

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

In the Matter of)	File No. EB-07-IH-9590
)	
Fox Television Holdings, Inc.)	NAL Acct. No. 200932080014
)	
Licensee of Various Satellite Earth Station Licenses)	FRN No. 0007322548
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 2, 2008

Released: December 2, 2008

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Fox Television Holdings, Inc. (“FTH”), licensee of various satellite earth station licenses, apparently, willfully and repeatedly, violated section 310(d) of the Communications Act of 1934, as amended (the “Act”), and section 25.119 of the rules of the Federal Communications Commission (the “Commission” or “FCC”)¹ by failing to timely apply for and obtain Commission consent to the transfer of control of certain satellite earth station licenses used in connection with operations of FTH television stations. Based on our review of the facts and circumstances surrounding this matter, we find that FTH is apparently liable for a forfeiture in the amount of \$17,500.

II. BACKGROUND

2. Section 310(d) of the Act provides that a satellite earth station license must not be “transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding [the] license,” unless the license holder applies for Commission authority to transfer the license, and the Commission finds that the transfer is in “public interest, convenience, and necessity.”² Under section 25.119 of the Commission’s rules, the transfer of control of a satellite earth station license must be approved by the Commission in advance.³ Transfer of control is defined as a change in the party controlling the licensee or the controlling ownership interest of the licensee.⁴

¹ 47 U.S.C § 310(d); 47 C.F.R. § 25.119.

² See 47 U.S.C § 310(d).

³ See 47 C.F.R. § 25.119; *Matter of SkyPort Global Communications, Inc.*, Notice of Apparent Liability for Forfeiture, DA 08-2457, ¶ 4 (Investigations & Hearings Division, Enforcement Bureau rel. Nov. 5, 2008).

⁴ 47 C.F.R. § 25.119(b).

3. On October 6, 2006, the Commission granted unopposed applications for authority to transfer control of Fox Television Stations, Inc. (“FTS”), licensee of 37 television broadcast stations, from K. Rupert Murdoch to Fox Entertainment Group, Inc. (“FEG”).⁵ According to the applicants, FTS was a wholly-owned subsidiary of FTH. Mr. Murdoch owned 100 percent of FTH’s issued and outstanding Preferred Stock (7600 shares) and FEG owned 100 percent of FTH’s issued and outstanding Common Stock (2400 shares).⁶ The applicants proposed to recapitalize the stock of FTH to reduce Mr. Murdoch’s voting interest from 76 percent to 14.8 percent, and increase FEG’s voting interest from 24 percent to 85.2 percent.⁷ The transaction was consummated on December 29, 2006.⁸ FTH subsequently realized that it had not applied for the Commission’s approval to transfer control of 35 satellite earth station licenses used to support the operations of the broadcast television stations.⁹ FTH therefore belatedly filed applications for Commission approval *nunc pro tunc* to transfer the 35 satellite earth station licenses from FTH to Fox Television Holdings, Inc. (As Recapitalized), which the Commission placed on public notice on August 29, 2007.¹⁰ The applications were unopposed, and the Commission granted authorization for the transfer of the satellite earth station licenses on December 14, 2007, “without prejudice to any enforcement action in connection with any prior unauthorized transfer of control of the station[s].”¹¹

4. On July 17, 2008, the Enforcement Bureau issued a letter of inquiry (“LOI”) to FTH directing FTH to provide information and documents regarding whether FTH transferred satellite earth station licenses without the Commission’s approval.¹² FTH responded to the LOI on August 6, 2008.¹³ FTH admits that it failed to timely apply for Commission approval to

⁵ See *Matter of K. Rupert Murdoch (Transferor) and Fox Entertainment Group (Transferee)*, Memorandum Opinion and Order, 21 FCC Rcd 11499 (2006).

⁶ *Id.* at 11499, ¶ 2.

⁷ *Id.* at 11500, ¶ 3.

⁸ See Letter from Jared S. Sher, Counsel, Skadden, Arps, Slate, Meagher & Flom LLP, to David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission (Aug. 6, 2008) (“LOI Response”) at 2.

⁹ See *id.* at 4.

¹⁰ See Public Notice, Report No. SES-00958 (rel. Aug. 29, 2007) (File Nos. SES-T/C-20070806-01063, SES-T/C-20070807-01050, SES-T/C-20070807-01051, SES-T/C-20070807-01052, SES-T/C-20070807-01053, SES-T/C-20070807-01054, and SES-T/C-20070807-01055). The call signs for the 35 satellite earth station licenses include E000014, E000065, E000168, E000201, E000210, E000642, E010173, E030109, E030331, E040467, E050115, E050228, E050238, E050246, E050325, E050398, E060142, E060186, E060338, E060374, E860360, E874292, E880593, E890118, E900067, E900976, E910471, E960522, E970182, E970411, E970411, E970359, E980339, E980353, and E980499.

¹¹ See, e.g., *WAGA License, Inc.*, Radio Station Authorization, File No. SES-T/C-20070807-01050, Consent to Transfer Control (Dec. 14, 2007).

¹² See Letter from Trent Harkrader, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to Dianne Smith, Vice President, Fox Televisions Holdings, Inc. (As Recapitalized) (July 17, 2008) (“LOI”).

¹³ See *supra* note 8.

transfer the satellite earth station licenses.¹⁴ FTH argues, however, that the Commission should not assess a forfeiture because the transfer did not result in any changes in FTH's day-to-day operations; and the Commission approved the recapitalization of FTH when it approved the transfer of FTH's broadcast licenses on October 6, 2006.¹⁵ FTH further states it voluntarily disclosed its failure to the Commission, and submitted applications for transfer of control *nunc pro tunc* for the satellite earth station licenses.¹⁶ FTH argues that the maximum sanction for its apparent violation should be an admonishment.¹⁷ Alternatively, FTH argues that the Commission's base forfeiture should be reduced given FTH's voluntary disclosure; and that the transfers of the 35 satellite earth station licenses were related to a single transaction.¹⁸

III. DISCUSSION

5. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹⁹ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.²⁰ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act²¹ and the Commission has so interpreted the term in the section 503(b) context.²² The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.²³ "Repeated" means that the act was committed or omitted more than once, or lasts more than one day.²⁴ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should

¹⁴ See *id.* at 4. ("FTH acknowledges and regrets that ... it inadvertently failed to include in its request for consent to the Transaction the earth station licenses held by subsidiaries of FTH").

¹⁵ See *id.*

¹⁶ See *id.*

¹⁷ See *id.* at 4-5.

¹⁸ *Id.* at 5.

¹⁹ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); see also 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464).

²⁰ 47 U.S.C. § 312(f)(1).

²¹ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²² See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, ¶ 5 (1991) ("*Southern California Broadcasting Co.*").

²³ See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) ("*Callais Cablevision*") (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage).

²⁴ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision*, 16 FCC Rcd at 1362, ¶ 9.

be imposed.²⁵ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.²⁶ As set forth below, we conclude under this standard that FTH is apparently liable for a forfeiture for its apparent, willful and repeated violations of section 310(d) of the Act and section 25.119 of the Commission's rules.²⁷

6. The fundamental issue in this case is whether FTH violated section 310(d) of the Act and Section 25.119 of the Commission rules by transferring 35 satellite earth station licenses without required Commission approval. We answer this question affirmatively. Based on a preponderance of the evidence, and under Section 1.80 of the Commission's rules,²⁸ we therefore conclude that FTH is apparently liable for a forfeiture of \$17,500.

7. FTH admits that it failed to apply for Commission approval to transfer control of the satellite earth station licenses.²⁹ In connection with the stock recapitalization, FTH applied for Commission approval to transfer FTH television broadcast licenses. Notwithstanding FTH's arguments,³⁰ the Commission did not also approve the transfer of the satellite earth station licenses, given that the transfer of the earth station licenses were also involved in the stock recapitalization of FTH. The Commission's approval was limited to the specific licenses identified in FTH's applications. Moreover, even though FTH voluntarily brought this matter to the Commission's attention, and filed applications for Commission approval *nunc pro tunc*, an unauthorized transfer of control constitutes a serious breach of a licensee's responsibility, and it took approximately eight months for FTH to file the applications after the unauthorized transfer occurred.

8. Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture for each violation or each day of a continuing violation, up to a statutory maximum for a single act or failure to act.³¹ In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(E) of the Act, including "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."³² Section 1.80(a) of the Rules provide that any person who willfully or repeatedly fails to comply with the provisions

²⁵ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

²⁶ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

²⁷ 47 U.S.C. § 310(d); 47 C.F.R. § 25.119.

²⁸ 47 C.F.R. § 1.80.

²⁹ LOI Response at 4.

³⁰ See *id.*

³¹ 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 1.80(b)(2). An unauthorized transfer of control is a continuing violation that does not end until the Commission grants a transfer of control application or other authorization. See *Matter of Notice of Apparent Liability for Forfeiture of Enserch Corporation*, Forfeiture Order, 15 FCC Rcd 13551, 13554, ¶ 10 (2000).

³² 47 U.S.C. § 503(b)(2)(E).

of the Act or the Rules shall be liable for a forfeiture penalty.³³ Based on the record before us, it appears that FTH's violations of Section 310(d) of the Act and Section 25.119 of the Rules were willful and repeated.³⁴

9. The Commission's *Forfeiture Policy Statement* and implementing rules prescribe a base forfeiture of \$1,000 for an unauthorized *pro forma* transfer of control of a Commission license.³⁵ Thus, based on the number of licenses involved, FTH could be subject to a forfeiture in the amount of \$35,000. We acknowledge, however, that the transfer of the 35 satellite earth station licenses resulted from a single transaction, and FTH voluntarily disclosed its oversight to the Commission. In analogous situations, the Commission has found that multiplying the base forfeiture amount by the number of licenses at issue would result in an excessive forfeiture, and that the number of licenses involved should be considered an aggravating factor.³⁶ Considering the unauthorized license transfers occurred as a result of a single transaction, FTH's voluntary disclosure, the number of the licenses at issue, the period of operation (approximately eight months) prior to filing corrective applications, and our precedent, we find that a reduction in the total forfeiture amount from \$35,000 to \$17,500 is appropriate. In sum, applying the factors set forth in section 503(b)(2)(E) of the Act and section 1.80 of the Commission's rules,³⁷ we conclude that FTH is apparently liable for a total forfeiture of \$17,500.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 310(d) of the Communications Act of 1934,³⁸ and Section 1.80 of the Commission's rules,³⁹ that Fox Television Holdings, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A

³³ See *supra* paragraph 5 (discussing the meanings of the elements, "willful" and "repeated").

³⁴ 47 U.S.C. § 310(d); 47 C.F.R. § 25.119.

³⁵ See 47 C.F.R. § 1.80; *Matter of 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, 17113 (1997) ("*Forfeiture Policy Statement*"). See also LOI Response at 1-4 (stating why the recapitalization of FTH did not constitute a substantial transfer of control).

³⁶ See, e.g., *Matter of Spectracom, LLC*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13412, 13414, ¶ 6 (Investigations & Hearings Division, Enforcement Bureau 2006) ("Considering the circumstances of this case, the nature of the licenses at issue, the relatively brief period of operation (approximately five (5) months) prior to filing the Application, the relatively few authorizations at issue, and our precedent, we find that a reduction in the total forfeiture amount [from \$24,000 to \$12,000] is appropriate). In *Matter of Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9672, ¶¶ 10-12 (2000), the Commission considered the licensee's voluntary disclosure, the duration of the period of unauthorized operation prior to filing corrective applications, and the number of licenses involved to be important factors in reducing a total proposed forfeiture from \$72,000 to \$40,000 for the unauthorized substantial transfer of control of 18 licenses.

³⁷ 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80.

³⁸ 47 U.S.C. § 310(d).

³⁹ 47 C.F.R. § 1.80.

FORFEITURE in the amount of \$17,500 for willfully or repeatedly violating section 310(d) of the Act and section 25.119 of the Commission's rules.⁴⁰

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's rules,⁴¹ within thirty days of the release date of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE, Fox Television Holdings, 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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Fox Television Holdings, Inc. will also send electronic notification within forty-eight (48) hours of the date said payment is made to david.janas@fcc.gov.

13. The response, if any, to this NOTICE OF APPARENT LIABILITY FOR FORFEITURE must be mailed to Hillary S. DeNigro, Chief, Investigations 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 above. E-mail address: hillary.denigro@fcc.gov.

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. Requests for payment of the full amount of this *Notice of Apparent Liability for Forfeiture* under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. For answers to questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov.⁴²

⁴⁰ 47 U.S.C. § 310(d); 47 C.F.R. § 25.119.

⁴¹ 47 C.F.R. § 1.80.

⁴² 47 C.F.R. § 1.1914.

16. 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 Jared Sher, Skadden, Arps, Slate, Meagher & Flom LLP, Counsel for Fox Television Holdings, Inc., 1400 New York Avenue, NW, Washington DC 20005-2111.

FEDERAL COMMUNICATIONS
COMMISSION

Kris Anne Monteith
Chief
Enforcement Bureau