

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

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|----------------------------------|---|----------------------------|
| In the Matter of |) | |
| |) | File No. EB-08-SE-148 |
| Discovery World Television, Inc. |) | NAL/Acct. No. 200932100050 |
| |) | FRN # 0017882317 |
| Earth Station call sign E970321 |) | |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 4, 2009

Released: March 6, 2009

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find Discovery World Television (“Discovery”), licensee of earth station call sign E970321, apparently liable for a forfeiture in the amount of twelve thousand eight hundred dollars (\$12,800) for operating its station without Commission authority, in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”)¹ and Section 25.102 of the Commission’s Rules (“Rules”),² and for failing to file a timely renewal application for its earth station in apparent willful violation of Section 25.121(e) of the Rules.³

II. BACKGROUND

2. On October 3, 1997, Discovery was granted a license to operate a fixed satellite earth station under call sign E970321. Under the terms of its license, Discovery’s authorization for its earth station expired on October 3, 2007.⁴ Thereafter, on February 25, 2008, Discovery became aware that it had failed to file a renewal application for the station and that its license had expired. On March 13, 2008, Discovery submitted an application for special temporary authority (“STA”) for the station to operate, which was granted on April 16, 2008.⁵ On April 11, 2008, Discovery filed an application for authorization for its earth station, call sign E970321, which was granted on May 28, 2008.⁶

3. Because it appeared that Discovery operated its earth station, call sign E970321, without authorization, the International Bureau referred this case to the Enforcement Bureau for investigation and possible enforcement action. On April 22, 2008, the Enforcement Bureau’s Spectrum Enforcement Division (“Division”) issued Discovery a letter of inquiry (“LOI”) to further investigate whether Discovery

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 25.102.

³ 47 C.F.R. § 25.121(e).

⁴ See File No. SES-LIC-19970519-00651 and File No. SES-MOD-20040825-01244.

⁵ See SES-STA-20080313-00298.

⁶ See SES-LIC-2008-0411-00456.

operated the earth station beyond expiration of its license.⁷

4. In its May 13, 2008 response to the LOI,⁸ Discovery admitted that it failed to timely renew its earth station license and that it continued to operate the station without Commission authority through March 13, 2008, the date of its STA request, because it was unaware that its license had expired.⁹ Discovery stated that it first became aware that its license had expired on February 25, 2008,¹⁰ at which time it took steps to request an STA to operate its station consistent with the parameters contained in the expired authorization, pending the submission and grant of a new license application.¹¹

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.¹² Section 25.121(c) of the Rules provides that the license term for an earth station is specified in the instrument of authorization.¹³ 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.”¹⁴ Absent a timely filed renewal application, an earth station license automatically terminates at the end of the license period.¹⁵

6. Under the terms of its license, Discovery’s authorization to operate its earth station, call sign E970321, expired on October 3, 2007. As a Commission licensee, Discovery is charged with the responsibility of knowing and complying with the terms of its authorization, the Act and the Rules.¹⁶ Discovery admitted that it failed to file its renewal application during the requisite 30-90 day period prior

⁷ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Mr. John Miller, Senior Vice-President, Technology and Distribution, Discovery World Television, Inc. (April 22, 2008).

⁸ Letter from Christopher A. Fedeli, Esq., to Marlene H. Dortch, Secretary, Federal Communications Commission, Attn: Susan M. Stickley, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (May 13, 2008).

⁹ *Id.* at 2-3.

¹⁰ *Id.* at 2.

¹¹ *Id.*

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

¹³ 47 C.F.R. § 25.121(c).

¹⁴ 47 C.F.R. § 25.121(e).

¹⁵ 47 C.F.R. § 25.161.

¹⁶ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7437 (2004) (“*Discussion Radio*”). See also *Side By Side, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 898 (Enf. Bur., Spectrum Enf. Div. 2008) (“*Side By Side*”); *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. 2005) (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*”).

to the expiration date. Moreover, Discovery admitted that it continued to operate the station after the expiration of its license, a situation that Discovery did not seek to remedy until March 13, 2008, when Discovery filed its request for an STA. Thus, it appears that Discovery 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 Act¹⁷ and Section 1.80(a) of the Rules¹⁸ 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.¹⁹ Based on the record before us, it appears that Discovery’s violation of Section 301 of the Act and of Section 25.102(a) of the Rules was willful and repeated, and its violation of Section 25.121(e) of the Rules was willful.

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 propose a total forfeiture of \$16,000.

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.²¹ 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.²² Accordingly, we herein propose separate forfeiture amounts for Discovery’s separate violations.

10. Consistent with precedent, we propose a forfeiture in the amount of \$3,000 for Discovery’s failure to timely file a renewal application for its earth station.²³ Additionally, we propose a

¹⁷ 47 U.S.C. § 503(b).

¹⁸ 47 C.F.R. § 1.80(a).

¹⁹ 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.)

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

²¹ 47 C.F.R. § 1.80(b).

²² See *Discussion Radio*, 19 FCC Rcd at 7438. See also *Side By Side*, 23 FCC Rcd at 901; *La Carpa*, 22 FCC Rcd at 2746; *Lazer*, 21 FCC Rcd at 8712; *Shared Data Networks*, 20 FCC Rcd at 18187.

²³ See e.g., *Bloomsburg University of Pennsylvania*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9357, 9359 (Media Bur., Audio Div. 2008); *Sunflower Communications, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7657, 7659 (Media Bur., Audio Div. 2008); *Santa Cruz Educational Broadcasting Foundation*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC 21033, 21035 (Media Bur., Audio Div. 2007) (all proposing the full base forfeiture amount of \$3,000 against broadcast station licensees for failure to file timely renewal applications).

forfeiture in the amount of \$5,000 for Discovery's unauthorized operation of its earth station, call sign E970321, after October 3, 2007.²⁴ In proposing a forfeiture of \$5,000 for the 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 adjusts the \$10,000 base forfeiture amount accordingly.²⁵ Thus, we propose an aggregate forfeiture of \$8,000 (\$3,000 for failure to timely file a renewal application, and \$5,000 for unauthorized operation).

11. This \$8,000 forfeiture amount is subject to adjustment, however. In this regards, we consider Discovery's size and ability to pay a forfeiture.²⁶ 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 Discovery, could expect the assessment of higher forfeitures for violations.²⁷ Given Discovery's size and ability to pay a forfeiture, we conclude that an upward adjustment of the base forfeiture amount to \$16,000 is appropriate.²⁸

12. We do find, however, that a downward adjustment of the proposed forfeiture from \$16,000 to \$12,800 is warranted because Discovery made voluntary disclosures to Commission staff and undertook corrective measures after learning of its violations but prior to any Commission inquiry or initiation of enforcement action.²⁹

IV. ORDERING CLAUSES

13. 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 Discovery World Television, Inc. **IS** hereby **NOTIFIED** of

²⁴ 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).

²⁵ See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$5,000 forfeiture against a broadcaster for operating its broadcast station beyond the expiration of its license); *Side by Side*, 23 FCC Rcd at 900 (proposing a \$5,000 forfeiture against an earth station operator for operating beyond the expiration of its license); *La Carpa*, 22 FCC Rcd at 2746 (proposing a \$5,000 forfeiture against an earth station operator for operating beyond the expiration of its license); *Lazer*, 21 FCC Rcd at 8712 (proposing a \$5,000 forfeiture against an earth station operator for operating beyond the expiration of its license).

²⁶ Discovery Communications, Inc., parent company of licensee Discovery World Television, Inc., reported third quarter 2008 revenues from its United States television networks as \$498 million. See *Discovery Communications Reports Third Quarter 2008 Results*, News Release, Discovery Communications, November 7, 2008.

²⁷ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099-100.

²⁸ See *Walgreen Co.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 16,045, 16,048 (Enf. Bur., Spectrum Enf. Div. 2007) (forfeiture paid).

²⁹ See *Petracom of Texarkana, LLC*, Forfeiture Order, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur., 2004). See also *Side By Side*, 23 FCC Rcd at 901; *Lazer*, 21 FCC Rcd at 8712; *Journal Broadcast Corp.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18211, 18214 (Enf. Bur., Spectrum Enf. Div., 2005) (forfeiture paid).

³⁰ 47 U.S.C. § 503(b).

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

its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twelve thousand eight hundred dollars (\$12,800) for willful and repeated violation of Section 301 of the Act and Section 25.201(a) of the Rules and for willful violation of Section 25.121(e) of the Rules.

14. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,³² within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Discovery World Television, Inc. **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/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). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Discovery will also send electronic notification on the date said payment is made to Ricardo.Durham@fcc.gov and Susan.Stickley@fcc.gov.

16. 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.

17. 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.

18. **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 Mr. John Miller, Senior Vice President, Technology and Distribution, Discovery World Television, Inc., 1 Discovery Place, Silver Spring, Maryland 20910, and to its counsel, Christopher A. Fedeli, Esq., Davis Wright Tremaine LLP, 1919 Pennsylvania Ave, N.W., Suite 200, Washington DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

³² 47 C.F.R. § 1.80.