

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

In the Matter of)	
)	File No. 07-SE-379
Side by Side, Inc.)	NAL/Acct. No. 200832100014
Toledo, Ohio)	FRN # 0005850862

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 28, 2008

Released: January 30, 2008

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find Side by Side, Inc. (“Side by Side”), former licensee of Ku Band earth station E950401,¹ apparently liable for a forfeiture in the amount of five thousand two hundred dollars (\$5,200) for operating its earth station without Commission authority and for failing to file a timely renewal application for its earth station 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 25.121(e) of the Commission's Rules (“Rules”).³

II. BACKGROUND

2. On August 25, 1995, Side by Side was granted a license to operate the fixed-satellite Ku Band earth station under call sign E950401. Under the terms of its license, Side by Side's authorization for its Ku Band earth station expired on August 25, 2005. On October 15, 2007, Side by Side contacted the Commission's International Bureau (“IB”) and learned that the license for its satellite earth station had expired. Thereafter, on October 17, 2007, Side by Side requested a special temporary authority (“STA”) to continue operations.⁴ On November 13, 2007, Side by Side submitted a new license application which IB granted on December 26, 2007 under call sign E070261.⁵ IB then dismissed the pending STA request.

3. Because it appeared that Side by Side operated earth station E950401 without authorization, IB referred this case to the Enforcement Bureau's Spectrum Enforcement Division (“Division”) for investigation and possible enforcement action. The Division issued Side by Side a letter of inquiry (“LOI”) on November 2, 2007.⁶

¹ File No. SES-LIC-19950620-00796. Earth station E950401 was licensed to Side by Side, Inc., d/b/a Yes Ministries.

² 47 U.S.C. § 301.

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

⁴ File No. SES-STA-20071017-01428.

⁵ File No. SES-LIC-20071113-01562. Earth station E070261 was licensed to Side by Side, Inc.

⁶ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Todd Hostetler, Side by Side, Inc. (November 2, 2007).

4. In its November 14, 2007 Response to the LOI,⁷ Side by Side admitted that it failed to timely renew its earth station license and that it continued to operate station E950401 without Commission authority through October 15, 2007, because it was unaware of the expiration of its license and the need to file a renewal.⁸ Side by Side stated that it first became aware that its license had expired on October 15, 2007,⁹ at which time it took immediate steps to request an STA to operate its station pending the submission and grant of a new license application.¹⁰

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.¹¹ Section 25.121(c) of the Rules 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. Under the terms of its license, Side by Side's authorization to operate earth station E950401 expired on August 25, 2005. Side by Side admitted that it failed to file its renewal application during the requisite 30-90 day period prior to August 25, 2005. Moreover, Side by Side admitted that it continued to operate this station after the expiration of its license on August 25, 2005—a situation that Side by Side did not seek to remedy until October 17, 2007 when Side by Side filed its request for an STA. Thus, it appears that Side by Side violated Section 25.121(e) of the Rules by failing to timely file a renewal application, and violated Section 301 of the Act and Section 25.102(a) of the Rules by continuing to operate its station without Commission authority.

7. Section 503(b) of the Act¹⁵ and Section 1.80(a) of the Rules¹⁶ 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 “repeated” means more than once.¹⁷ Based on the record before us, it appears that Side by Side’s violations of Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Rules were willful and repeated.

⁷ Letter from A. Wray Fitch III, Esq., Counsel for Side by Side, Inc., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (November 14, 2007).

⁸ *Id.* at 1-2.

⁹ *Id.* at 1.

¹⁰ *Id.* at 2.

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

¹² 47 C.F.R. § 25.121(c).

¹³ 47 C.F.R. § 25.121(e).

¹⁴ 47 C.F.R. § 25.161.

¹⁵ 47 U.S.C. § 503(b).

¹⁶ 47 C.F.R. § 1.80(a).

¹⁷ See 47 U.S.C. § 312(f)(1) & (2). See also *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (the definitions of willful and repeated contained in the Act apply to violations for which forfeitures are assessed under Section 503(b) of the Act).

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.”¹⁸ Having considered the statutory factors, as explained below, we propose a total forfeiture of \$5,200.

9. Section 1.80(b) of the Rules sets a base forfeiture amount of \$10,000 for operation of a station without Commission authority and \$3,000 for failure to file required forms or information.¹⁹ As the Commission has held, a licensee’s continued operations without authorization and its failure to timely file a renewal application 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 Side by Side’s separate violations.

10. Consistent with precedent, we propose a forfeiture in the amount of \$1,500 for Side by Side’s failure to timely file a renewal application within the time period specified in Section 25.121(e) of the Rules.²¹ Additionally, we propose a forfeiture in the amount of \$5,000 for Side by Side’s unauthorized operation of earth station E950401 after August 25, 2005.²² In proposing a forfeiture of \$5,000 for the station’s unauthorized operation, 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 thus downwardly adjust the \$10,000 base forfeiture amount accordingly.²³ Thus, we propose an aggregate forfeiture of \$6,500 (\$1,500 for failure to timely file a renewal application and \$5,000 for unauthorized operation).

¹⁸ 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; *Forfeiture Policy Statement*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁹ 47 C.F.R. § 1.80(b).

²⁰ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7438 (2004) (“*Discussion Radio*”). See also *La Carpa Corp.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2744, 2745 (Enf. Bur., Spectrum Enf. Div., 2007) (forfeiture paid) (“*La Carpa*”); *Lazer Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8710, 8712 (Enf. Bur., Spectrum Enf. Div., 2006) (forfeiture paid) (“*Lazer*”); *Shared Data Networks, LLC*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18184, 18186 (Enf. Bur., Spectrum Enf. Div., 2005) (forfeiture paid) (“*Shared Data Networks*”)

²¹ See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$1,500 forfeiture against a broadcaster for failure to timely file its renewal application); *La Carpa*, 22 FCC Rcd at 2746 (proposing a \$1,500 forfeiture against an earth station operator for failure to timely file a renewal application); *Lazer*, 21 FCC Rcd at 8712 (proposing a \$1,500 forfeiture against an earth station operator for failure to timely file a renewal application).

²² Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), prohibits assessment of a forfeiture for a violation that occurred more than one year before the issuance of a NAL, but this section does not bar consideration of prior conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period. See *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37, 37-38 (1967), *recon. denied*, 11 FCC Rcd 193 (1967).

²³ See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$5,000 forfeiture for operating a broadcast station for 14 months beyond the expiration of its license); *La Carpa*, 22 FCC Rcd at 2746 (proposing a \$5,000 forfeiture for operating an earth station for three years after the expiration of its license); *Lazer*, 21 FCC Rcd at 8712 (proposing a \$5,000 forfeiture for operating an earth station for one year after the expiration of its license).

11. As a Commission licensee, Side by Side is charged with the responsibility of knowing and complying with the terms of its authorizations, the Act and the Rules.²⁴ We do find, however, that a downward adjustment of the proposed forfeiture from \$6,500 to \$5,200 is warranted because Side by Side made voluntary disclosures to Commission staff and undertook corrective measures after learning of its violations *prior* to any Commission inquiry or initiation of enforcement action.²⁵

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,²⁷ Side by Side, Inc. **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of five thousand two hundred dollars (\$5,200) for the willful and repeated violation of Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Commission's Rules.

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,²⁸ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Side by Side, Inc. **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 credit card through the Commission's Debt and Credit Management Center at (202) 418-1995, or 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 1-A625, Washington, D.C. 20554.²⁹

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.

²⁴ See *Discussion Radio*, 19 FCC Rcd at 7437. See also *La Carpa*, 22 FCC Rcd at 2746; *Shared Data Networks*, 20 FCC Rcd at 18187.

²⁵ See *Petracom of Texarkana, LLC*, Forfeiture Order, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur., 2004). See also *Lazer*, 21 FCC Rcd at 8712; *Journal Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18211, 18214 (Enf. Bur., Spectrum Enf. Div., 2005) (forfeiture paid).

²⁶ 47 U.S.C. § 503(b).

²⁷ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

²⁸ 47 C.F.R. § 1.80.

²⁹ 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 Side by Side, Inc., Attention: Mr. Todd Hostetler, 5115 Glendale Avenue, Toledo, Ohio 43614-1801, and its counsel, A. Wray Fitch III, Esq., Gammon & Grange, P.C., Seventh Floor, 8280 Greensboro Drive, McLean, Virginia 22102-3807.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau