

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

In re)	
)	
Mulzer Enterprises, Inc.)	
)	File No. 720EF0011
Notice of Apparent Liability for Forfeiture)	
for Paging and Radiotelephone Service)	
Station KNLM888)	
Bandon, Indiana)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 15, 1997

Released: July 17, 1997

By the Chief, Enforcement and Consumer Information 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 Mulzer Enterprises, Inc. ("Mulzer"), licensee of Paging and Radiotelephone Service Station KNLM888, Bandon, Indiana. Specifically, we find that Mulzer failed to timely file FCC Form 489 for Station KNLM888, in apparent violation of Section 22.142(b) of the Commission's Rules, 47 C.F.R. § 22.142(b).

2. The Commission granted Mulzer authorization to construct station facilities for KNLM888 on August 25, 1995. The authorization required construction to be completed by August 25, 1996 and permitted operation on frequency 152.12 MHz.

3. Mulzer completed construction and began operating the station by August 25, 1996. However, Mulzer did not file FCC Form 489, which notifies the Commission that construction has been completed and service has begun. The Commission terminated Mulzer's authorization on October 30, 1996, pursuant to Public Notice Report No. NCS-97-05-A. Subsequently, on December 5, 1996, Mulzer filed FCC Form 489.

4. Section 22.142(b) 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. § 22.142(b). 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., Mountaineer Paging*, 12 FCC Rcd 4727 (1997).

5. Mulzer's reason for not filing FCC Form 489 before commencing service was clerical oversight. When Mulzer discovered the inadvertent error through the Public Notice, it promptly filed FCC Form 489.

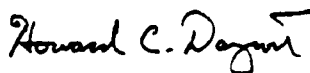
6. There is no dispute that Mulzer commenced service without filing FCC Form 489 in a timely manner. Regardless of its claim of inadvertence, the fact remains that it willfully and repeatedly violated Section 22.142(b) of the Commission's Rules over an extended period of time. Based on the factors set forth in Section 503(b)(2)(D) of the Act and case precedent, we find that Mulzer's violation of Section 22.142(b) warrants a \$2,000 forfeiture.

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, Mulzer is hereby advised of its APPARENT LIABILITY FOR FORFEITURE in the amount of two thousand dollars (\$2,000) for repeated violations of Section 22.142(b).

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 counsel for Mulzer, Frederick M. Joyce, Esq., Joyce & Jacobs, Attorneys at Law, L.L.P., 1019 19th Street, N.W., 14th Floor, PH-2, Washington, D.C. 20036, by Certified Mail, Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION



Howard C. Davenport
Chief, Enforcement and Consumer Information Division
Wireless Telecommunications Bureau