

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

In the Matter of)
)
Notice of Apparent Liability)
For a Forfeiture)
)
NETWORK SERVICES, LLC)
)
Licensee of Paging and Radiotelephone)
Station KNKG523, Phoenix, Arizona)
)

File No. 820EF0009

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 2, 1998

Released: April 3, 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") and Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, against Network Services, LLC ("Network Services"), licensee of Paging and Radiotelephone Station KNKG523, Phoenix, Arizona. For the reasons that follow, we find Network Services apparently failed to timely file a FCC Form 489 to notify the Commission of the commencement of service of Station KNKG523, in apparent violation of Section 22.142(b) of the Commission's Rules, 47 C.F.R. § 22.142(b).

2. On May 9, 1996, the Commission granted Network Services' application to construct Station KNKG523. The construction permit contained an expiration date of May 9, 1997. The information before us indicates that Network Services commenced service from the new station on May 2, 1997. However, Network Services did not file a FCC Form 489 notifying the Commission of commencement of service until June 17, 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. Network Services states that it inadvertently failed to file FCC Form 489 within 15 days of commencement of service. Network Services further states that it filed the appropriate Form 489 immediately upon realizing the error. We note that Network Services voluntarily brought this matter to the Bureau's attention.

5. Despite the fact that Network Services 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, Network Services' 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 Network Services' 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 depart from this precedent. We find, therefore, that a \$2,000 base amount is appropriate here. However, in view of Network Services' voluntary disclosure of its violation to the Commission, we reduce the amount of Network Services' 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, Network Services, LLC, 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, 47 C.F.R. § 22.142(b).

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: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the file number of this proceeding. Alternatively, Network Services may choose to submit a written statement seeking reduction or cancellation of the proposed monetary forfeiture.

8. Copies of this notice are being sent by Certified Mail - Return Receipt Requested to Brad Scott, President, Network Services, LLC, 525 South Douglas Street, El Segundo, CA 90245, and to Pete Fiorio, Fiorio Communications Consulting, 10451 Twin Rivers Road, Suite 207, Columbia, MD 21044 .

FEDERAL COMMUNICATIONS COMMISSION

Howard C. Davenport

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Chief, Enforcement and Consumer Information Division
Wireless Telecommunications Bureau