

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

In re)	
)	
Southwestern Bell Telephone Company)	File No. 620EF0011
)	
Notice of Apparent Liability for Forfeiture)	
for Paging and Radiotelephone Service)	
Station KDT224)	
Chanute, Kansas)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 30, 1996;

Released: October 31, 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 Southwestern Bell Telephone Company ("SWBT"), licensee of Paging and Radiotelephone Service Station KDT224, Chanute, Kansas. Specifically, we find that SWBT failed to timely file FCC Form 489 for Station KDT224, 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 SWBT authorization to make major modifications to station facilities for KDT224 on September 10, 1993. The authorization required construction to be completed by September 10, 1994 and permitted operation on frequency 152.60 MHz.

3. On November 3, 1995, SWBT filed a request for Special Temporary Authority to continue operation of KDT224 and an FCC Form 489, notifying completion of construction in accordance with authorization. Subsequently, on September 3, 1996, in response to a request from the Chief, Enforcement Division, Wireless Telecommunications Bureau, pursuant to Section 308(b) of the Act, SWBT stated that it commenced service on frequency 152.60 MHz on approximately April 26, 1994.

¹ Section 22.9(b)(1) was the appropriate Commission Rule in effect when timely notice was due from SWBT. Commission's 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. Section 22.9(b)(1) of the Commission's Rules provides 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). In the past, the Commission has determined that a forfeiture of \$2,000 is justified when a licensee fails to timely file an FCC Form 489. *See, e.g., R & D Cellular*, 11 FCC Rcd 3350 (1996).

5. SWBT states that the reason it did not file its FCC Form 489 before commencing service is that the employee responsible for the filing left SWBT's employment without notifying his successor of the requirement. When SWBT discovered the inadvertent error, it promptly filed FCC Form 489. Further, SWBT states that it has taken affirmative steps to ensure that such errors will not occur in the future.

6. There is no dispute that SWBT commenced service without filing FCC Form 489 in a timely manner. Regardless of its claim of inadvertence, the fact remains that it willfully and repeatedly violated Section 22.9(b)(1) of the Commission's Rules over an extended period of time. Based on the factors set forth in Section 503(b)(2)(D) of the Act and case precedent, we find that SWBT's violations of Section 22.9(b)(1) warrant a \$2,000 forfeiture. However, because it voluntarily disclosed the violations, the infraction was minor, and the infraction does not raise questions as to SWBT's qualifications to be a Commission licensee, we reduce the forfeiture to \$1,000. *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, SWBT is hereby advised of its APPARENT LIABILITY FOR FORFEITURE in the amount of one thousand dollars (\$1,000) for repeated violations of Section 22.9(b)(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 Vice President and Associate General Counsel for SWBT, Durward D. Dupre, One Bell Center, St. Louis, MO 63101, by Certified Mail, Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION



Howard C. Davenport
Chief, Enforcement Division
Wireless Telecommunications Bureau