

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

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| In the Matter of |) | |
| |) | |
| NORTHEAST UTILITIES |) | File No. EB-01-IH-0262 |
| |) | NAL/Acct. No. 20023208002 |
| Licensee of Various Land Mobile and Microwave Stations |) | |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 6, 2001

Released: November 7, 2001

By the Chief, Investigations and Hearings Division, Enforcement Bureau:

I. Introduction

1. In this Notice of Apparent Liability for Forfeiture we find that Northeast Utilities failed to disclose in multiple applications filed with the Commission that it had been convicted of felonies, in apparent willful and repeated violation of Section 1.17 of the Commission’s rules, 47 C.F.R. § 1.17. We conclude that that Northeast Utilities is apparently liable for a forfeiture in the amount of \$20,000.

II. Background

2. On September 27, 1999, Northeast Utilities Service Company, a subsidiary of Northeast Utilities, pleaded guilty to six counts of violating the Clean Water Act. On the same day, Northeast Nuclear Energy Company, another subsidiary of Northeast Utilities, pleaded guilty to 19 counts of violating the Atomic Energy Act by submitting false and inaccurate operator license applications to the Nuclear Regulatory Commission. Each company was ordered to pay a \$3.35 million fine and was placed on probation for three years. Each offense constituted a felony.

3. Between September 28, 1999, and November 27, 2000, Northeast Utilities, either directly or through its subsidiaries, filed more than 128 applications with the Commission for various purposes. Each of the forms specifically inquired whether the applicant, or any entity with a controlling interest in the applicant, had ever been convicted of a felony. In each instance, the applicant responded in the negative.

4. On November 28, 2000, Northeast Utilities Service Company filed an application on FCC Form 603, seeking Commission consent to the transfer of control of certain authorizations to another entity. In that application, it disclosed to the Commission for the first time that Northeast Utilities had been convicted of the felonies described above. Northeast Utilities thereafter amended its previously-filed applications which were still pending in order, albeit belatedly, to provide information about the convictions.

5. The Enforcement Bureau's Investigations & Hearings Division subsequently conducted an investigation into Northeast Utilities' apparent failure to properly disclose the company's criminal background in applications filed with the Commission. In a May 15, 2001, response to a letter of inquiry from the Investigations & Hearings Division, Northeast Utilities explained:

[Northeast Utilities] answered in the negative [regarding whether it had ever been convicted of a felony] as there was a misunderstanding as to the fact that these were indeed felony convictions. The [Northeast Utilities] personnel responsible for the licensing were aware that [Northeast Utilities] plead "guilty to violations" but did not understand that this was classified as a criminal "felony". It was never [Northeast Utilities'] intent to misrepresent this conviction and as soon as [Northeast Utilities'] staff became aware of this error, they worked with counsel and staff at [Northeast Utilities' communications law firm] to correct all outstanding applications and to identify the process to attach the necessary notification to all applications going forward.

6. Notwithstanding Northeast Utilities' disclosure on November 28, 2000, Northeast Utilities Service Company, in August 2001, filed two additional applications with the Commission. In each application, Northeast Utilities Service Company responded in the negative when asked whether it had been convicted of a felony.

III. Discussion

7. Section 1.17 of the Commission's rules, 47 C.F.R. § 1.17, states in pertinent part that "No applicant . . . shall . . . in any application, pleading, or report or any other written statement submitted to the Commission, make any . . . willful material omission bearing on any matter within the jurisdiction of the Commission." A "willful material omission" need not be accompanied by an intent to deceive. *Curators of the University of Missouri*, 16 FCC Rcd 1174, 1181 (2001) (*recon. pending*),¹ citing *Abacus Broadcasting Corp.*, 8 FCC Rcd 5110, 5115 (Rev. Bd. 1993).

8. Northeast Utilities disclosed its felony convictions to the Commission in a filing on November 28, 2000. Prior to that date, however, Northeast Utilities filed more than 128 applications in which it failed to disclose the convictions. Of the 128 applications, six were filed within the last year and are, thus, actionable under Section 503(b)(6)(B) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b)(6)(B). Northeast Utilities also filed two applications *after* November 28, 2000, in which it again erroneously responded in the negative when asked whether it had been convicted of a felony. Each of the applications was filed on behalf of Northeast Utilities or a subsidiary by an authorized company individual who certified to the truthfulness, correctness, and completeness of the information therein. While the company may not have intended to mislead the Commission, under the Commission's precedent in the *Curators of the University of Missouri* case, Northeast Utilities willfully omitted material information in multiple filings by certifying in the negative that it had not been convicted of a felony. By failing to disclose its criminal background in the various applications, Northeast Utilities essentially prevented the Commission from carrying out its statutory obligations contained in Section 309 of the Communications Act of 1934, as amended, 47 C.F.R. § 309. Section 309 requires the

¹ This case involved an apparent violation of Section 73.1015, 47 C.F.R. § 73.1015. Section 73.1015 and Section 1.17 contain identical language prohibiting the making of a "willful material omission" in an application filed with the Commission.

Commission, in the case of each application, to make a public interest determination as to whether the application should be granted. Furthermore, Northeast Utilities' failure to inform the Commission of its felony criminal convictions frustrated the efficient administration of the Commission's processes. In order to carry out its business, the Commission, by necessity, must rely on the accuracy and completeness of the information provided by those who come before it. Northeast Utilities failed to carry out its obligations in this regard.

9. Based on the foregoing, we find that Northeast Utilities apparently willfully and repeatedly (on eight separate occasions within the statute of limitations), violated Section 1.17 of the Commission's rules. Under these circumstances, we take into account "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." Section 503(b)(2) of the Communications Act of 1934, as amended, 47 C.F.R. § 503(b)(2). In the *Curators of the University of Missouri* case cited above, the Commission proposed an \$8,000 forfeiture for an analogous willful omission in both an application and a response to the staff. Here, there are more violations, but disclosure was voluntary. On balance, we conclude that a proposed forfeiture in the total amount of \$20,000 is appropriate for the eight apparent violations involved here.

IV. Ordering Clauses

10. Accordingly, IT IS ORDERED that, 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, Northeast Utilities IS APPARENTLY LIABLE FOR A FORFEITURE in the amount of \$20,000, for apparently willfully and repeatedly violating Section 1.17 of the Commission's rules, 47 C.F.R. § 1.17.

11. IT IS FURTHER ORDERED that, pursuant to 47 C.F.R. § 1.80, within 30-days of the release of this NOTICE OF APPARENT LIABILITY, Northeast Utilities SHALL PAY the full amount of the proposed forfeiture² or SHALL FILE a written response seeking reduction or cancellation of the proposed forfeiture.³

12. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for

² Payment of the forfeiture shall be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment shall note the NAL/Acct. No. referenced above.

³ The response, if any, shall be directed to Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Room 3-B443, Washington DC 20554. The response shall note the File No. and NAL/Acct No. referenced above. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent'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. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan shall be directed to: Chief, Revenue and Receivables Operations Group, 445 12th Street, SW, Washington DC 20554. See 47 C.F.R. § 1.1914.

Forfeiture shall be sent by Certified Mail - Return Receipt Requested, to Cristi Walker, Counsel, Northeast Utilities, 107 Selden Street, Berlin CT 06037.

FEDERAL COMMUNICATIONS COMMISSION

Charles W. Kelley
Chief, Investigations and Hearings Division
Enforcement Bureau