

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

In the Matter of)	File No. EB-08-SE-507
)	NAL/Acct. No. 200932100051
Lockheed Martin Corporation)	FRN # 0015097702

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 9, 2009

Released: March 11, 2009

By the Chief, Spectrum Enforcement Division, Enforcement Bureau

I. INTRODUCTION

1. In this *Notice of Liability for Forfeiture* ("NAL"), we find Lockheed Martin Corporation, Inc. ("Lockheed Martin"), licensee of Fixed Satellite Service earth stations call signs E920702 and E7541 apparently liable for a forfeiture in the amount of twenty-four thousand eight hundred dollars (\$24,800) for operating both earth stations without Commission authorization in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended ("Act")¹ and Section 25.102(a) of the Commission's Rules ("Rules"),² and for failing to file timely renewal applications for both earth stations in apparent willful and repeated violation of Section 25.121(e) of the Rules.³

II. BACKGROUND

2. On August 3, 1997, the Commission renewed Lockheed Martin's license to operate earth station call sign E920702 for a ten year period.⁴ Under the terms of the license, Lockheed Martin was authorized to communicate with all U.S.-licensed satellites operating in the Ku-band (14.0-14.5 GHz and 11.7-12.2 GHz).⁵ Lockheed Martin's authorization for station E920702 expired on August 3, 2007.⁶

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 25.102(a)

³ 47 C.F.R. § 25.121(e).

⁴ See SES-RWL-19970808-01083.

⁵ Originally, this earth station was authorized to communicate with ALSAT, which at the time meant "all authorized U.S. Domestic satellites." However, in the *DISCO I Order*, the Commission adopted a single regulatory regime for domestic and international satellite communications, and authorized all ALSAT earth stations to engage in both domestic and international communications. Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, *Report and Order*, IB Docket No. 95-41, 11 FCC Rcd 2429 (1996) (*DISCO I Order*). Later, in 1999, the Commission expanded "ALSAT" again to include certain non-U.S.-licensed satellites listed on a Permitted List on the Commission's web site. Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, *First Order on Reconsideration*, IB Docket No. 96-111, 15 FCC Rcd 7207 (1999) (*DISCO II First Reconsideration Order*). However, neither of these Commission Orders expanded the authority of Lockheed Martin's E920702 earth station to communicate with any satellite outside of the Ku-band.

⁶ SES-RWL-19970808-01083.

Also on August 3, 1997, the Commission renewed Lockheed Martin's license to operate earth station call sign E7541 using frequencies in portions of the C-band to communicate with ALSAT Satellites for a ten-year period.⁷ Under the terms of the license, Lockheed Martin's authorization for station E7541 expired on August 3, 2007.⁸ Lockheed Martin did not file timely renewal applications for either earth station E920702 or E7541.

3. On May 8, 2008, Lockheed Martin filed a request for special temporary authority ("STA") to continue operations on earth station E920702 to allow Lockheed Martin to communicate with the satellite formerly known as AMC-14 on the 17.7935 GHz frequency in the transmit direction and the 12.6985 GHz and 12.6945 GHz frequencies in the receive direction ("requested frequencies").⁹ The requested point of communication and the requested frequencies were not previously authorized by the Commission for earth station E920702.¹⁰ In its STA request, Lockheed Martin acknowledged that its license for earth station E920702 had expired on August 3, 2007 without a renewal application being timely filed. In addition, Lockheed Martin acknowledged that station E920702 was never authorized by the Commission to communicate with the AMC-14 satellite or to operate on the requested frequencies, but that Lockheed Martin had operated station E920702 on these requested frequencies to support the launch of the satellite formerly known as AMC-14 since March 15, 2008.¹¹ Lockheed Martin stated that it first realized that its license for earth station E920702 had expired and that it was operating this earth station to communicate with an unauthorized point of communication on unauthorized frequencies on May 6, 2008.¹² The International Bureau granted Lockheed Martin's STA request to continue its operations on earth station E920702 on May 12, 2008.¹³

4. On May 16, 2008, Lockheed Martin filed a Petition for Reinstatement of Expired Licenses E920702 and E7541 ("Petition").¹⁴ In its Petition, Lockheed Martin admits that its licenses for earth stations E920702 and E7541 expired on August 3, 2007, without renewal applications having been filed.¹⁵ Lockheed Martin also admits that it operated station E920702 for twelve days in 2007 after the expiration of the license¹⁶ and intermittently each day in 2008 beginning with the March 15 launch of the satellite formerly known as AMC-14.¹⁷ Further, Lockheed Martin admits that, following the expiration of its license on August 3, 2007, it operated station E7541 from March 19 to March 22, 2008.¹⁸ Lockheed

⁷ See SES-RWL-19970808-01082.

⁸ *Id.*

⁹ See SES-STA-20080508-00569 ("May 8, 2008 STA Request").

¹⁰ The satellite formerly known as AMC-14 is not an ALSAT Satellite.

¹¹ May 8, 2008 STA Request, Narrative Exhibit at 1.

¹² *Id.*

¹³ See Public Notice, Satellite Communications Services Information, Re: Actions Taken, Report No. SES-01033 (May 14, 2008). IB granted additional STA requests for Lockheed Martin's continued operation of station E920702 on July 7, 2008 and September 9, 2008.

¹⁴ See Letter from Stephen D. Baruch, Esq., Counsel for Lockheed Martin Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 16, 2008) ("Petition").

¹⁵ Petition at 1.

¹⁶ *Id.* According to Lockheed Martin, the specific dates it operated the station in 2007 were August 9, 15-18, and 28; and November 18, 20-21, and 23-25).

¹⁷ *Id.* at 1-2.

Martin states that it learned of the expiration of the licenses on May 6, 2008 and that its failure to timely file renewal applications was a regrettable oversight.¹⁹

5. Because it appeared that Lockheed Martin had operated earth stations E920702 and E7541 without authorization, the International Bureau referred this case to the Enforcement Bureau's Spectrum Enforcement Division ("Division") for investigation and possible enforcement action.

III. DISCUSSION

6. 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.²⁰ Section 25.121(c) of the Rules provides that the license term for an earth station is specified in the instrument of authorization.²¹ 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."²² Absent a timely filed renewal application, an earth station license automatically terminates at the end of the license period.²³

7. As a Commission licensee, Lockheed Martin was required to maintain its authorizations in order to operate its earth stations, E920702 and E7541. Lockheed Martin admits that, following the license expiration date of August 3, 2007, it operated earth station E920702 without Commission authority for twelve days in 2007. In addition, from March 15, 2008 through May 8, 2008, the date Lockheed Martin filed its STA request, Lockheed Martin admits it operated station E920702 without Commission authorization, using frequencies and communicating with a point of communication that had not been authorized by the Commission for this earth station. Lockheed Martin also admits that it operated earth station E7541, after its license expiration date, from March 19, 2008 to March 22, 2008. By operating earth station E920702 and earth station E7541 without Commission authorization, Lockheed Martin apparently violated Section 301 of the Act and Section 25.102(a) of the Rules. Lockheed Martin also acted in apparent violation of Section 25.121(e) of the Rules by failing to file timely renewal applications for the earth stations.

IV. PROPOSED FORFEITURE

8. Section 503(b) of the Act²⁴ and Section 1.80(a) of the Rules²⁵ 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

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¹⁸ *Id.* at 2. According to Lockheed Martin, station E7541 no longer transmits in any capacity.

¹⁹ *Id.* at 1. On November 3, 2008, Lockheed Martin filed an application to re-license both earth stations under a single call sign. *See* SES-LIC-20081103-01443, SES-AMD-20081130-01518, and SES-AMD-20081219-01664. The application was accepted for filing and placed on public notice on February 11, 2009. *See* Public Notice, Satellite Communications Services, Re: Satellite Radio Applications Accepted for Filing, Report No. SES-01111 (Feb. 11, 2009).

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

²¹ 47 C.F.R. § 25.121(c).

²² 47 C.F.R. § 25.121(e).

²³ 47 C.F.R. § 25.161.

²⁴ 47 U.S.C. § 503(b).

²⁵ 47 C.F.R. § 1.80(a).

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.²⁶ Based on the record before us, it appears that Lockheed Martin's violations of Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Rules were willful and repeated.

9. 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."²⁷

10. Section 503(b)(6) of the Act²⁸ bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of an *NAL*. Section 503(b)(6) does not, however, bar the Commission from assessing whether Lockheed Martin's conduct prior to that time period apparently violated the provisions of the Act and Rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period.²⁹ Thus, while we may consider the fact that Lockheed Martin's conduct has continued over a period that began in 2007, the forfeiture amount we propose herein relates only to Lockheed Martin's apparent violations that have occurred within the past year.

11. 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.³⁰ 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.³¹ Accordingly, we herein propose separate forfeiture amounts for

²⁶ 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) ("*Southern California*").

²⁷ 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; *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, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

²⁸ 47 U.S.C. § 503(b)(6).

²⁹ See 47 U.S.C. § 503(b)(2)(D), 47 C.F.R. § 1.80(b)(4); see also *Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 1820, 1825 (2006), *forfeiture ordered*, 22 FCC Rcd. 1051 (2007) (forfeiture paid); *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-71 (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 (1967), *recon. den.*, 11 FCC 2d 193 (1967); *Bureau D'Electronique Appliquee, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 3445, 3447-48 (Enf. Bur., Spectrum Enf. Div. 2005), *forfeiture ordered*, 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div. 2005) (forfeiture paid).

³⁰ 47 C.F.R. § 1.80(b).

³¹ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 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).

Lockheed Martin's separate violations.

12. Consistent with recent precedent, we propose the full base forfeiture amount of \$6,000 (\$3,000 for each station) for Lockheed Martin's failure to timely file renewal applications for earth stations E920702 and E7541 within the time period specified in Section 25.121(e) of the Rules.³² Additionally, we propose a forfeiture in the amount of \$5,000 for Lockheed Martin's unauthorized operation of earth station E7541 after its license had expired on August 3, 2007. In proposing a forfeiture of \$5,000 for the unauthorized operation of station E7541, 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.³³ For Lockheed Martin's unauthorized operations of station E920702, however, we propose the full base forfeiture amount of \$10,000. Unlike station E7541, we do not find that a downward adjustment to the proposed forfeiture amount for unauthorized operation of station E920702 is appropriate. Lockheed Martin's unauthorized operation of station E920702 in its support of the launch of the satellite formerly known as AMC-14 was undertaken without any previous Commission authorization (using frequencies and communicating with a point of communication that had not been authorized under its expired license) in violation of the Act and Commission Rules.³⁴ Thus, we propose an aggregate forfeiture of \$21,000 (\$6,000 for failure to timely file renewal applications for earth stations E920702 and E7541, \$5,000 for unauthorized operation of earth station E7541, and \$10,000 for unauthorized operation of earth station E920702).

13. This \$21,000 base forfeiture amount is subject to adjustment, however. In this regard, we consider Lockheed Martin's size and ability to pay a forfeiture.³⁵ 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 Lockheed Martin, could expect the assessment of higher forfeitures for violations.³⁶ Given Lockheed Martin's size and ability to pay a forfeiture, we conclude that an upward

³² See e.g., *Discovery World Television, Inc.*, Notice of Apparent Liability for Forfeiture, DA 09-538, (Enf. Bur. Spectrum Enforcement Div., rel. March 6, 2009); *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).

³³ 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).

³⁴ See e.g., *Able Infosat Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 887, 890 (Enf. Bur., Spectrum Enf. Div. 2008) (proposing the full base forfeiture amount of \$10,000 for unauthorized operations and declining to make a downward adjustment where the operator's unauthorized operation was undertaken without any previous Commission authorization) (forfeiture paid); *Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd. 13811 (Enf. Bur., Spectrum Enf. Div., 2006) (proposing the base forfeiture amount of \$10,000 for operating without Commission authorization and an upward adjustment of \$4,000 for unauthorized operations that spanned over a five-year period) (forfeiture paid).

³⁵ Lockheed Martin recently reported its net sales for 2007 as \$41.9 billion. See *Lockheed Martin Corporation 2007 Annual Report* (February 28, 2008).

³⁶ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099-100. See also *Walgreen Co.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 16045, 16048 (Enf. Bur., Spectrum Enf. Div. 2007).

adjustment of the base forfeiture amount to \$31,000 is appropriate.

14. Lockheed Martin asserts that its failure to timely file renewal applications was a regrettable oversight. Such administrative oversight or inadvertence does not, however, mitigate its violations.³⁷ As a Commission licensee, Lockheed Martin is charged with the responsibility of knowing and complying with the terms of its authorizations, the Act and the Rules. We do find, however, that a downward adjustment of the proposed forfeiture from \$31,000 to \$24,800 is warranted due to Lockheed Martin's voluntary disclosure of the violations. The Commission has considered voluntary disclosure to be a mitigating factor where the licensee brings a violation to the attention of the Commission immediately upon its discovery and before any Commission action is taken.³⁸

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act³⁹ and Sections 0.111, 0.311 and 1.80 of the Rules,⁴⁰ Lockheed Martin Corporation **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-four thousand eight hundred dollars (\$24,800) for the willful and repeated violation of Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Rules.

16. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,⁴¹ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Lockheed Martin Corporation **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

17. 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. Lockheed Martin

³⁷ See *Southern California*, 6 FCC Rcd at 4387 (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance").

³⁸ See *Petracom of Texarkana, LLC*, Forfeiture Order, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur., 2004). See also *Side By-Side, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 898, 901 (Enf. Bur., Spectrum Enf. Div., 2008), *forfeiture ordered*, 23 FCC Rcd 7393 (Enf. Bur., Spectrum Enf. Div., 2008) (forfeiture paid); *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).

³⁹ 47 U.S.C. § 503(b).

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

⁴¹ 47 C.F.R. § 1.80.

will also send electronic notification on the date said payment is made to Jackie.Ellington@fcc.gov and JoAnn.Lucanik@fcc.gov.

18. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

19. 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.

20. **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 Stephen D. Baruch, Esq., counsel for Lockheed Martin Corporation, Leventhal Senter & Lerman PLLC, 2000 K Street, NW, Suite 600, Washington, DC 20006-1809.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau