability for erroneous representations, but simply requires a reasonable basis for making any representations in a written statement to the Commission.²⁶ According to Intelsat, because the employee who actually made the certifications consulted with company personnel with specialized knowledge of the applicable agreements²⁷ and was assured that the relocation was in keeping with applicable coordination agreements,²⁸ Intelsat exercised the diligence required by Section 1.17.

10. We disagree with the assertion that such cursory consultation constitutes due diligence under these circumstances. It is incumbent on satellite operators making Section 25.118(e) certifications to fully and thoroughly review all applicable agreements to determine the accuracy of information to be certified to the Commission; it is not sufficient to merely rely on the recollection of company personnel of matters contained in written agreements. As the Commission has stated, “[we rely] heavily on the truthfulness and accuracy of the information provided to us. If information submitted to us is incorrect, we cannot properly carry out our statutory responsibilities.”²⁹ Intelsat’s perfunctory review of the 2001 agreement resulted in a significant error, which placed its satellite and that of Inmarsat in danger of operating in unsafe

²³ See *Amendment of Section 1.17 of the Commission’s Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4021 ¶ 10 (2003) (reasonableness depends on the circumstances under which a written statement is made to the Commission, and the Commission described its standard as akin to a negligence standard), *recon. denied*, Memorandum Opinion and Order, 19 FCC Rcd 5790, *further recon. denied*, Memorandum Opinion and Order, 20 FCC Rcd 1250 (2004). See also Letter from Peter H. Doyle, Chief, Audio Services Division, Media Bureau, Federal Communications Commission, to Lee W. Shupert, Esq., KMZ Roseman, counsel for ICS Holdings, Inc., DA 06-1427, 2006 WL 1911076 (MB/ASD rel. July 12, 2006) (admonishing applicant in a renewal application proceeding for minor technical violation of Section 1.17 and cautioning applicant to be more attentive to applicant certifications in the future as a false statement, even absent an intent to deceive, constitutes an actionable violation of Section 1.17 of the Commission’s rules).

²⁴ See Response at 9.

²⁵ *Id.*

²⁶ See *id.* at 11.

²⁷ See *id.*

²⁸ See *id.*

²⁹ See *Amendment of Section 1.17 of the Commission’s Rules Concerning Truthful Statements to the Commission*, Notice of Proposed Rulemaking, 17 FCC Rcd 3296, 3297 ¶ 3 (2002) (subsequent history omitted).

proximity. Only after Intelsat began moving its satellite did it learn of its mistake,³⁰ and then only when an Inmarsat employee sought confirmation that Intelsat was moving its satellite to the location designated in the 2001 agreement. At that point, Intelsat realized it had erred and took corrective measures.³¹

11. Section 503(b)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b)(1), 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)(1) has been interpreted to mean simply that the acts or omissions are committed knowingly.³² Based on the evidence before us, we find that Intelsat apparently provided to the Commission in conjunction with its *August 17, 2005, Fleet Management Notice* material factual information that was incorrect and/or misleading without having a reasonable basis for making the representations contained therein, in violation of Section 1.17 of the Commission's rules.

12. Pursuant to Section 1.80 of the Commission's rules,³³ the base forfeiture amount for misrepresentations or lack of candor is the statutory maximum or, in this case, \$11,000.³⁴ Section 1.80(b)(4) of the Commission's rules also specifies that, in determining the amount of a forfeiture penalty, the Commission or its designee will take into account "the nature, circumstances, extent, and gravity of the violations 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."³⁵ The Commission takes very seriously the requirement that applicants and licensees provide truthful and accurate information at all times. In light of Intelsat's ability to pay,³⁶ and the seriousness of this violation as described above, we find that the base amount is appropriate in this instance. Under these circumstances, we believe that a forfeiture in the amount of \$11,000 is warranted.

IV. ORDERING CLAUSES

13. 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, Intelsat

³⁰ Response at 2.

³¹ Response at 8.

³² Section 312(f)(1) of the Communications Act, or 1934, as amended, 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..." See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991).

³³ See 47 C.F.R. § 1.80.

³⁴ See 47 U.S.C. § 503(b)(2)(C) (setting forth the statutory maximum forfeiture for non-broadcast licensees). The Commission twice amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), to increase the maximum forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. See *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000) (adjusting the maximum forfeiture amounts for non-broadcast licensees from \$10,000/\$75,000 to \$11,000/\$87,500); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004) (adjusting the maximum forfeiture amounts from \$11,000/\$87,500 to \$11,000/\$97,500).

³⁵ 47 C.F.R. § 1.80(b)(4).

³⁶ See *Intelsat Investor Fact Sheet – First Quarter 2006*, available at http://ww2.intelsat.com/pdf/en/investors/financial/2006/2006-Fact-Sheet_1Q.pdf (visited Aug. 15, 2006) (first quarter 2006 revenues for Intelsat were \$280 million).

North America LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of eleven thousand dollars (\$11,000) for willfully violating Section 1.17 of the Commission's rules.

14. IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Commission's rules, within 30 days of the release date of this *Notice of Apparent Liability for Forfeiture*, Intelsat North America, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

15. 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 in the caption. 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.

16. IT IS FURTHER ORDERED that the response, if any, shall be mailed to William H. Davenport, Chief, Investigation and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Suite 4-C330, Washington, D.C. 20554, and must include the NAL/Acct. No. referenced in the caption.

17. IT IS FURTHER ORDERED that the Commission shall not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent 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 respondent'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.

18. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Associate Managing Director -- Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554.³⁷

19. 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 attention of Robert Pettit, Esquire, Wiley Rein & Fielding LLP, 1776 K Street, N.W., Washington D.C. 20006, counsel for Intelsat North America LLC.; and to the licensee.

FEDERAL COMMUNICATIONS COMMISSION

William H. Davenport
Chief, Investigations and Hearings Division
Enforcement Bureau

³⁷ See 47 C.F.R. § 1.1914.