

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

In re)
)
Courtesy Communications, Inc.) File No. 620EF0012
)
Notice of Apparent Liability for Forfeiture)
for Paging and Radiotelephone)
Service Station KRS679)
)
Ritzville, Washington)

MEMORANDUM OPINION AND ORDER

Adopted: April 25, 1997

Released: April 30, 1997

By the Chief, Enforcement Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On August 5, 1996, a *Notice of Apparent Liability for Forfeiture* ("NALF") was issued against Courtesy Communications, Inc. ("Courtesy") in the amount of \$6,000. *See Courtesy Communications, Inc.*, 11 FCC Rcd 9164 (1996). On August 26, 1996, Courtesy filed a Response to the Notice of Apparent Liability, requesting a reduction or cancellation of the forfeiture. For the reasons stated below, we affirm our finding of liability, and accordingly, affirm the \$6,000 forfeiture.

II. BACKGROUND

2. On October 27, 1993, the Commission granted Courtesy's application to relocate its three base stations for Station KRS679 to a new site at Ritzville, Washington. At the end of the one year construction period set forth as a condition for the granting of its application, Courtesy failed to file FCC Forms 489, which notifies the Commission that construction has been completed and service has begun. Consequently, on October 18, 1995, the Commission released a public notice which cancelled the October 27, 1993 authorization as expired.

3. On November 21, 1995, Courtesy filed an emergency request for Special Temporary Authority ("STA") to resume legal operation of Station KRS679. In the request, Courtesy stated that it might have timely filed an FCC Form 489, but could not find any evidence of the filing. It justified its request for STA by stating that its paging service is used by many people in the health care industry, from physicians to ambulance services. On December 1, 1995, the Commission granted an STA to Courtesy for Station KRS679 to operate from December 1, 1995 to January 29, 1996, pending the Commission's processing of Forms 600 and 489 which were eventually filed by Courtesy.

4. The *NALF* found that Courtesy appeared to have violated Section 22.142(b) of the Commission's Rules, 47 C.F.R. § 22.142(b), by failing to timely file FCC Forms 489, the purpose of which is to notify the Commission of the initiation of service on frequencies 152.24, 152.84, and 152.70 MHz. Therefore, the *NALF* assessed a forfeiture of \$6,000, which was derived by assessing a \$2,000 forfeiture for each frequency for which there had been a failure to give timely notification.

5. In its response, Courtesy does not dispute any of the factual findings. Instead, Courtesy requests that its fine should be either cancelled or reduced, arguing that the failure to file FCC Form(s) 489 was unintentional and that the fine imposed by the Commission was disproportionate to the violations. Courtesy argues that its fine should be cancelled due to the consistent losses it has experienced during 1994, 1995, and continuing into the first half of 1996. In the alternative, Courtesy argues that its fine should be reduced from \$6,000 to \$2,000 because the three frequencies were filed as a single site, and should be treated as a single omission rather than three separate omissions. Courtesy argues that its fine should then be further reduced to \$1,000 because the violations were minor, and further reduced to \$500 because Courtesy "has had a consistent record of conformity with all FCC regulations for 24 years." Response to the Notice of Apparent Liability of Courtesy Communications, Inc. at 2.

III. DISCUSSION

6. There is no dispute that Courtesy failed to file the FCC Forms 489 in a timely manner. Section 503(b)(2)(B) of the Communications Act of 1934, as amended, authorizes the Commission to impose forfeiture penalties not to exceed \$100,000 for each violation or each day of a continuing violation by a common carrier. In assessing the amount of a forfeiture, Section 503(b) of the Act requires the Commission to "take into account the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, ability to pay, and other matters as justice may require." 47 U.S.C. § 503(b)(2)(D).

7. We cannot agree with Courtesy that its fine should be reduced or cancelled because the failure to file FCC Form 489 was unintentional and the fine imposed by the Commission was disproportionate to the violations. Courtesy does not dispute that it failed to timely file Forms 489. As a Commission licensee, Courtesy is under a continuing obligation to learn and comply with Commission Rules. The Commission expects, at a minimum, that all licensees comply with its rules and regulations and Courtesy cannot excuse its failure to comply with our rules on the basis of its inadvertence.

8. We also do not agree with Courtesy that its fine should be cancelled due to the consistent losses it experienced during 1994, 1995, and continuing into the first half of 1996. The Commission has stated that the use of gross revenues in assisting the determination as to a company's ability to pay is "both reasonable and appropriate and, moreover, a very useful yardstick in helping to analyze a company's financial condition for forfeiture purposes." *See In Re PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992). We find that the \$6,000 forfeiture is not excessive when compared to Courtesy's combined gross revenues of \$2,382,824, which the company reported on its 1994 and 1995 tax returns, copies of which Courtesy provided to the Commission. The \$6,000 forfeiture is approximately one-quarter of one percent of \$2,382,824 and is, therefore, a relatively small amount for Courtesy. Moreover, Courtesy has not stated that the \$6,000 forfeiture would impact its ability to continue to provide service to the public. The Commission, in *PJB Communications*, stated

In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. Nevertheless, we recognize that in some cases, other financial indicators, such as net losses, may also be relevant. If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay a forfeiture.

We therefore reject Courtesy's argument for a reduction in the forfeiture that it has been operating at a loss.

9. We also dismiss Courtesy's next argument that its fine should be reduced from \$6,000 to \$2,000 because the three frequencies were filed as a single site, and should be treated as a single omission rather than three separate omissions. Courtesy was authorized to operate on three different frequencies, utilizing three separate transmitters. Courtesy was required to timely notify the Commission when each transmitter was placed into service. However, Courtesy did not notify the Commission of its commencement of service on any of the three frequencies. Accordingly, we affirm our finding that Courtesy violated Section 22.142(b) on three separate occasions. The number of violations which Courtesy committed was appropriately based on the number of operating transmitters for which Courtesy failed to file Form 489, regardless of the fact that it would have been permissible for Courtesy to have timely filed one Form 489. *See In Re Telepersonal Communications, Inc.*, 11 FCC Rcd 12268 (1996).

10. Likewise, we cannot agree with Courtesy's argument that the violations should be further reduced from \$2,000 to \$1,000 because the violations were minor. Again we reject Courtesy's attempt to minimize the extent of its violations and its attempt to characterize them as minor. In the past, the Commission has reduced fines where there has been a failure to file Form 489. However, this generally occurs when the licensee has voluntarily informed the Commission of its failure to file. See *AllCity Paging, Inc.*, 9 FCC Rcd 6485 (1994). Courtesy did not make such a voluntary disclosure in this case.

11. Finally, Courtesy argues that the fine should be reduced even further from \$1,000 to \$500 because Courtesy "has had a consistent record of conformity with all FCC regulations for 24 years." We reject this argument and note that the fact that Courtesy has had such a consistent record of conformity with Commission regulations simply reinforces the routine nature of such filings, and leaves the Commission to question why Courtesy nevertheless violated the Commission's Rules with which it was so familiar. Therefore, for the reasons set forth above, we affirm our finding of liability, and accordingly, affirm the \$6,000 forfeiture.

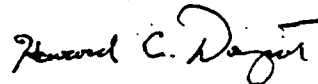
IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, 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, that Courtesy Communications, Inc., SHALL FORFEIT TO the United States the sum of six thousand dollars (\$6,000) for willful and repeated violations of section 22.142(b) of the Commission's Rules. 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, within thirty (30) days of the release date of this Order, sending it to Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the File Number of the above captioned proceeding.

13. IT IS FURTHER ORDERED that if said forfeiture is not paid within the period specified, the case will be referred to the Department of Justice for collection pursuant to Section 504(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 504(a).

14. IT IS FURTHER ORDERED that a copy of this Notice SHALL BE SENT to counsel for Courtesy Communications, Inc., Harold Mordkofsky, Esq., Blooston, Mordkofsky, Jackson, and Dickens, 2120 L Street, N.W., Washington, DC 20037, by Certified Mail, Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in dark ink, appearing to read "Howard C. Davenport". The signature is fluid and cursive, with a prominent initial 'H' and a stylized 'D'.

Howard C. Davenport
Chief, Enforcement Division
Wireless Telecommunications Bureau