

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

In the Matter of)	
)	File No. EB-06-SE-353
Walgreen Co.)	NAL/Acct. No. 200732100044
Licensee of Earth Station E880547)	FRN # 0014602361
Mount Prospect, Illinois)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 22, 2007

Released: August 24, 2007

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find Walgreen Co. ("Walgreens" or "company"), licensee of Ku-band¹ satellite earth station E880547, in Mount Prospect, Illinois, apparently liable for a forfeiture in the amount of seventeen thousand dollars (\$17,000) for unauthorized operations of 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 as well as for its willful and repeated failure to notify the Commission of permitted modifications to its VSAT system within the required time period in violation of Section 25.118(a) of the Rules.⁴

II. BACKGROUND

2. Walgreens is a large pharmaceutical retailer with more than 5,400 locations and holds Commission authorization to operate a fixed satellite VSAT network consisting of a hub earth station and associated remote earth stations. On September 14, 2006, Walgreens filed with the Commission's International Bureau a request for Special Temporary Authority ("STA") to continue operating its VSAT system in accordance with modifications it had previously made to the system and which were not consistent with its current authorization.⁵ Contemporaneously with its STA request, Walgreens filed a formal application requesting permanent approval of the modifications and requesting consolidation of the call signs associated with the VSAT system.⁶

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 47 C.F.R. § 25.118(a).

⁵ See File No. SES-STA-20060914-01733.

⁶ See File No. SES-MOD-20060914-01734. Walgreens' modification application included a request to consolidate call signs E880547, E880548, and E880549 into call sign E880547. Walgreens' request to consolidate

3. In the STA request, Walgreens described the following three modifications made to its VSAT system without Commission approval and/or without notice to the Commission: addition of Puerto Rico as a point of communication ("Modification 1"); addition of 1.2 meter antennas ("Modification 2"); and addition of emission designator 12M0G7D transmitted by the hub and received by the remote earth stations ("Modification 3").⁷

4. The International Bureau granted the STA request for 60 days on September 28, 2006.⁸ On the same date, the International Bureau referred the case to the Enforcement Bureau for investigation and possible enforcement action. The modification application was granted on October 30, 2006.⁹ Both the STA and the modification application were granted without prejudice to any future enforcement action against the company in connection with unauthorized operation of its radio facilities. On March 9, 2007, the Enforcement Bureau's Spectrum Enforcement Division issued a letter of inquiry ("LOI") to Walgreens.¹⁰ Walgreens responded to the LOI on April 20, 2007.¹¹ In its response, Walgreens acknowledged making the modifications to its VSAT system that resulted in the instant violations.¹²

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. 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. Sections 25.118(a)(1) and (2) of the Rules permit earth station operators to make certain modifications to their licenses without prior Commission authorization, provided that the operators notify the Commission of the modifications within 30 days.

6. In its STA application and correspondence, Walgreens acknowledges that it made the modifications listed above without prior Commission approval and/or without providing notice to the Commission within the appropriate time period. The effect of Modification 1, adding Puerto Rico as a point of communication in July 2000, was to expand its area of operation without authorization in violation of Section 301 of the Act and Section 25.102(a) of the Rules. Walgreens' failure to obtain prior Commission approval before implementing Modification 1, which affected the parameters or terms and

call signs was granted. and as such, the VSAT system is referred to by call sign E880547 throughout this document.

⁷ See Application for Earth Station Temporary Authority (File No. SES-STA-20060914-01733), Exhibit A, page 1.

⁸ See Satellite Communications Services Information Re: Actions Taken, Public Notice, Report No. SES-00861, October 4, 2006.

⁹ See Satellite Communications Services Information Re: Actions Taken, Public Notice, Report No. SES-00869, November 1, 2006.

¹⁰ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Phil Herrera, Walgreen Co. (March 9, 2007).

¹¹ Letter from Veronica M. Ahern, Esq., Attorney for Walgreen Co., to Jacqueline Ellington, Esq., Spectrum Enforcement Division, Enforcement Bureau (April 20, 2007) ("LOI Response").

¹² LOI Response at 1.

conditions of Walgreens' authorization, also violated Section 25.117(a) of the Rules, which requires prior approval for this type of modification.¹³ Modification 2, deploying 1.2 meter antennas to replace 1.8 meter antennas beginning in the third quarter of 2000, was permitted pursuant to Section 25.118(a)(2) of the Rules. Under Section 25.118(a), however, notification of such modification must be provided within 30 days of the modification.¹⁴ Modification 3, adding emission designator 12M0G7D to update its system with new hub equipment in early 1998, was also permissible under Section 25.118(a)(1) of the Rules. Again, however, under Section 25.118(a), notification of such modification must be provided within 30 days of the modification.¹⁵ Walgreens violated Section 25.118(a) in both instances by failing to provide notice to the Commission of Modifications 2 and 3 within the requisite 30-day time period.

7. Section 503(b) of the Act,¹⁶ and Section 1.80(a) of the Rules,¹⁷ 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,¹⁸ and "repeatedly" means more than once.¹⁹ Based upon the record before us, Walgreens apparently willfully and repeatedly violated Section 301 of the Act and Sections 25.102(a), 25.117(a), and 25.118(a) of the Rules by making the subject modifications to its stations without Commission authorization and/or notification, as required. We therefore find that a forfeiture penalty is warranted.

8. In determining the appropriate forfeiture amount, Section 503(b)(2)(E) 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."²⁰ Having considered the statutory factors, as explained below, we

¹³ 47 C.F.R. § 25.117(a).

¹⁴ 47 C.F.R. § 25.118(a).

¹⁵ *Id.*

¹⁶ 47 U.S.C. § 503(b).

¹⁷ 47 C.F.R. § 1.80(a).

¹⁸ 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.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991) ("*Southern California*") (discussing legislative history regarding applicability of Section 312(f)(1) definition of "willful" to Section 503(b)).

¹⁹ 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.

²⁰ 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; see also *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

propose a total forfeiture of \$17,000.

9. The Commission's *Forfeiture Policy Statement*²¹ and Section 1.80(b) of the Rules establish a base forfeiture amount of four thousand dollars (\$4,000) for construction or operation at an unauthorized location, and three thousand dollars (\$3,000) for failure to file required forms or information.²² We believe that Walgreens' modifications justify the following proposed forfeitures: for Walgreens' unauthorized expansion of its area of operation by adding a remote antenna in Puerto Rico without prior authorization (Modification 1), we propose a \$4,000 forfeiture; for Walgreens' failure to provide the requisite notification for deployment of 1.2 meter antennas (Modification 2), we propose a \$3000 forfeiture; and for Walgreens' failure to provide the requisite notification for the addition of an emission designator 12M0G70 to update hub equipment (Modification 3), we propose a forfeiture of \$3,000. The aggregate proposed forfeiture amount for these violations totals \$10,000.

10. This \$10,000 forfeiture amount is subject to adjustment, however. In this regard, we consider the duration of the violations and Walgreens' size and ability to pay the forfeiture.²³ To ensure that forfeiture liability is a deterrent, and not simply a cost of doing business, the Commission has determined that large or highly profitable companies, such as Walgreens, could expect the assessment of higher forfeitures for violations.²⁴ Given the duration of the violations, and Walgreens' size and ability to pay, we conclude that an upward adjustment of the base forfeiture amount to \$25,000 is appropriate.

11. Walgreens asserts that its violations of the Act and the Rules were a result of it inadvertently misunderstanding its obligations as a Commission licensee.²⁵ Such inadvertence does not, however, mitigate its violations.²⁶ As a Commission licensee, Walgreens is charged with the responsibility of knowing and complying with the terms of its authorizations, the Act and the Rules.²⁷ We find it appropriate, however, to reduce the proposed aggregate forfeiture amount from \$25,000 to \$17,000, based upon the fact that Walgreens has a history of compliance with the Commission's rules²⁸

²¹ *Forfeiture Policy Statement*, 12 FCC Rcd at 17114.

²² 47 C.F.R. § 1.80(b).

²³ Walgreen Co. recently reported its net sales for 2006 as \$47.4 billion. See 2006 Walgreens Annual Report (November 13, 2006).

²⁴ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099-100; see also *SBC Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 19370, 19372 (Enf. Bur. 2001), *forfeiture ordered*, 17 FCC Rcd 7589, 7599 ¶ 23 (2002) (increasing the \$3,000 base forfeiture amount to \$100,000, based on a finding that the carrier had the ability to pay and that its failure to file required information was egregious and intentional). We find that Walgreens' violations were willful, but not egregious or intentional. Nevertheless, because Walgreens' revenues, like SBC's, are substantial, the forfeiture amount must be higher to serve a deterrent effect.

²⁵ LOI Response at 4.

²⁶ See *Southern California*, 6 FCC Rcd at 4387 (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance").

²⁷ See *Lockheed Martin Corporation*, Notice of Apparent Liability, 22 FCC Rcd 4116, 4119 (Enf. Bur., Spectrum Enf. Div., 2007) ("*Lockheed Martin*").

²⁸ See *KGB, Inc.*, Memorandum Opinion and Order, 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.*, Forfeiture Order, 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

and that it voluntarily disclosed the violations to Commission staff after learning of its violations prior to any Commission inquiry or initiation of enforcement action.²⁹

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act³⁰ and Sections 0.111, 0.311 and 1.80 of the Rules,³¹ Walgreen Co. **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seventeen thousand dollars (\$17,000) for its apparent willful and repeated violations of Section 301 of the Act and Sections 25.102(a), 25.117(a), and 25.118(a) of the Rules.

13. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Walgreen Co. **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. 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. 20554.³²

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.

licensee's history of overall compliance). *American General Finance, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 6935, 6938 (Enf. Bur., Spectrum Enf. Div., 2006) ("*AGF*") (reducing the proposed forfeiture from \$29,000 to \$20,000 on the basis of the licensee's history of compliance and voluntary disclosure).

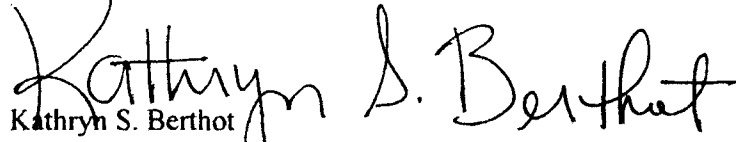
²⁹ See *Petracom of Texarkana, LLC*, Forfeiture Order, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur. 2004); *AGF*, 21 FCC Rcd at 6938; *Lockheed Martin*, 22 FCC Rcd at 4119; *Criswell College*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 5106, 5109 (Enf. Bur., Spectrum Enf. Div., 2006); *Gilmore Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 6284, 6287 (Enf. Bur., Spectrum Enf. Div., 2006).

³⁰ 47 U.S.C. § 503(b).

³¹ 47 C.F.R. § 0.111, 0.311 and 1.80.

³² See 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 Walgreen Co., Attn: Mr. Phil Herrera, 1084 Mount Prospect Plaza, Mount Prospect, Illinois 60056, and to counsel for Walgreen, Co., Veronica M. Ahern, Esq., Nixon Peabody, 409 9th Street, NW, Suite 900, Washington, DC 20004.

FEDERAL COMMUNICATIONS COMMISSIONA handwritten signature in black ink, reading "Kathryn S. Berthot". The signature is fluid and cursive, with the first name "Kathryn" being the most prominent part.

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau