

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

In the Matter of)	
Notice of Apparent Liability of)	
CLEAR PAGING, INC.)	File No. 820EF0004
Licensee of Paging and Radiotelephone)	
Station KNLP864, Jackson, Mississippi)	
For a Forfeiture)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 10, 1998

Released: February 11, 1998

By the Chief, Enforcement and Consumer Information Division,
Wireless Telecommunications Bureau:

1. This action constitutes a Notice of Apparent Liability for Forfeiture, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b) (the "Act"), against Clear Paging, Inc. ("Clear Paging"), licensee of Paging and Radiotelephone Station KNLP864, Jackson, Mississippi. For the reasons that follow, we find Clear Paging apparently failed to timely notify the Commission of the commencement of service of Station KNLP864, in apparent violation of Section 22.142(b) of the Commission's Rules.
2. On January 19, 1996, the Commission granted Clear Paging's application to relocate Station KNLP864 to a new site in Jackson, Mississippi. The information before us indicates that Clear Paging commenced service from the new location on January 13, 1997. However, Clear Paging did not file an FCC Form 489 notifying the Commission of commencement of service until February 13, 1997.
3. Section 22.142(b) of the Commission's Rules provides in pertinent part, "*Notification Requirement*. Licensees must notify the FCC (FCC Form 489) of commencement of service to subscribers, no later than fifteen days after service begins." 47 C.F.R. § 22.142(b).
4. Because Clear Paging commenced service to subscribers from the new location on January 13, 1997, and Section 22.142(b) requires notification on FCC Form 489 within 15 days of commencement of service, Clear Paging should have notified the Commission that it had commenced service from the new location by no later than January 28, 1997. Clear Paging

concedes that it inadvertently failed to file FCC Form 489 when it filed an FCC Form 600 on January 17, 1997. Clear Paging further states that it filed the appropriate FCC Form 489 on February 13, 1997, immediately upon realizing the error. We note that Clear Paging voluntarily brought this matter to the Bureau's attention.

5. Despite the fact that Clear Paging eventually filed its FCC Form 489, it did, by its own admission, fail to file the required notice on time. Because each day of a continuing violation is considered a separate violation for purposes of computing a forfeiture, Clear Paging's violation is considered a repeated violation within the meaning of Section 503(b)(1) of the Act. See *Eastern Carolina Broadcasting, Inc.*, 6 FCC Rcd 6154, 6155 (1991). We find that Clear Paging's failure to timely notify the Commission of the commencement of service is an apparent repeated violation of Section 22.142(b) of the Commission's Rules. The guidelines contained in the Commission's *Forfeiture Policy Statement*, 12 FCC Rcd 17087 (1997), which became effective on October 14, 1997, specify a base forfeiture amount of \$3,000 for failure to file required forms or information. The guidelines, however, permit the Commission to issue a higher or lower forfeiture than the specified base amount. The Commission determined, in cases decided before the recent adoption of the *Forfeiture Policy Statement*, that a base forfeiture amount of \$2,000 is justified when a licensee has failed to timely file Form 489. See e.g. *Mulzer Enterprises, Inc.*, 12 FCC Rcd 10269 (1997); and *Mountaineer Paging*, 12 FCC Rcd 4727 (1997). There is no apparent need to change this precedent. We find, therefore, that a \$2,000 base amount is appropriate here. However, in view of Clear Paging's voluntary disclosure of its violation to the Commission, we reduce the amount of Clear Paging's proposed forfeiture to \$1,000.

6. Accordingly, 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, Clear Paging, Inc., is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of one thousand dollars (\$1,000) for repeatedly violating Section 22.142(b) of the Commission's Rules.

7. Payment of the forfeiture may be made by credit card through the Commission's Billings and Collections Branch at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the file number of this proceeding. Alternatively, Clear Paging may choose to submit a written statement seeking reduction or cancellation of the proposed monetary forfeiture.

8. A copy of this Notice is being sent, by Certified Mail - Return Receipt Requested, to Clear Paging's counsel, Robert E. Stup, Jr., Esq., Fleischman and Walsh, L.L.P., 1400 Sixteenth Street, N.W., Suite 600, Washington, D. C. 20036.

FEDERAL COMMUNICATIONS COMMISSION



Howard C. Davenport
Chief, Enforcement and Consumer Information Division
Wireless Telecommunications Bureau