

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

In re)	
)	
U.S. West Communications, Inc.)	File No. 620EF0007
)	
Notice of Apparent Liability for Forfeiture)	
for Rural Radiotelephone Service)	
Station KNK0734)	
Williams, Arizona)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 26, 1996

Released: September 27, 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 U.S. West Communications, Inc. ("U.S. West"), licensee of Rural Radiotelephone Service Station KNK0734, Williams, Arizona. Specifically, we find that U.S. West failed to timely file FCC Forms 489 for Station KNK0734, in apparent violation of Section 22.9(b)(1) of the Commission's Rules, 47 C.F.R. § 22.9(b)(1).¹

2. The Commission granted U.S. West authorization to construct station facilities for KNK0734 on July 29, 1992. The authorization required construction to be completed by July 29, 1993, and permitted operation on frequencies 454.175, 454.350, 454.575, and 454.600 MHz.

3. On October 6, 1995, U.S. West filed a request for Special Temporary Authority with the Commission to continue operation of KNK0734 on frequencies 454.575 MHz and 454.600 MHz, which was granted pending processing of application for reinstatement of expired authorization on October 27, 1995. U.S. West also voluntarily disclosed its failure to timely file FCC Forms 489. On January 19, 1996, U.S. West filed an FCC Form 489 for Station KNK0734.

¹ Note that Section 22.9(b)(1) was the appropriate Commission Rule in effect when timely notice was due from U.S. West. Commission Rules have subsequently been amended and reorganized so that the notice requirement provided in former Section 22.9(b)(1) now appears in Section 22.142(b) of the Commission's Rules, 47 C.F.R. § 22.142(b).

4. On August 28, 1996, in response to a request from the Chief, Enforcement Division, Wireless Telecommunications Bureau, pursuant to Section 308(b) of the Act, U.S. West stated that KNK0734 was timely constructed and services commenced on all four authorized frequencies in September, 1992.² However, U.S. West's response further states that the station "immediately experienced severe service disruptions on all four authorized frequencies" which required the discontinued use of some of the authorized frequencies. U.S. West contends that only two of the authorized frequencies are currently operational (454.575 MHz and 454.600 MHz).³

5. The former Section 22.9(b)(1)⁴ of the Commission's Rules provided in pertinent part:

Notification of status of facilities. (FCC Form 489). When construction has been completed in accordance with the radio station authorization, the licensee shall so notify the Commission using Form 489. Licensees can commence service the day Form 489 is placed in the mail to FCC.

47 C.F.R. § 22.9(b)(1). A licensee must file an FCC Form 489 before commencing service on an authorized frequency. *See Emery Telephone*, 10 FCC Rcd 10012 (1995). In the past, the Commission has determined that a forfeiture of \$2,000 is justified when a licensee fails to timely file FCC Form 489. *See, e.g., R & D Cellular*, 11 FCC Rcd 3350 (1996).

6. There is no dispute that U.S. West commenced service on frequencies 454.175, 454.350, 454.575 and 454.600 MHz without filing FCC Form 489 in a timely manner. The fact that U.S. West discontinued service on two of the frequencies shortly thereafter does not obviate its requirement to file FCC Forms 489. Thus, U.S. West repeatedly violated Section 22.9(b)(1) of the Commission's Rules over an extended period of time by not filing an FCC Form 489 for each frequency. Therefore, based on the factors set forth in Section 503(b)(2)(D) of the Act and case precedent, we find that U.S. West's violations of Section 22.9(b)(1) warrant an \$8,000 forfeiture (\$2,000 for each failure to file an FCC Form 489 before commencing service on each frequency). However, because U.S. West voluntarily disclosed the violations and the infractions were minor, we reduce the total forfeiture to \$4,000. *See AllCity Paging, Inc.*, 9 FCC Rcd 6485 (1994).

7. 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, U.S. West is hereby advised of its APPARENT LIABILITY FOR FORFEITURE in the amount of four thousand dollars (\$4,000) for repeated violations of Section 22.9(b)(1) of the Commission's Rules . 47 C.F.R. § 22.9(b)(1).

² See Affidavit of Chris Cocchiarella, Litigation Risk Manager for U.S. West (Aug. 28, 1996).

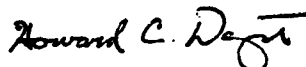
³ U.S. West Communications, Inc., Request for Special Temporary Authority (File No. 60157-CR-P/L-01-92) at 2.

⁴ See *supra*, note 1.

8. 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, sending it 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.

9. A copy of this Notice is being sent to Executive Director-Federal Regulatory, for U.S. West, Elridge A. Stafford, 1020 19th Street, N.W., Suite 700, Washington, DC 20036, by Certified Mail, Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION



Howard C. Davenport
Chief, Enforcement Division
Wireless Telecommunications Bureau