

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

In re	)	
	)	
Telepersonal Communications, Inc.	)	File No. 620EF009
	)	
Licensee of Paging and Radiotelephone	)	
Service Station KNK0761 in Miami,	)	
North Miami, Green Acres, Tavernier,	)	
Boca Raton, and Palm City, Florida	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: September 26, 1996;**

**Released: September 27, 1996**

By the Chief, Enforcement Division, Wireless Telecommunications Bureau:

1. The Chief, Enforcement Division, Wireless Telecommunications Bureau, pursuant to delegated authority, has before him a response to the Notice of Apparent Liability for Forfeiture, DA 96-1180 (released July 25, 1996) ("NALF"), filed by Telepersonal Communications, Inc. ("Telepersonal"), on August 22, 1996.<sup>1</sup> For the following reasons, we find no justification for reducing or rescinding the proposed forfeiture.

2. The NALF determined that Telepersonal was apparently liable for a forfeiture in the amount of \$3,000 for having repeatedly violated Section 22.142(b) of the Commission's Rules. Specifically, the NALF concluded that Telepersonal had failed to timely file an FCC Form 489 for each of the three frequencies on which Station KNK0761 operates. The NALF indicated that although each of the three violations warranted a forfeiture of \$2,000 (for a total of \$6,000), the total forfeiture amount should be reduced in half to \$3,000 in recognition of Telepersonal's voluntary disclosure of the violations. The final forfeiture amount also was based on an examination of the mitigating factors set forth in Section 503(b) of the Communications Act of 1934, as amended.

3. Telepersonal does not dispute that it violated Section 22.142(b) of the Rules. However, Telepersonal maintains that because it was permissible to file only one FCC Form 489 for Station KNK0761, rather than a separate FCC Form 489 for each of the three authorized frequencies on which Station KNK0761 operates, it should be held liable, if at all, for only one

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<sup>1</sup> Telepersonal's pleading is incorrectly styled as a "Petition for Reconsideration" of the NALF. However, Section 1.80(f)(3) of the Commission's Rules contemplates the submission of a "response" to an NALF, not a "petition for reconsideration."

rule violation. Thus, Telepersonal argues that, at most, the Commission should impose a forfeiture of \$2,000, with such amount being reduced in half to \$1,000 to reflect Telepersonal's voluntary disclosure. Additionally, Telepersonal maintains that the NALF failed to consider its past record of compliance with the Commission's Rules. According to Telepersonal, when this factor is taken into account, the forfeiture amount should be further reduced to \$500.

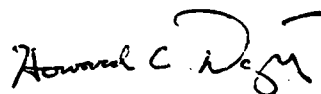
4. There is no merit to Telepersonal's arguments. Section 22.142(b) of the Commission's Rules requires licensees to timely notify the Commission of the commencement of service to subscribers. Such notification is required for each authorized transmitter. In the instant case, Telepersonal was authorized to operate on three different frequencies, utilizing as many transmitters. It was required to timely notify the Commission when each transmitter was placed in service. Telepersonal, however, did not timely notify the Commission when any of its three transmitters commenced operations. Accordingly, it must be held that Telepersonal violated Section 22.142(b) on three separate occasions. It is of no consequence that Telepersonal could have availed itself of a single FCC Form 489 to notify the Commission about the operational status of its three transmitters. The number of violations that Telepersonal committed was appropriately based on the number of operating transmitters for which Telepersonal failed to provide the required notification, not the number of FCC Forms 489 that Telepersonal may have opted to file. Furthermore, we reject Telepersonal's argument that the forfeiture amount should be reduced because the NALF failed to consider the company's past record of compliance with the Commission's rules and regulations. Section 503(b) of the Act requires the Commission to consider, among other things, a licensee's history of prior offenses in setting the amount of a forfeiture. The Commission expects, at a minimum, that all licensees will comply with its rules and regulations. Telepersonal's dearth of prior offenses is a factor which, in this instance, properly mitigated against a more severe sanction. While the NALF did not expressly reference Telepersonal's past record, all of the factors set forth in Section 503(b) were considered in proposing the initial forfeiture amount.

5. ACCORDINGLY, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, that Telepersonal Communications, Inc. SHALL FORFEIT to the United States the sum of three thousand dollars (\$3,000) for three violations of Section 22.142(b) of the Commission's Rules. Payment of the forfeiture shall be made by mailing a check or similar instrument made payable to the Federal Communications Commission, to Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference the captioned file number.

6. IT IS FURTHER ORDERED that a copy of this Order shall be sent by Certified Mail -- Return Receipt Requested, to counsel for Telepersonal:

Henry A. Solomon, Esq.  
Haley, Bader & Potts  
4350 North Fairfax Drive, Suite 900  
Arlington, Virginia 22203-1633

**FEDERAL COMMUNICATIONS COMMISSION**



Howard C. Davenport  
Chief, Enforcement Division  
Wireless Telecommunications Bureau