

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

In re)
)
Metrocall USA, Inc.) File No. 620EF0005
)
Notice of Apparent Liability for Forfeiture)
for Paging and Radiotelephone Service)
Station KNKP278)
Davis, California)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 25, 1996

Released: July 26, 1996

By the Chief, Enforcement 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), against Metrocall USA, Inc. ("Metrocall"), licensee of Paging and Radiotelephone Service Station KNKP278, Davis, California. Specifically, we find that Metrocall failed to timely notify the Commission of commencement of service of Station KNKP278, in apparent violation of Section 22.142(b) of the Commission's Rules, 47 C.F.R. § 22.142(b).

2. The Commission granted Metrocall authorization to construct base station facilities for KNKP278 on February 8, 1995. The authorization required construction to be completed by February 8, 1996 and permitted operation on frequency 931.1625 MHz.

3. On March 6, 1996, Metrocall filed a request for a waiver of Commission Rule 22.142(b). It stated that: a) construction of the station was completed and service to the public began by February 8, 1996 and b) its failure to timely file FCC Form 489 was "due to clerical oversight."

4. Section 22.142(b) of the Commission's rules provides in pertinent part:

Notification requirement. Licensees must notify the Commission (FCC Form 489) of commencement of service to subscribers. The notification must be mailed or delivered to filing place (see § 22.106 of this part) no later than 15 days after service begins.

47 C.F.R. § 22.142(b). In the past, the Commission has determined that a forfeiture of \$2,000 is justified when a licensee fails to timely file Form 489. See e.g., *R & D Cellular*, 11 FCC Rcd 3350 (1996).

5. There is no dispute that Metrocall failed to timely notify the Commission of the

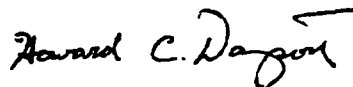
initiation of service on 931.1625 MHz. Regardless of its claim of clerical oversight, the fact remains that it repeatedly violated Section 22.142(b) of the Commission's Rules over a period of time. Based on the factors set forth in Section 503(b)(2)(D) of the Act and case precedent, we find that Metrocall's violation of Section 22.142(b) warrants a \$2,000 forfeiture. However, because it voluntarily disclosed the violation and the infraction was minor, we reduce the total 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, Metrocall is hereby advised of its APPARENT LIABILITY FOR FORFEITURE in the amount of one thousand dollars (\$1,000) for repeated violation of Section 22.142(b).

7. Payment of the forfeiture may be made by credit card 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 the above-captioned proceeding.

8. A copy of this notice is being sent to counsel for Metrocall, Amy Brett, Esq., Joyce & Jacobs, 1019 19th Street, N.W. 14th Floor, Washington D.C. 20036, by Certified Mail, Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION



Howard C. Davenport
Chief, Enforcement Division
Wireless Telecommunications Bureau