

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	File No. EB-11-IH-1376
)	
Intelsat License LLC)	NAL/Acct. No. 201432080001
f/k/a Intelsat North America, LLC)	
)	FRN 0009308008
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 12, 2013

Released: December 12, 2013

By the Commission: Commissioner Pai dissenting and issuing a statement.

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Intelsat License LLC, f/k/a Intelsat North America, LLC (Intelsat or Company),¹ apparently willfully violated Section 25.158(c) of the Commission's rules (Rules) by permitting another entity to assume Intelsat's position in the processing queue for a geostationary orbit (GSO)-like satellite license, and Section 1.65(a) of the Rules by failing to maintain the continuing accuracy and completeness of information furnished in an application pending before the Commission.² Based on our review of the facts and circumstances surrounding this matter, and for the reasons discussed below, we find that Intelsat is apparently liable for a forfeiture penalty of one hundred and twelve thousand five hundred dollars (\$112,500).

II. BACKGROUND

2. Intelsat currently holds a license to operate the Galaxy 28 satellite at the 89.0° W.L. orbital location utilizing 500 megahertz (MHz) of Ka-band spectrum in each transmission direction to serve North America.³ On February 27, 2009, Intelsat filed an application for a license to operate a new satellite (to be called Galaxy KA) at 89.1° W.L. that would utilize the same Ka-band spectrum used by Galaxy 28, plus an additional 500 MHz of Ka-band spectrum in each transmission direction.⁴ Intelsat

¹ On January 18, 2011, Intelsat North America, LLC notified the Commission that it had changed its corporate name to Intelsat License LLC. See Letter to Marlene H. Dortch, Secretary FCC, from Jennifer D. Hindin, Counsel for Intelsat License LLC (Jan. 18, 2011).

² 47 C.F.R. §§ 1.65(a), 25.158(c). A GSO-like space station is a space station in geostationary orbit that communicates with earth stations with non-omnidirectional antennas. See *Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket. No. 02-34, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, 10773, para. 21 (2003) (*Space Station Licensing Reform Order*).

³ The Commission licensed the Galaxy 28 satellite in 2003 to Loral Space and Communications, Inc. (Loral). Intelsat acquired the Galaxy 28 license from Loral in 2004 and launched the satellite on June 25, 2005. See *Applications for Consent to Assignments of Space Station Authorizations and Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Order and Authorization, 19 FCC Rcd 2404 (2004). Galaxy 28 is authorized to operate in the 29.5-30.0 GHz (Earth-to-space) and the 19.7-20.2 GHz (space-to-Earth) Ka-band frequency bands. In addition, Galaxy 28 is authorized to operate in other frequency bands not relevant to this proceeding.

⁴ See FCC Form 312, Satellite License Application of Intelsat North America, LLC, IBFS File No. SAT-LOA-20090227-00029. Intelsat proposed to operate Galaxy KA in the 29.5-30.0/19.7-20.2 GHz bands authorized for

(continued....)

proposed to use Galaxy KA to provide service to North and South America using both the original Ka-band spectrum and the additional Ka-band spectrum.⁵ In its application, Intelsat acknowledged that, because it sought to operate on additional Ka-band spectrum, certain construction milestones and a \$3 million bond requirement would apply.⁶

3. Both the Galaxy 28 and the proposed Galaxy KA satellites are GSO-like space stations. Section 25.158(b) of the Rules establishes a first-come, first-served “queue” approach to issuing licenses for GSO-like space stations.⁷ Under this framework, the Commission places applications seeking authority to operate GSO-like space stations at new orbit locations or new frequency bands in a processing queue in the order in which they are filed.⁸ If the space station proposed in the first-in-line application will not cause harmful interference to a space station already licensed, and the applicant is otherwise qualified, the Commission will grant the application. Once a first-in-line application is granted, the Commission will deny subsequently filed applications that propose space stations that will cause harmful interference to the newly licensed space station.⁹ The Part 25 Rules also include safeguards to discourage speculative applications and to ensure that licensees remain “willing and able” to timely implement their systems.¹⁰ In particular, Section 25.158(c) provides that “[a]n applicant for a GSO-like satellite system license is not allowed to transfer, assign, or otherwise permit any other entity to assume its place in any queue.”¹¹

4. [REDACTED]

a. [REDACTED]

(Continued from previous page) _____
Galaxy 28, and in the additional 28.35-28.6 GHz and 29.25-29.5 GHz (Earth-to-space), and 18.3-18.8 GHz (space-to-Earth) frequency bands. For ease of reference, we refer to the frequency bands common to Galaxy 28 and Galaxy KA as the “original Ka-band spectrum” and the frequency bands unique to Galaxy KA as the “additional Ka-band spectrum.”

⁵ *Id.*

⁶ *Id.*

⁷ 47 C.F.R. § 25.158(b).

⁸ *Space Station Licensing Reform Order*, 18 FCC Rcd at 10766, para. 5, 10804–12, paras. 108–31.

⁹ Without significantly increasing antenna size or costs associated with ground infrastructure, a GSO-like space station located in close proximity to another (that is, when one station is appreciably less than two degrees apart from another station in orbit) cannot operate on the same spectrum and serve the same geographic area without potentially causing harmful interference to the other’s operations.

¹⁰ *See Space Station Licensing Reform Order*, 18 FCC Rcd at 10846–52, paras. 226–44.

¹¹ 47 C.F.R. § 25.158(c).

¹² [REDACTED]

b. [REDACTED]

5. [REDACTED]

6. In December of 2009, ViaSat, Inc. (ViaSat) acquired WildBlue¹⁴ and [REDACTED]

[REDACTED] on February 17, 2010, ViaSat filed an application with the Commission for a license for a new satellite at 88.9° W.L. utilizing most of the additional 500 MHz of Ka-band spectrum to serve the contiguous United States (CONUS) and South America.¹⁵ ViaSat also requested authority to operate the new satellite in the original Ka-band spectrum in South America.¹⁶ By filing this application, ViaSat became second in the satellite licensing queue behind Intelsat with respect to a satellite at 88.9° W.L. utilizing the overlapping Ka-band spectrum.

7. On March 2, 2010, [REDACTED] Intelsat amended its Galaxy KA application to withdraw its request for the additional 500 MHz of Ka-band spectrum and to remove the South American beams from the original Ka-band spectrum.¹⁷ As a result, ViaSat assumed the first-in-line position in the satellite licensing queue with respect to most of the additional 500 MHz of Ka-band spectrum in CONUS and South America and the original 500 MHz in South America. Because the application for Galaxy KA, as amended, did not expand the frequency bands and coverage area authorized for Galaxy 28, Intelsat claimed that construction milestone and bond requirements should not apply to Galaxy KA because it would be a replacement for the Galaxy 28.¹⁸ Intelsat did not reference [REDACTED] in its amended application.

8. At a meeting with International Bureau staff on February 18, 2010, Intelsat verbally disclosed [REDACTED]

¹³ [REDACTED]

¹⁴ See ViaSat website, available at <http://www.viasat.com/news/wildblue-communications-acquisition-closes> (last visited Oct. 17, 2013).

¹⁵ See FCC Form 312, Satellite License Application of ViaSat, Inc., IBFS File No. SAT-LOA-20100217-00029. As noted above, the additional bands included in the Galaxy KA application were the 28.35-28.6 GHz and 29.25-29.5 GHz (Earth-to-space), and 18.3-18.8 GHz (space-to-Earth) frequency bands. Of those additional bands, ViaSat sought to use 28.35-28.6 MHz (Earth-to-space) and 18.3-18.8 GHz (space-to-Earth). This amounts to 250 MHz of overlapping spectrum in the uplink direction and 500 MHz in the downlink direction.

¹⁶ In addition to the original Ka-band spectrum and most of the additional Ka-band spectrum, ViaSat requested authority to operate on other segments of the Ka-band that did not overlap with Intelsat's authorized or proposed Ka-band spectrum. The full ViaSat proposal contains the 28.1-29.1 GHz (Earth-to-space) and 18.3-19.3 GHz (space-to-Earth) frequency bands in CONUS and South America, and in the 29.5-30.0 GHz (Earth-to-space) and 19.7-20.2 GHz (space-to-Earth) frequency bands in South America. The frequency bands unique to ViaSat's application are the 28.1-28.35, 28.6-29.1 GHz (Earth-to-space) and the 18.8-19.3 GHz (space-to-Earth) frequency bands.

¹⁷ See FCC Form 312, Amendment to Satellite License Application of Intelsat North America, LLC, IBFS File No. SAT-AMD-20100302-00038.

¹⁸ See *id.* After the amendment, Intelsat sought processing of its application as a replacement application for the Galaxy 28 satellite, because Intelsat sought in its application the same frequency bands included in Intelsat's existing authorization for the in-orbit Galaxy 28 space station. Replacement applications are not queued and receive priority processing.

[REDACTED]. Intelsat did not [REDACTED] until August 18, 2011, and did not, [REDACTED].¹⁹ Subsequently, the International Bureau referred this matter to the Enforcement Bureau for investigation.

9. After extensive discussions with the Commission, Intelsat [REDACTED]. On October 18, 2012 Intelsat withdrew its March 2, 2010 amendment and reentered the licensing queue behind ViaSat's then first-in-line application with regard to most of the additional 500 MHz of spectrum and the South American beams.²⁰ On December 13, 2012, ViaSat withdrew its February 17, 2010 application and, thereby, removed itself from the licensing queue.²¹ Consequently, Intelsat's application returned to the first-in-line position with respect to the additional 500 MHz of Ka-band spectrum in CONUS and South America and the original 500 MHz in South America.

III. DISCUSSION

10. Under Section 503(b)(1) of the Communications Act of 1934, as amended (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.²² 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.²³ 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 Act,²⁴ and the Commission has so interpreted the term in the Section 503(b) context.²⁵ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.²⁶ "Repeated" means that the act was committed or omitted more than once, or lasts more than one day.²⁷ 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 be imposed.²⁸ The Commission will then issue a forfeiture if it finds, based on the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.²⁹

¹⁹ [REDACTED]

²⁰ See *FCC Public Notice*, 27 FCC Rcd 13170 (Oct. 19, 2012) (noting Intelsat's withdrawal of SAT-AMD-20100302-00038, IBFS Withdrawal ID No. WTH20121018101109900).

²¹ See *FCC Public Notice*, 27 FCC Rcd 15930 (Dec. 21, 2012) (noting ViaSat's withdrawal of SAT-LOA-20100217-00029, IBFS Withdrawal ID No. WTH20121213183022152).

²² See 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(2).

²³ 47 U.S.C. § 312(f)(1).

²⁴ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²⁵ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California Broadcasting*).

²⁶ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision*) (issuing an NAL for, *inter alia*, a cable television operator's repeated violation of the cable signal leakage rules).

²⁷ *Southern California Broadcasting*, 6 FCC Rcd at 4388, para. 5; *Callais Cablevision*, 16 FCC Rcd at 1362, para. 9.

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

²⁹ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002).

11. At issue in this case is whether Intelsat violated the Rules by willfully or repeatedly permitting another entity to assume its place in a GSO-like satellite licensing queue³⁰ and failing to maintain the continuing accuracy and completeness of information furnished in an application pending before the Commission.³¹

12. We answer these questions in the affirmative. As set forth below, we conclude that Intelsat is apparently liable for forfeiture for the willful or repeated violation of Section 25.158(c) of the Rules. We further conclude that Intelsat willfully and repeatedly violated Section 1.65(a) of the Rules but decline to find it liable for a forfeiture for this violation. Based on the facts and circumstances before us, we therefore conclude that Intelsat is apparently liable for forfeiture penalties totaling one hundred and twelve thousand five hundred dollars (\$112,500).

A. Intelsat Apparently Permitted Another Entity to Assume its Place in a GSO-like Satellite Licensing Queue

13. We find that Intelsat apparently violated Section 25.158(c) of the Rules by permitting ViaSat to assume its place in the GSO-like satellite licensing queue.³² Section 25.158(c) clearly directs that “[a]n applicant for a GSO-like satellite system license is not allowed to transfer, assign, or otherwise permit any other entity to assume its place in any queue.”³³ In this case, Intelsat established its first-in-line queue position for the additional Ka-band spectrum and for South American coverage using the original Ka-band spectrum at the nominal 89° W.L. orbital location on February 27, 2009, when it filed its application for a license to operate Galaxy KA.³⁴ On February 17, 2010, [REDACTED] ViaSat filed an application for a new satellite license at the nominal 89° W.L. orbital location utilizing most of the additional 500 MHz of Ka-band spectrum to serve CONUS and South America, and the original Ka-band spectrum to serve South America. At the time of its filing, this application was in conflict with Intelsat’s earlier-filed application for the Galaxy KA satellite and, therefore, second-in-line behind Intelsat’s application in the licensing queue. [REDACTED] on March 2, 2010, Intelsat amended the Galaxy KA application by withdrawing its request for the additional Ka-band spectrum and by removing the South American beams on the original Ka-band spectrum.³⁵ As a result, ViaSat obtained first-in-line processing queue status at the nominal 89° W.L. orbital location for most of the additional Ka-band spectrum and for South American coverage using the original Ka-band spectrum. This [REDACTED] is precisely the type of conduct that Section 25.158(c) was meant to prevent. We conclude that Intelsat’s withdrawal of its request for the additional Ka-band spectrum, [REDACTED] and removal of the South American beams on the original Ka-band spectrum, therefore, constituted action to transfer, assign, or otherwise permit ViaSat to assume its place in the GSO-like satellite licensing queue in apparent violation of the Rules.³⁶

14. Furthermore, we conclude that this violation continued for the entire period during which Intelsat vacated its first-in-line position in favor of ViaSat. Intelsat’s apparent violation began no later

³⁰ 47 C.F.R. § 25.158(c).

³¹ 47 C.F.R. § 1.65(a).

³² 47 C.F.R. § 25.158(c).

³³ *Id.*

³⁴ For purposes of this NAL, we refer to the orbital locations at 88.9° W.L., 89.0° W.L., and 89.1° W.L. as the “nominal” 89° W.L. orbital location. To facilitate station-keeping among satellites operating at the same “nominal” orbital location, operators often request authority to operate at locations slightly offset from a nominal location.

³⁵ *See supra* paras. 2–7.

³⁶ *See* FCC Form 312, Amendment to Satellite License Application of Intelsat North America, LLC, FCC File No. SAT-AMD-20100302-00038.

than March 2, 2010, when Intelsat amended its Galaxy KA application, thereby removing itself from the licensing queue and allowing ViaSat to assume Intelsat's vacated first-in-line position. The apparent violation ended no earlier than December 13, 2012, when ViaSat withdrew its February 17, 2010 application, thereby removing itself from first-in-line in the licensing queue and reinstating Intelsat at the head of the queue.

B. Intelsat Apparently Failed to Maintain the Continuing Accuracy and Completeness of its Pending Application

15. We also conclude that Intelsat apparently violated Section 1.65(a) of the Rules, which provides that “[e]ach applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application.”³⁷ The rule further requires that applicants amend their applications within 30 days, unless good cause is shown, to reflect any substantial change in information provided to the Commission.³⁸ Finally, Section 1.65(a) applies the same updating requirement when there “has been a substantial change as to any other matter which may be of decisional significance in a Commission proceeding involving the pending application.”³⁹

16. On February 27, 2009, Intelsat filed its application to construct, launch, and operate the Galaxy KA satellite using 1000 megahertz of Ka-band spectrum in both transmission directions at the 89° W.L. location. Pursuant to Section 1.65(a), during the pendency of that application, Intelsat had an obligation to timely inform the Commission of any “substantial change[s]” that may be of “decisional significance.” We find that Intelsat apparently deliberately withheld such information concerning two distinct, material changes.

17. First, Intelsat's [REDACTED] was material information of decisional significance because it had the potential to fundamentally alter the nature and scope of Intelsat's Galaxy KA license application. The Commission has made clear that the underlying purpose of Section 25.158(c) is “to discourage speculative applications and to ensure that licensees remain committed and able to proceed with system implementation in a timely manner.”⁴⁰ Therefore, [REDACTED] is a “substantial change” of “decisional significance” that could affect the Commission's determination as to whether an applicant is “committed and able to proceed with system implementation in a timely manner.” Without complete information concerning Intelsat's [REDACTED], the Commission was unable to accurately evaluate the applications before it and to make certain those applications aligned with the public interest. Intelsat should have disclosed [REDACTED] to the Commission under Section 1.65(a) within 30 days of [REDACTED]. Intelsat did not inform the Commission of [REDACTED], and did not provide the Commission with [REDACTED].⁴¹

³⁷ 47 C.F.R. § 1.65(a).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See *Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75- 25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 8842, 8849, para. 12 (2007) (*17/24 GHz BSS Report and Order*).

⁴¹ [REDACTED]

18. Second, [REDACTED] These actions constituted additional substantial changes of decisional significance, as they [REDACTED]. Again, Intelsat failed to amend its application pursuant to Section 1.65 to reveal [REDACTED]. Intelsat amended its pending Galaxy KA application to narrow its scope, but did not fully disclose the underlying reason for the amendment until it [REDACTED].⁴²

19. Thus, with respect to two distinct, material changes, Intelsat failed to maintain the continuing accuracy of its pending application. The violations continued until Intelsat [REDACTED]. Thus, for each material change, Intelsat allowed more than 18 months to pass before making a corrective filing with the Commission. We therefore conclude that Intelsat apparently willfully and repeatedly violated Section 1.65 of the Rules.

C. Proposed Forfeiture

20. Section 503(b)(1) of the Act provides that any person who 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.⁴³ In this case, the Commission may assess a forfeiture up to \$16,000 for each violation or each day of a continuing violation, up to a maximum of \$112,500 for a single act or failure to act.⁴⁴ 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,”⁴⁵ as well as our forfeiture guidelines.⁴⁶

21. We view Intelsat’s apparent relinquishment of its place in the GSO-like satellite licensing queue to allow another entity to assume its place as a serious dereliction of its responsibilities under the Rules. An applicant’s identity is particularly material in the context of an application subject to the restrictions of Section 25.158(c). Intelsat’s apparent violation of section 25.158(c) continued at least until ViaSat withdrew its application on December 13, 2012.

22. The Commission has not yet established a base forfeiture amount for violations of the International Bureau’s satellite licensing “queue-jumping” rule, Section 25.158(c). In cases of first

⁴² *Id.*

⁴³ See 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(2).

⁴⁴ See 47 U.S.C. § 503(b)(2)(D); 47 C.F.R. § 1.80(b)(5) (2012). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(D). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), requires the Commission to adjust its forfeiture penalties periodically for inflation. See 28 U.S.C. § 2461 note (4). The Commission most recently adjusted its penalties to account for inflation in 2013. See *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 28 FCC Rcd 10785 (Enf. Bur. 2013); see also *Inflation Adjustment of Monetary Penalties*, 78 Fed. Reg. 49,370–01 (Aug. 14, 2013) (setting Sept. 13, 2013, as the effective date for the increases). Because the DCIA specifies that any inflationary adjustment “shall apply only to violations that occur after the date the increase takes effect,” however, we apply the forfeiture penalties in effect at the time the apparent violations took place. 28 U.S.C. § 2461 note (6). Here, because the apparent violations at issue occurred prior to September 13, 2013, the applicable maximum penalties are based on the Commission’s previous inflation adjustment that became effective on September 2, 2008. See *Inflation Adjustment of Maximum Forfeiture Penalties*, 73 Fed. Reg. 44,663, 44,664 (July 31, 2008).

⁴⁵ 47 U.S.C. § 503(b)(2)(E).

⁴⁶ See 47 C.F.R. § 1.80(b)(5) (2012); Note to Paragraph (b)(5): Guidelines for Assessing Forfeitures.

impression like this one, the Commission generally looks for guidance in precedent concerning analogous violations.⁴⁷ A position in the queue for GSO-like licenses has considerable value and confers upon the holder priority in the acquisition of a valuable and sought-after license. Therefore, the Commission's rules are carefully designed to safeguard the administration of the queue.⁴⁸ The Commission has made clear that unauthorized and undisclosed private transactions between applicants that transfer positions in the queue are not permitted.⁴⁹ Such surreptitious transactions undermine the Commission's capacity to promote the public interest through its application processing standards and procedures. In this respect, Section 25.158(c)'s restriction is similar to the restriction imposed by Section 214 of the Act, which requires prior Commission approval for transfers of control of FCC authorizations.⁵⁰ The base forfeiture penalty for an unauthorized transfer of control in violation of Section 214 is eight thousand dollars (\$8,000).⁵¹ Given that a Section 25.158(c) violation appears to be most analogous to an unauthorized transfer of control, we conclude that the base forfeiture for a Section 25.158(c) violation should, similarly, be eight thousand dollars (\$8,000).

23. We also find that Intelsat apparently violated Section 1.65(a) of the Rules by failing to maintain the continuing accuracy and completeness of information furnished in a pending application with the Commission. Pursuant to Section 1.65(a), Intelsat was obligated, within thirty (30) days, to amend its application to inform the Commission of any "substantial changes" concerning that application which may be of "decisional significance."⁵² Intelsat failed to do so with respect to two distinct, material changes. However, while we find that Intelsat apparently violated Section 1.65(a) of the Rules, Section 503(b)(6)(B) of the Act provides that "[n]o forfeiture penalty shall be determined or imposed against any person under this subsection if . . . such person does not hold a broadcast station license issued under title III of this Act and if the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability."⁵³ We find that Intelsat's violation of Section 1.65(a) of the Rules began on [REDACTED] Intelsat's violations of Section 1.65(a) of the Rules continued until [REDACTED]. Since more than one (1) year has passed since Intelsat [REDACTED], the Commission can no longer determine or impose a forfeiture penalty for these violations.

24. The Rules also provide that base forfeitures may be adjusted based upon consideration of the factors enumerated in Section 503(b)(2)(E) of the Act⁵⁴ and Section 1.80(b)(8) of the Rules, which include "the nature, circumstances, extent, and gravity of the violations and . . . the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁵⁵ We find that a significant upward adjustment of the base forfeiture amount is appropriate in this case for several reasons. First, we find that Intelsat's violations were egregious – they struck at the very core of our licensing scheme

⁴⁷ See, e.g., *VCI Co.*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 15933, 15939–40, para. 17 (2007); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19904, para. 29 (2003).

⁴⁸ See *Space Station Licensing Reform Order*, 18 FCC Rcd at 10846–52, paras. 226–44.

⁴⁹ *id.*

⁵⁰ See 47 U.S.C. § 214; 47 C.F.R. §§ 63.18, 63.24.

⁵¹ See 47 C.F.R. § 1.80(b)(5) Note, Section I (2012).

⁵² 47 C.F.R. § 1.65(a).

⁵³ 47 U.S.C. § 503(b)(6)(B).

⁵⁴ See 47 U.S.C. § 503(b)(2)(E).

⁵⁵ 47 C.F.R. § 1.80(b)(8).

for satellite-based services. The Commission has determined that strict rules, including the queue-jumping prohibition, were essential to avoiding speculation and ensuring the serious and committed intention of applicants for satellite authorizations, which, in turn, were essential to a successful service.⁵⁶ Intelsat's attempt to circumvent these rules threatened that mechanism. Second, Intelsat's violations continued for a substantial period of time.⁵⁷ Finally, to ensure that a proposed forfeiture is a deterrent, and not simply a cost of doing business, the Commission has determined that large or highly-profitable companies, such as Intelsat,⁵⁸ may be subject to proposed forfeitures that are higher than the base forfeiture amount.⁵⁹ Given the seriousness and continuing nature of Intelsat's violations and Intelsat's size and its ability to pay a forfeiture, we conclude that an upward adjustment of the base forfeiture amount from eight thousand dollars (\$8,000) to one hundred and twelve thousand five hundred dollars (\$112,500), which is the statutory maximum allowable forfeiture for these violations, is appropriate.⁶⁰ Accordingly, we find that Intelsat is apparently liable for a total forfeiture of one hundred and twelve thousand five hundred dollars (\$112,500) for its willful or repeated violation of Section 25.158(c) of the Rules.

⁵⁶ See *17/24 GHz BSS Report and Order*, 22 FCC Rcd at 8849, paras. 12–15 (identifying bonds, milestones for construction and launch of satellites, and limits on the number of pending applications that an applicant may have outstanding as additional parts of a package of “designed to discourage speculative applications and to ensure that licensees remain committed and able to proceed with system implementation in a timely manner”).

⁵⁷ Intelsat's 25.158(c) violation lasted more than two years, from March 2, 2010, when Intelsat amended its Galaxy KA application until December 13, 2012, when ViaSat withdrew its February 17, 2010 application. Intelsat's two 1.65(a) violations lasted more than two years and 18 months, respectively. These violations lasted from the date on which Intelsat [REDACTED], and the date on which [REDACTED], until the date on which Intelsat [REDACTED]. While Section 503(b)(6)(B) of the Rules prohibits the Commission from now imposing a forfeiture penalty against Intelsat for its violations of Section 1.65(a) of the Rules, the Commission may nonetheless consider the occurrence of such violations and attendant facts as further evidence of Intelsat's degree of culpability and intention to subvert Section 25.158(c) when the Commission determines Intelsat's forfeiture.

⁵⁸ Intelsat's parent company, Intelsat S.A., reported 2012 revenues of \$2.6 billion in its SEC filings. See Intelsat S.A. 2013 Form 10-K (filed February 28, 2013), available at <http://investors.intelsat.com/phoenix.zhtml?c=131114&p=irol-reportsannual> (last visited Oct. 17, 2013).

⁵⁹ It is well-established Commission policy to consider the revenues of a violator's parent company. See, e.g., *Tesla Exploration, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 9808, 9811, para. 10 & n.20 (2012); *Union Oil Company of California, a Subsidiary of Chevron Corporation*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 13806, para. 10 (2012); *Google Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4012, 4032–33, paras. 49–50 (Enf. Bur. 2012) (upwardly adjusting the base forfeiture to the statutory maximum due to the deliberate nature of the violation and the company's gross revenues); *Fox Television Stations Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 7074, 7081, para. 16 (Enf. Bur. 2010) (upwardly adjusting the base forfeiture based on the egregiousness of the violation and the company's substantial revenues); see generally *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, 17099–100, paras. 23–24 (1997) (cautioning all entities and individuals that, independent from the uniform base forfeiture amounts, the Commission will take into account the subject violator's ability to pay in determining the amount of a forfeiture to guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business, and noting that such large or highly profitable entities should expect that the forfeiture amount set out in a Notice of Apparent Liability against them may in many cases be above, or even well above, the relevant base amount).

⁶⁰ We could arrive at the same result by imposing a forfeiture penalty for each day that Intelsat's violation continued. See 47 U.S.C. § 503(b)(2)(D); 47 C.F.R. § 1.80(b)(5) (2012) (authorizing a forfeiture penalty of up to \$16,000 for “each day of a continuing violation” up to the maximum forfeiture of \$112,500); see also *supra* note 44 (regarding inflation adjustments to the forfeitures specified in Section 503(b)(2)(D)); *AT&T Wireless Services, Inc.*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 9903 (2002) (Commission concluded that nothing short of the statutory maximum for a continuing violation would serve as a deterrent for future violations when a company failed to inform the Commission for more than two years about inaccuracies related to an E911 waiver request despite an obligation to do so).

IV. ORDERING CLAUSES

25. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Act,⁶¹ and Section 1.80 of the Rules,⁶² Intelsat License LLC, f/k/a Intelsat North America, LLC, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of one hundred and twelve thousand five hundred dollars (\$112,500) for willfully or repeatedly violating Section 25.158 of the Rules.⁶³

26. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Intelsat License LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

27. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Intelsat License LLC shall send electronic notification on the date said payment is made to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, to Pamela S. Kane at Pamela.Kane@fcc.gov, and to Edward H. Smith II at Edward.Smith@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁶⁴ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

28. Any request for full payment over time 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. 20554.⁶⁵ Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

⁶¹ 47 U.S.C. § 503(b).

⁶² 47 C.F.R. § 1.80.

⁶³ 27 C.F.R. § 25.158.

⁶⁴ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁶⁵ See 47 C.F.R. § 1.1914.

29. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.⁶⁶ Mail the written statement to Theresa Z. Cavanaugh, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554 and include the NAL/Account Number referenced above. Intelsat License LLC shall also e-mail the written response to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, Pamela S. Kane at Pamela.Kane@fcc.gov, and Edward H. Smith II at Edward.Smith@fcc.gov.

30. 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 principles (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.

31. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and first class mail, to counsel for Intelsat License LLC, Jennifer D. Hindin, Esq., Wiley Rein LLP, 1776 K St., NW, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁶⁶ See 47 C.F.R. §§ 1.16, 1.80(f)(3).

**STATEMENT OF
COMMISSIONER AJIT PAI, DISSENTING**

Re: *Intelsat License LLC f/k/a Intelsat North America, LLC*, File No. EB-11-IH-1376; NAL/Acct. No. 201432080001; FRN 0009308008.

In cases other than those involving a broadcast licensee, Section 503(b)(6)(B) of the Communications Act provides that “[n]o forfeiture penalty shall be determined or imposed . . . if the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability.” Here, the Commission alleges that Intelsat violated Section 25.158(c) of our rules by taking action to “transfer, assign, or otherwise permit ViaSat to assume its place in the GSO-like satellite licensing queue in apparent violation of the Rules.” Any such action, however, took place no later than March 2, 2010, when Intelsat amended its application for the Galaxy KA satellite, thus moving ViaSat to the head of the queue. Accordingly, since more than one year has elapsed since that date, I do not believe that the Commission may impose a forfeiture penalty consistent with Section 503(b)(6)(B) for this alleged violation of our rules.

To be sure, the Notice of Apparent Liability claims that Intelsat’s alleged violation of our rules continued until ViaSat took action that restored Intelsat’s position at the head of the queue, thus curing the alleged violation. But this stretches the concept of a continuing violation past the breaking point. For example, under this theory, the statute of limitations for theft would begin to run not when an item is stolen or even when it is discovered that an item has been stolen, but rather when that item is returned to its rightful owner. Needless to say, that is not the law and neither do I believe that a court would find our reasoning in today’s item to be persuasive.

Because I believe that the statute of limitations has expired, I need not reach the question of whether Intelsat actually violated Section 25.158(c). I will simply note that I am skeptical of the Commission’s conclusion on that score.