

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

In the Matter of)	File No. EB-08-IH-5190
)	
Shop at Home Holdings, Inc.)	NAL/Acct. No. 201032080015
)	
Licensee of Various Satellite Earth Stations)	FRN No. 0017977729
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 4, 2010

Released: January 4, 2010

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

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Shop at Home Holdings, Inc. (“Shop at Home Holdings” or the “Company”) acquired the licenses for, and operated, two satellite earth stations, without obtaining prior Commission consent, in apparent willful and repeated violation of Sections 310(d) of the Communications Act of 1934, as amended (the “Act”),¹ and 25.119 of the Commission’s Rules.² Based on our review of the facts and circumstances surrounding this matter, we find that Shop at Home Holdings apparently is liable for a forfeiture in the total amount of \$16,000.

II. BACKGROUND

2. Section 310(d) of the Act provides that no station license may 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,” without prior Commission consent.³ Section 25.119 of the Commission’s rules imposes similar requirements with respect to satellite earth stations.⁴

3. On June 21, 2006, Shop at Home Holdings, a subsidiary of America’s Collectibles Network, Inc., acquired the licenses for satellite earth stations E980222 and E980223 from Shop at Home Network, LLC, a subsidiary of the E.W. Scripps Company, as part of a larger corporate transaction between the entities.⁵ The parties did not seek Commission consent to the assignment of the two station

¹ 47 U.S.C. § 310(d).

² 47 C.F.R. § 25.119.

³ 47 U.S.C. § 310(d).

⁴ 47 C.F.R. § 25.119.

⁵ See Letter from Joseph E. Dunne III, Counsel to Shop at Home Holdings, Inc., to Marlene H. Dortch, Secretary, FCC, dated Sept. 10, 2009 (“*LOI Response*”) at Tabs 4, 5, 6. America’s Collectibles Network, Inc. and the E.W. Scripps Company are not related entities. See Letter from Kathleen A. Kirby, Counsel to Shop at Home Network, LLC, to Karl Kensinger and Jeanette Spriggs, International Bureau, Satellite Division, FCC, dated August 26, 2008, at 2.

licenses prior to consummating the transaction,⁶ and Shop at Home Holdings subsequently operated the stations from June 21, 2006, through March 7, 2008. From March 7, 2008 until August 2008, Shop at Home Holdings maintained the two earth stations as emergency back-up facilities, but did not operate them.⁷

4. Shop at Home Holdings states that it learned for the first time in early July 2008 of the need to obtain prior Commission consent to the assignment of the earth stations, more than two years after acquiring the two station licenses and in the course of preparing license renewal applications for the licenses.⁸ The company thereafter filed an appropriate remedial application belatedly seeking Commission consent to the assignment of the two station licenses.⁹ The International Bureau subsequently granted the application on January 5, 2009,¹⁰ and referred the matter to the Enforcement Bureau which commenced an investigation.¹¹

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.¹² 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.¹³ The legislative history to Section 312(f)(1) clarifies that the definition of “willful” applies to both Sections 312 and 503(b) of the Act,¹⁴ and the Commission has so interpreted the term in the Section 503(b) context.¹⁵ The Commission may also assess a forfeiture for violations that are repeated.¹⁶ “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.¹⁷

6. Turning to the instant case, Shop at Home Holdings concedes that it failed to timely apply for Commission consent to the assignment of the satellite earth station licenses.¹⁸ Moreover, the

⁶ *LOI Response* at Tab 6.

⁷ *Id.* at Tab 7.

⁸ *Id.* at Tab 6.

⁹ Application for Assignment of Earth Stations from Shop at Home Network, LLC to Shop at Home Holdings, Inc., File No. SES-ASG-20080724-00987.

¹⁰ Public Notice, Report No. SES-01101 (rel. Jan. 7, 2009) (File No. SES-ASG-20080724-00987).

¹¹ Letter from Trent B. Harkrader, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Charles A. Wagner, Shop at Home Holdings, Inc., dated July 29, 2009.

¹² 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

¹³ 47 U.S.C. § 312(f)(1).

¹⁴ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁵ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting Co.*”).

¹⁶ 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).

¹⁷ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision*, 16 FCC Rcd at 1362, ¶ 9.

¹⁸ *LOI Response* at Tab 6.

record reveals that Shop at Home Holdings operated the two stations for nearly two years without authority. It is of no consequence that Shop at Home Holdings may have been unaware of the Commission's requirements at the time it acquired the two station licenses in 2006. Under the circumstances and particularly in light of Shop at Home Holdings' admission of wrongdoing, we find that Shop at Home Holdings failed to obtain Commission consent to the assignment of the two earth station licenses, in apparent willful and repeated violation of Section 310(d) of the Act and 25.119 of the Commission's Rules.

7. Section 503(b)(1) of the Act provides that any person that willfully or repeatedly fails 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 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$150,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,500,000 for a single act or failure to act.²⁰ 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."

8. The Commission's *Forfeiture Policy Statement* and implementing rules prescribe a base forfeiture of \$8,000 for an unauthorized assignment of a Commission license.²¹ Such forfeiture amount may be adjusted upward or downward depending upon the existence of aggravating or mitigating factors. In the instant case, we have taken into consideration Shop at Home Holding's failure over a period of more than two years to file corrective applications. On balance and after applying the factors set forth in Sections 503(b)(2)(E) of the Act and 1.80 of the Commission's Rules, we find that a forfeiture in the amount of \$16,000 is appropriate in this instance.

IV. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that Shop at Home Holdings, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$16,000 for willfully and repeatedly violating the Act and the Commission's rules.

10. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's Rules,²² within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Shop at Home 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.

11. 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

¹⁹ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(2).

²⁰ 47 U.S.C. § 503(b)(2)(B); *see also* 47 C.F.R. § 1.80(b)(2); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000).

²¹ *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*").

²² *See* 47 C.F.R. § 1.1914.

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 Federal Reserve Bank of New York, 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). Shop at Home Holdings, Inc. will also send electronic notification within forty-eight (48) hours of the date said payment is made to Hillary.DeNigro@fcc.gov.

12. The response, if any, to this NOTICE OF APPARENT LIABILITY must be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554 and must include the NAL/Acct. No. referenced above.

13. 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 (GAAP); 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.

14. Requests for payment of the full amount of this Notice of Apparent Liability 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.²³

15. IT IS FURTHER ORDERED that a copy of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE shall be sent by certified mail, return receipt requested, to Joseph E. Dunne III, Counsel for Shop at Home Holdings, Inc., P.O. Box 9203, Durango, CO 81302-9203.

FEDERAL COMMUNICATIONS COMMISSION

Hillary S. DeNigro
Chief, Investigations & Hearings Division
Enforcement Bureau

²³ See *id.*