

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

In the Matter of)	
)	
Notice of Apparent Liability for Forfeiture of)	
)	
BRANDON COMMUNICATIONS, INC.)	File No. 820EF0008
)	
Licensee of Station KNKJ206,)	
Erhard, Morris, and Glenwood, Minnesota)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 3, 1998

Released: March 4, 1998

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

1. This is 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), and Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, against Brandon Communications, Inc. ("Brandon"), licensee of KNKJ206, frequency 152.24 MHz, in Erhard, Morris, and Glenwood, Minnesota. For the reasons that follow, we find that Brandon failed to timely notify the Commission of the commencement of service of Station KNKJ206, in apparent violation of Section 22.142(b) of the Commission's Rules.

2. On April 23, 1996, the Commission granted Brandon's application to construct new transmitter sites in Erhard, Morris, and Glenwood, Minnesota for Station KNKJ206. The information before us indicates that Brandon apparently commenced service from all three locations on May 11, 1996. However, Brandon did not file an FCC Form 489 notifying the Commission of commencement of service until March 4, 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 Brandon commenced service to subscribers on May 11, 1996, and Section 22.142(b) requires notification on FCC Form 489 within 15 days of commencement of service,

Brandon should have notified the Commission that it had commenced service no later than May 26, 1996. Brandon concedes that it did not timely file an FCC Form 489 because of its unfamiliarity with the Commission's notification rules. Brandon asserts that it filed an appropriate Form 489 on March 4, 1997, immediately upon realizing its error. We note that Brandon voluntarily brought this matter to the Bureau's attention.

5. Despite the fact that Brandon eventually filed its Form 489, it did, by its own admission, fail to file the required notice on time. The purpose of the Form 489 is to notify the Commission that construction has been completed, and the frequency is in use, so that the Commission will not assign that frequency to anyone else. Brandon's violation continued until it filed its Forms 489. Because each day of a continuing violation is considered a separate violation for purposes of computing a forfeiture, Brandon'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).

6. 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 per frequency 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. Based on the factors set forth in Section 503(b)(2)(D) of the Act, and case precedent, we find that Brandon's apparent violations of Section 22.142(b) warrant a \$2,000 forfeiture for each of the three locations, for a total forfeiture amount of \$6,000. However, in view of Brandon's voluntary disclosure of its violations to the Commission, and considering the facts in this case, we reduce the amount of Brandon's proposed forfeiture to \$3,000.

7. In a letter dated July 23, 1997, Brandon asserts that Station KNKJ206 serves a very sparsely populated rural area and does not generate enough revenue to pay a monetary forfeiture without suffering a severe financial hardship. The financial information Brandon provides indicates that, although Brandon apparently incurred a financial loss in its paging business during a recent reporting period, it apparently does have sufficient assets from which to pay the monetary forfeiture. Furthermore, the Commission has found that a licensee's gross revenues are a useful yardstick in determining the licensee's ability to pay a forfeiture. See *In Re PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992). Since the proposed forfeiture is only a very small proportion of Brandon's gross revenues, payment of the proposed forfeiture apparently should not impair Brandon's ability to provide service. In addition, Brandon requested a waiver of Section 22.142(b) of the Commission's Rules, but did not provide a sufficient factual showing to justify a waiver. Under the circumstances, we do not find any lawful basis for waiving Section 22.142(b) in this instance. The Commission, therefore, will not forbear from issuing a Notice of Apparent Liability for Forfeiture.

8. 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, Brandon Communications, Inc., is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of three thousand dollars (\$3,000) for violation of Section 22.142(b) of the Commission's Rules.

9. 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, Brandon may choose to submit a written statement seeking reduction or cancellation of the proposed monetary forfeiture.

10. A copy of this Notice is being sent, by Certified Mail/Return Receipt Requested, to Brandon's counsel, Frederick M. Joyce, 1019 19th Street, N.W., Fourteenth Floor, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION



Howard C. Davenport
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Wireless Telecommunications Bureau