

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

In the Matter of
Data Investments, Inc.
d/b/a Star Communications
P.O. Box 537
Cape Girardeau, Missouri 63702-0537
File Number EB-00-TS-146
NAL/Acct. No. 200132100008

FORFEITURE ORDER

Adopted: April 9, 2001

Released: April 11, 2001

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1 In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of two thousand dollars (\$2,000) against Data Investments, Inc., d/b/a Star Communications ("Star"), Cape Girardeau, Missouri, for willfully and repeatedly violating Section 301 of the Communications Act of 1934 ("Act"), as amended, and Section 22.3 of the Commission's Rules ("Rules"). The noted violations involve Star's operation of four Public Mobile (paging) radio stations KNKC938, KNKJ977, KNKC272, and KNKC934 after its licenses for those stations had expired.

2. On November 27, 2000, the Enforcement Bureau Chief issued a Notice of Apparent Liability ("NAL") for Forfeiture in the amount of five thousand dollars (\$5,000). Star filed its response on January 17, 2001.

II. BACKGROUND

3. Between the expiration of Star's authorization for Stations KNKC938, KNKJ977, KNKC272 and KNKC934, on April 1, 1999, and the grant of its renewal application, Star had no authority to operate those stations. On December 27, 1999, Star filed, with its renewal application, a request for a waiver of Section 1.949 of the Rules. Star's waiver request indicates that Star operated Stations KNKC938, KNKJ977, KNKC272 and KNKC934 without authorization between April 1, 1999 and December 27, 1999. On March 20, 2000, the Commission staff granted Star's waiver request and reinstated its authority to operate Stations KNKC938, KNKJ977, KNKC272 and KNKC934.

1 47 U.S.C. § 301.

2 47 C.F.R. § 22.3.

3 Data Investments, Inc., 15 FCC Rcd 23730 (Enf. Bur., 2000).

4 47 C.F.R. § 1.949(a), which requires that renewal applications in the Wireless Radio Services be filed no later than the expiration date of the authorization for which the renewal is sought.

4. In its response to the NAL, Star contends that imposition of the proposed monetary forfeiture would be unjust because Star submitted a renewal application before its licenses expired, which apparently “went to the wrong department or was lost.” According to Star, it mailed this application on November 17, 1998, to: “License Renewal Division, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.” Star asserts that the FCC did not respond to inquiries about the application’s status.

III. DISCUSSION

5. As the NAL explicitly states, the forfeiture amount in this case was assessed in accordance with Section 503 of the Communications Act of 1934, as amended (“Act”),⁵ Section 1.80 of the Rules,⁶ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Policy Statement*”). Section 503(b) of the Act requires that, in examining Star’s response, the Commission 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 other such matters as justice may require.⁷

6. 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 Rules provides, in pertinent part, that stations in the Public Mobile Service must be operated with a valid Commission authorization.

7. Star filed its response to the NAL three weeks late. However, because consideration of that response facilitates the proper resolution of this matter, we will consider it.

8. The Commission has no record of the application described in Star’s response to the NAL and Star presents no evidence that such an application was ever received by the Commission. However, Star has consistently maintained, in correspondence sent both before and after the issuance of the NAL, that it did mail such an application. In light of the circumstances of this case, we will give Star the benefit of any doubt and assume that it mailed such an application to the Commission on or about November 17, 1998.

9. As described in Star’s response to the NAL, the application Star says it filed has defects which include:

(1) Star did not send its application to the Mellon Bank, in Pittsburgh, Pennsylvania, as required by Section 0.401(b) of the Rules.⁸ Instead, it mailed the application to “License Renewal Division,” which did not exist.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 C.F.R. § 0.401(b).

(2) Star used FCC Form 600. Section 22.145 of the Rules,⁹ then in effect, required the use of FCC Form 405.

10. In view of these defects, we find that rescission of the monetary forfeiture is not warranted. However, even though the application dated November 17, 1998, is defective, its submission does demonstrate good faith and, therefore, justifies mitigation of the forfeiture amount.

11. We conclude that Star willfully and repeatedly violated Section 301 of the Act and Section 22.3 of the Rules by operating Stations KNKC938, KNKJ977, KNKC272, and KNKC934 without Commission authorization between April 1, 1999 and December 27, 1999. Taking the above statutory factors into account as well as the factors set forth in the *Policy Statement*, we conclude that the proposed monetary forfeiture should be mitigated to \$2,000.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁰ Star **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two thousand dollars (\$2,000) for operating a paging system without Commission authorization in willful and repeated violation of Section 301 of the Act and Section 22.3 of the Rules.

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules¹¹ within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the Act.¹² Payment may be made 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 NAL/Acct. No. 20013210000. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

14. **IT IS FURTHER ORDERED THAT** a copy of this order shall be sent, by certified mail, return receipt requested, to Timothy J. Singleton, Data Investments, Inc., d/b/a Star Communications, P.O. Box 537, Cape Girardeau, Missouri 63702-0537.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁹ 47 C.F.R. § 22.145. This section was superseded on December 14, 1998, by 47 C.F.R. § 1.949.

¹⁰ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹¹ 47 C.F.R. § 1.80.

¹² 47 U.S.C. § 504(a).

¹³ See 47 C.F.R. § 1.1914.