

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

In the Matter of)	
)	
The Ohio Bell Telephone Company)	File No. EB-00-TS-079
Licensee of Paging Station KQD612)	NAL/Acct. No. 200132100007
Dayton, Ohio)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 27, 2000

Released: November 29, 2000

By the Chief, Enforcement Bureau:

I. Introduction

1. In this Notice of Apparent Liability for Forfeiture, we find that Ohio Bell Telephone Company (Ohio Bell), operated a paging system without Commission authorization, in apparent violation of Section 301 of the Communications Act of 1934 (“Act”)¹, as amended, and Section 22.3 of the Commission’s Rules (“Rules”).² We conclude that Ohio Bell is apparently liable for a forfeiture in the amount of five thousand dollars (\$5,000).

II. Background

2. Ohio Bell’s authorization for Public Mobile Radio Station KQD612, expired on September 9, 1999. On December 14, 1999, Ohio Bell filed an application for renewal of the authorization for that station and requested the waiver of Section 1.949 of the Commissions Rules.³ Ohio Bell’s waiver request indicates that Ohio Bell apparently operated paging facilities without authorization between September 9, 1999 and December 14, 1999. On February 20, 2000, the Commission granted Ohio Bell’s waiver request and reinstated its authority to operate Station KQD612.

III. Discussion

3. Section 301 of the Act sets forth the general mandate that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license. Section 22.3 of the Commission’s Rules provides, in pertinent part, that stations in the Public Mobile Service must be operated with a valid Commission authorization. We conclude that Ohio Bell operated a paging station without a valid license

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 22.3.

³ 47 C.F.R. § 1.949. This Section provides , in pertinent part, that “Applications for renewal of authorizations in the Wireless Radio Services must be filed no later than the expiration date of the authorization for which renewal is sought. . . .”

between September 9, 1999 and December 14, 1999, in apparent willful and repeated violation of Section 301 of the Communications Act and Section 22.3 of the Rules.

5. The Commission has stated that “The Wireless Bureau, after reviewing all the facts and circumstances concerning the late filing of [a] renewal application, may, in its discretion, also initiate enforcement action against the licensee for . . . unauthorized operation. . . .”⁴ In addition, the Commission stated that applications for renewal received more than 30 days after expiration of the license may lead to “more significant fines or forfeitures.”⁵ In this case, Ohio Bell operated without a license and filed a renewal application after its license expiration.

6. The guidelines contained in the Commission’s *Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303 (1999), specify a base forfeiture amount of \$10,000 for operation without an instrument of authorization for the service. Section 503(b)(2)(D) of the Act⁶ requires the Commission to consider “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.” In this case, Ohio Bell failed to file an application for renewal and operated a station under circumstances where the Commission has envisioned “more significant fines or forfeitures” for violations in excess of 30 days. On the other hand, Ohio Bell had previously been licensed, so this is not comparable to “pirate” wireless operations, which typically have been subject to forfeitures of approximately \$10,000.⁷ Taking these facts into consideration and all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we conclude that a forfeiture of \$5,000 is warranted.

IV. Ordering Clauses

7. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act⁸ and Sections 0.111, 0.311 and 1.80 of the Rules⁹ Ohio Bell is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of \$5,000 for violation of Section 301 of the Communications Act of 1934, as amended, and Section 22.3 of the Commission’s Rules. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2)(D) of the Act, 47 U.S.C. § 503(b)(2)(D) and the guidelines enumerated in the *Forfeiture Policy Statement*.

8. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Commission’s Rules, within thirty days of the release of this **NOTICE OF APPARENT LIABILITY**, Ohio Bell **SHALL PAY**

⁴ The enforcement responsibilities of the Wireless Telecommunications Bureau are now with the Enforcement Bureau. See 47 C.F.R. § 0.111.

⁵ *Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, Memorandum Opinion and Order upon reconsideration*, 14 FCC Rcd 11476, 11485-11486 (1999).

⁶ 47 U.S.C. §503(b)(2)(D).

⁷ See, e.g., *Jean R. Jonassaint*, 15 FCC Rcd 10422 (Enf. Bur. 2000).

⁸ 47 U.S.C. § 503(b).

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

the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by 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 should note the NAL/Acct. No.: 200132100007.

10. The response if any must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, SW, Washington, D.C. 20554, Ref: EB-00-TS-079; NAL/Acct. No.: 200132100007.

11. 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 (“GAAP”); 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.

12. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, SW Washington, D.C. 20554.¹⁰

13. **IT IS FURTHER ORDERED THAT** this notice shall be sent, by certified mail, return receipt requested, to counsel for Ohio Bell Telephone Company, Skadden, Arps, Slate, Meagher & Flom, Attention David H. Pawlik, 1440 New York Avenue, NW, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁰ See 47 C.F.R. § 1.1914