Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re	)	File No. 519WT0001
	)	
Centel Cellular Company of North Carolina Limited Partnership	)	
	)	
Notice of Apparent Liability for Forfeiture for Station KNKA291 in the Domestic Public Cellular Radio Telecommunications Service Serving Market 47B at Greensboro, North Carolina	)	

MEMORANDUM OPINION AND ORDER

Adopted: August 12, 1996; Released: August 21, 1996

By the Commission:

I. INTRODUCTION AND EXECUTIVE SUMMARY

1. We issued a *Notice of Apparent Liability for Forfeiture* ("NALF") in the amount of $3,000,000 against Centel Cellular Company of North Carolina Limited Partnership ("Centel")[1] for having violated our rules that safeguard public safety.[2] Specifically, Centel endangered public safety by constructing and placing in operation an antenna tower that constituted a hazard to air navigation because the tower penetrated the air safety zone directly in line with the aircraft departure and approach path at Greensboro/Piedmont Triad International Airport in North Carolina. This impermissible invasion of airspace occurred because Centel failed to comply with our rules that required it to notify the Federal Aviation Administration ("FAA") and to obtain the FAA's approval before constructing the tower. Centel also failed to comply with our tower

[1] In March 1993, the Common Carrier Bureau approved the applications of Centel Corporation and Sprint Corporation for transfer of control of Commission licenses and other authorizations held by Centel Corporation and its subsidiaries (including Centel Cellular Company of North Carolina Limited Partnership) to Sprint Corporation. *Centel Corporation*, 8 FCC Rcd 1829 (Com. Car. Bur. 1993). Therefore, while this Order refers only to "Centel," the correspondence found in the record of this proceeding is with either Centel or Sprint.

[2] *Centel Cellular of North Carolina Limited Partnership*, 10 FCC Rcd 915 (1994).

safety lighting rules. Finally, Centel failed to act promptly to lower and light the tower even after its staff, in responding to a Commission query, corrected the calculation errors and therefore knew that the tower impermissibly intruded into the airspace. Centel also did not act promptly even later, when the FAA directly informed Centel that the tower was a threat to air safety, requested that Centel immediately take remedial action, and issued an air safety hazard warning to pilots and navigators.

2. In the NALF, we imposed a $3,000,000 forfeiture against Centel for violating three Commission Rules. We found that Section 17.7(b)(1) of the Rules was violated because Centel failed to notify the FAA before constructing an antenna tower for which notification was required, Section 17.21(a) of the Rules was violated because Centel failed to provide required safety lighting on the tower, and Section 22.117(b)(3) was violated because Centel constructed and operated this additional antenna tower without first obtaining full FAA approval. All of these violations resulted in an ongoing air safety hazard lasting approximately five months. Centel has filed a Response to the NALF requesting that the Commission reduce the forfeiture amount. For the reasons discussed below, we affirm our finding that Centel is liable for violating all three Rules, and accordingly, we affirm the two separate $1,000,000 forfeitures for Centel's violations of Sections 17.7 and 17.21 of the Rules. However, we eliminate the third $1,000,000 forfeiture assessed for Centel's violation of Section 22.117 of the Rules due to the close relationship between Sections 17.7 and 22.117 and our having assessed the statutory maximum for violation of Section 17.7. The net effect is to reduce the total amount of forfeiture assessed against Centel from $3,000,000 to $2,000,000.

II. BACKGROUND

3. On December 17, 1993, Centel completed construction of an antenna tower near Guilford, North Carolina, placing it 2.3 nautical miles from the Greensboro/Piedmont Triad International Airport. The antenna tower was 187 feet in height and thus penetrated the airport's "air safety zone." This zone, which represents the safe angle of departure or approach by an aircraft flying into or out of an airport, is an imaginary surface that extends outward and upward for a specified radius from the nearest point of the nearest runway of an airport.[3] After completing construction and placing this tower into operation, Centel filed an FCC Form 489 on December 17, 1993, thereby notifying the Commission of the construction of the antenna tower. The Commission staff noticed that the FAA study number[4] listed on FCC Form A-428 which Centel filed with the FCC Form 489, related to a different tower than this one, and on March 23,

[3] *See* 47 C.F.R. § 17.7(b).

[4] An FAA study number references a completed FAA Determination.

1994, sent a letter to Centel requesting a copy of the FAA Determination[5] for the Guilford antenna tower.[6] By letter dated April 29, 1994, Centel acknowledged that it had not obtained an FAA Determination for the Guilford tower, but informed us that one would be forthcoming as soon as possible.[7] In the letter, Centel attempted to explain why it indicated an FAA Study Number on its filing with the Commission (even though no Determination was ever done) by stating that the original land survey performed at the Guilford cell site was erroneous and caused Centel to believe that FAA notification and approval were not required. When Centel constructed the antenna tower, it apparently concluded that the ground elevation was 900 feet. In fact, however, the actual ground elevation is 924 feet, and Centel had in its possession documents which accurately showed that the elevation was 924 feet. Nevertheless, Centel failed to utilize the information available to it, and proceeded to construct the antenna tower which exceeded the permissible height by 21 feet.

4. On May 3, 1994, almost five months after the tower had been constructed and was placed in operation, and as a result of the Commission staff's inquiry to Centel on the status of FAA approval for that tower, Centel submitted to the FAA a completed FAA Form 7460-1 (Notice of Proposed Construction or Alteration) with the correct site elevation data, and requested an FAA Determination on the already-constructed antenna tower. On May 11, 1994, the FAA conducted a preliminary aeronautical study and notified Centel that the tower exceeded the maximum permissible height by 21 feet, and thus it must be reduced to 166 feet in order to conform with aviation obstruction standards.[8] On the same day, the FAA also issued a notice to pilots and navigators, warning of the air safety hazard caused by Centel's antenna tower. On May 12, 1994, the FAA requested that the Commission take action because Centel's antenna tower "exceeds FAA obstruction standards and would have a substantial adverse effect on

[5] An FAA Determination is an aeronautical study conducted by the FAA to determine any potential obstruction to navigable airspace caused by a proposed tower. The Determination takes into consideration factors such as the height and conspicuousness of the tower construction, flight routes near the area, the location of runways, *etc.*, in order to make recommendations for any necessary lighting, marking or alterations to the tower required to ensure the safety of air navigation in the vicinity of the tower. *See generally* Part 77 of Federal Aviation Administration Rules (Objects Affecting Navigable Airspace), Subpart D (Aeronautical Studies of Effect of Proposed Construction on Navigable Airspace), 14 C.F.R. §§ 77.31-77.39.

[6] Letter from J. Cimko, Chief, Mobile Services Division, Common Carrier Bureau, to N. Victory, Esq., Centel's counsel (Mar. 23, 1994), stating that the FAA aeronautical study number 93-ASO-1237-OE indicated by Centel on its application does not correspond to the coordinates of the Guilford tower.

[7] Letter from M. Baker, Esq., Centel's counsel, to W. Caton, Acting Secretary, Federal Communications Commission (Apr. 29, 1994).

[8] Acknowledgement of Notice of Proposed Construction or Alteration from R. Shipp, Jr., Airspace Specialist, System Management Branch, Air Traffic Division, Federal Aviation Administration, to S. Andersen, Engineer, Centel (May 11, 1994).

instrument approach procedures at Greensboro/Piedmont Triad Airport."[9] In response to the FAA's request, a Compliance and Information Bureau ("CIB") investigator who was dispatched to the site, confirmed the tower's height to be 187 feet above ground level. The investigator also observed that the antenna tower lacked the obstruction lighting which the Commission's Rules require. On May 16, 1994, CIB directed Centel to immediately illuminate the antenna tower.[10] At the same time, the Common Carrier Bureau ("CCB") staff telephoned Centel and instructed it to immediately lower the tower and add temporary lighting to it. After the two Bureaus contacted Centel, it temporarily installed two flashing red beacons on the top of the antenna tower. On May 17, 1994, Centel reduced the height of the tower. On May 18, 1994, the FAA completed its Determination on the tower and notified Centel that at the now-reduced height of 166 feet, the antenna tower would no longer be a hazard to air navigation, provided that Centel install permanent red obstruction lighting on the tower.[11] Centel then installed a permanent flashing red beacon at the top and two steady-burning side lights at the mid-point of the tower. On May 18, 1994, Centel submitted to the Commission an amended FCC Form 489 for the Guilford tower, referencing the updated height and site elevation data.

III. DISCUSSION

A. The Notice of Apparent Liability for Forfeiture

5. While Part 22 of the Commission's Rules permits cellular licensees to construct antenna towers without prior Commission approval, the Rules nevertheless require licensees to fully comply with all Commission and FAA requirements relating to notifying and obtaining approval from the FAA, as well as lighting and marking the towers if necessary.[12] In the NALF, we found that "this proceeding is the first known case in which an antenna tower was constructed without prior notification to the FAA in which the antenna tower exceeded the 'air safety zone' and, furthermore, required red obstruction lighting."[13] Specifically, we found that Centel violated

[9] Letter from R. Shipp, Jr., Airspace Specialist, System Management Branch, Air Traffic Division, Federal Aviation Administration, to L. Bolden, Norfolk Field Office, Compliance and Information Bureau (May 12, 1994).

[10] Letter from J. Freeman, Engineer in Charge, Norfolk Field Office, Compliance and Information Bureau, to K. Paglusch, Centel (May 16, 1994).

[11] Acknowledgement of Notice of Existing Construction or Alteration from R. Shipp, Jr., Airspace Specialist, System Management Branch, Air Traffic Division, Federal Aviation Administration, to S. Andersen, Engineer, Centel (May 18, 1994).

[12] *See, e.g., Revision and Update of Part 22 of the Public Mobile Radio Services Rules, Notice of Proposed Rulemaking*, 47 Fed. Reg. 43,842, 43,867 (Oct. 4, 1982) (Stating that even though additional transmitters may be constructed without Commission authorization, "licensees must have received FAA approval of the antenna structure.").

[13] *Centel*, 10 FCC Rcd at 918.

three separate Commission Rules. First, Section 17.7(b)(1) of the Commission's Rules requires a licensee to notify the FAA prior to constructing or altering a tower if the proposed height exceeds the allowable slope.[14] In the NALF, we found that Centel was in violation of this Rule for 137 days. Second, Section 17.21 of the Commission's Rules provides that antenna towers "shall be painted and lighted when . . . [t]hey exceed 60.96 meters (200 feet) in height above the ground or they require special aeronautical study."[15] We found that Centel was in violation of this Rule for 150 days. Third, the version of Section 22.117 of the Commission's Rules in effect at the time of Centel's violation provided that a licensee may construct and operate additional transmitting facility on the same frequency without obtaining prior Commission approval "provided . . . [f]ull FAA approval has been obtained."[16] We found that Centel was in violation of this Rule for 151 days. We also found that Centel did not dispute that it was required to notify the FAA prior to constructing the Guilford antenna tower, nor did it dispute that it was required to have received full FAA approval for the construction. Additionally, in the NALF, we further stated that the record amply demonstrated that both the FAA's and the Commission's Rules required lighting of the tower under the circumstances presented in this case. Finally, the violations were found to constitute willful[17] and repeated[18] conduct within the meaning of those terms as defined in the Communications Act of 1934, as amended ("the Act").

6. In assessing forfeitures for the three Rule violations, we emphasized in the NALF the fact that "serious threat to air navigation safety created and perpetuated by Centel for five months is unprecedented and clearly demonstrates the grave nature of these violations."[19] Moreover, we stated that "serious safety threats remained for the entire five-month period that elapsed from the time of construction until ultimate compliance. Violations involving serious risk to public safety

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[14] As constructed, the Guilford tower penetrated "an imaginary surface extending outward and upward" at a slope of "100 to 1 for a horizontal distance of 6.10 kilometers (20,000 feet) from the nearest point of the nearest runway" of the Greensboro/Piedmont Triad International Airport. *See generally* 47 C.F.R. § 17.7(b)(1).

[15] 47 C.F.R. § 17.21(a). An aeronautical study is conducted by the FAA upon any construction or alteration for which notice is submitted to the FAA, or whenever the FAA determines it is appropriate. *See* 14 C.F.R. § 77.33.

[16] 47 C.F.R. § 22.117(b)(3). Part 22 of the Commission's Rules was subsequently amended on August 2, 1994, *see In the Matter of Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services*, 9 FCC Rcd 6513 (1994), and a similar requirement for FAA notification and approval is now at Section 22.165(b) of the Commission's Rules, 47 C.F.R. § 22.165(b).

[17] Section 312 of the Act defines the term "willful" to mean the "conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act." 47 U.S.C. § 312(f)(1). This definition applies to Section 503(b) of the Act. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

[18] Section 312 of the Act defines the term "repeated" to mean the "commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2). This definition applies to Section 503(b) of the Act. *See* H.R. REP. NO. 97-765, 97th Cong., 2d Sess. 50-51 (1982).

[19] *Centel*, 10 FCC Rcd at 917.

have previously been treated by the Commission as warranting substantial enforcement action, particularly where, as here, the safety hazard was not immediately remedied."[20] Because of the seriousness of the risk imposed, and the continued nature of the violations, we found in the NALF that under Section 503(b)(2) of the Act, Centel was subject to a forfeiture of $1,000,000 for each of the three specified Rule violations, for a total forfeiture of $3,000,000.[21]

B. Centel's Response to Notice of Apparent Liability for Forfeiture

7. In its Response to Notice of Apparent Liability for Forfeiture ("Response"),[22] Centel offered three arguments for a reduction of the forfeiture. First, it contended that the amount of "the proposed forfeiture is wholly inconsistent with first-time tower lighting violations." Second, Centel argued that "because the violations alleged arose out of a single failure to act, the proposed forfeiture exceeds the maximum permitted under the Communications Act." Third, Centel argued that "as a matter of law, there was no violation of lighting and marking requirements in this case." We have carefully considered these arguments, and as explained below, we conclude that Centel violated each of the three Commission Rules as we correctly found in the NALF. We also affirm our assessment of a $1,000,000 forfeiture for each of Centel's violations of Sections 17.7(b)(1) and 17.21(a) of the Commission's Rules. In this instance, however, we exercise our discretion to mitigate the forfeiture from $1,000,000 to zero for Centel's violation of Section 22.117(b) of the Commission's Rules.

(1). That the Proposed Forfeiture Amount Is Inconsistent with First-Time Tower-Lighting Violations

8. Centel's Response first argued that "the forfeiture that the Commission seeks to impose is unprecedented," because "the Commission has *never* imposed a forfeiture for any act" in excess of $1,000,000.[23] To support this, Centel argued that neither of the two cases cited in the NALF, *Emmis Broadcasting Corp. of St. Louis*[24] and *David R. Price*,[25] lends support to our conclusion

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[20] *Id.* at 918.

[21] Section 503 of the Act states that any "person who is determined by the Commission . . . to have . . . willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act . . . shall be liable to the United States for a forfeiture penalty. 47 U.S.C. § 503(b)(1)(B). Section 503(b)(2)(B) provides that the amount of any forfeiture penalty "shall not exceed $100,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,000,000 for any single act or failure to act." 47 U.S.C. § 503(b)(2)(B).

[22] The Response was filed by Centel on January 17, 1995.

[23] Response at 4, 5 (emphasis in original).

[24] 6 FCC Rcd 2289 (1991).

[25] 7 FCC Rcd 6550 (1992).

that a $3,000,000 forfeiture against Centel is appropriate because the actual forfeiture amounts imposed in those two cases were only $25,000, and $8,000, respectively. It is apparent, however, that Centel has misunderstood the importance of those decisions. In the NALF, we cited those two cases to illustrate the fact that the Commission has had no reservation about imposing the maximum authorized penalty when the circumstances of a case warrant such a sanction. In *Emmis*, the maximum amount of forfeiture allowed to be imposed on that broadcast licensee was $25,000, while in *Price*, the $8,000 fine was imposed in addition to the ultimate sanction of revocation of the station's license. In the instant case, we found in the NALF that Centel's violations were "grave" and "unprecedented."[26] Thus, while we did not initiate a revocation proceeding against Centel's licenses under these circumstances, we nevertheless did not hesitate to impose, by a NALF, the maximum authorized amount of monetary forfeiture for Centel's failure to comply with our antenna tower construction rules. On review, we once again affirm this position, and warn licensees that we will not hesitate to seek severe sanctions for violations of our safety rules.

9. Centel further argued that the forfeiture amount assessed by us in the NALF is excessive because "the vast majority of recent cases" finding a violation of tower lighting and marking rules involved forfeiture amounts of less than $10,000,[27] even when the violation continued for several weeks,[28] and even where the tower exceeded 200 feet.[29] We believe that Centel's reliance upon these cases is misplaced because of the unprecedented nature of Centel's violations. As stated above, we specifically found in the NALF that "the Centel proceeding is the first known case in which an antenna tower was constructed *without the prior notification to the FAA* in which the antenna tower exceeded the 'air safety zone' and required red obstruction lighting."[30] Nowhere in its Response does Centel challenge our finding that the violations presented in this case are "unprecedented." Indeed, all of the cases cited by Centel deal only with

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[26] *Centel*, 10 FCC Rcd at 917.

[27] Response at 5 n.2. Centel cited the following cases and forfeiture amounts: *Private Land Mobile Station WSM534*, 9 FCC Rcd 1647 (1994) ($6,400); *Pegasus Broadcasting of San Juan, Inc.*, 8 FCC Rcd 777 (1993) ($4,000); *Metropolitan Houston Paging Services*, 8 FCC Rcd 334 (1993) ($2,000); *Associated Paging and Telephone, Inc.*, 7 FCC Rcd 4195 (1992) ($8,000); *Alexander Mitchell Communications Corp.*, 7 FCC Rcd 3496 (1992) ($8,000); *Mobilefone Services, Inc.*, 7 FCC Rcd 3490 (1992) ($8,000); *American Paging, Inc.*, 7 FCC Rcd 3480 (1992) ($8,000); *Central Power and Lighting Co.*, 7 FCC Rcd 2509 (1992) ($8,000); *Richmond Cellular Telephone Co.*, 6 FCC Rcd 607 (Mob. Serv. Div. 1991) ($9,900); *Oro Spanish Broadcasting Co., Inc.*, 5 FCC Rcd 833 (1990) ($8,000).

[28] Response at 6 n.3. Centel cited the following: *Private Station, supra* (violation continued for almost four years, forfeiture assessed was $6,400); *Pegasus, supra* (violation continued for four months, forfeiture assessed was $4,000); *Radio Relay Corp. - Michigan*, 5 FCC Rcd 5900 (Mob. Serv. Div. 1990) (violation continued for four weeks, forfeiture assessed was $9,950); *Garvin County Broadcasting, Inc.*, 46 FCC 2d 954 (1974) (violation continued for over three months, forfeiture assessed was $500).

[29] Response at 6 n.3. Centel cited *Oro Spanish, supra.*

[30] *Centel*, 10 FCC Rcd at 918 (emphasis added).

instances of tower lighting violations. Centel, in contrast, violated the FAA notification and approval requirements in addition to lighting rules. These additional facts were significant in our determination of an unprecedented amount of forfeiture. Our cellular rules authorize a licensee such as Centel to build additional transmitting facilities within its licensed geographic service area without prior Commission approval, provided that it first complies with all applicable FAA and Commission tower construction rules. Because the Commission is unaware of the location and height of each of these additional towers unless and until the licensee provides us with that information, we must rely upon the licensees to police themselves and comply with all applicable tower construction rules. We consider non-compliance with these rules as a very serious offense "because of the potential dangers to aviation created by such violations."[31] We specifically emphasized in the NALF that "our concern in this instance is heightened because it appears that the licensee was negligent in preparing to construct this tower. We rely on the diligence of our licensees and we cannot countenance such a failure."[32] Because Centel is the first licensee to be found to have violated this combination of tower construction rules, we conclude that Centel's comparison of its situation to the "recent cases" is inapposite.

10. In seeking a reduction of the forfeiture, Centel also argued that we failed to consider mitigating factors in Centel's favor, as required by Section 503 of the Communications Act when we assessed the forfeiture in the NALF. Centel thus urged the Commission to look at the "totality of the circumstances" surrounding its violations.[33] To respond, we first note that in fact in the NALF we took into account the factors in Section 503 of the Act when we assessed the forfeiture amount of $3,000,000.[34] Nevertheless, we describe here in detail our findings as to those factors. Section 503 mandates that in determining the amount of a forfeiture, the Commission must take into consideration "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[35]

11. First, with respect to the "nature, circumstances, extent, and gravity of the violation," we repeat our finding in the NALF that "serious threat to air navigation safety created and perpetuated by Centel for five months is unprecedented and clearly demonstrates the grave nature

[31] *Radio Beaumont, Inc.*, 13 FCC 2d 965, 966 (1968).

[32] *Centel*, 10 FCC Rcd at 915.

[33] Response at 6.

[34] *See Centel*, 10 FCC Rcd at 918 ("The amount specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934.").

[35] 47 U.S.C. § 503(b)(2)(D).

of these violations."[36] In its effort to refute this finding, however, and to minimize the egregious nature of these offenses, Centel asserted that the forfeiture should be reduced because "the effect of the error in this case was fortunately not one that posed a significant threat to air safety."[37] To support this position, Centel claimed that at its original 187-foot height, the tower "only intruded minimally beyond the Required Obstacle Clearance (ROC) height," and since the United States Standard for Terminal Instrument Procedures establishes a buffer zone of 250 feet above the ROC height into which aircraft operating in instrument meteorological conditions may not descend, Centel argued that the tower would not have been anywhere near the flight path of passing aircraft. The Commission has rejected similar arguments raised by licensees in the past,[38] and we now reject in the strongest terms Centel's assertion.

12. The Commission has always considered air navigation safety of the utmost importance,[39] and we cannot allow our licensees to take a cavalier attitude toward the very real hazard that their antenna towers can cause to air safety. Furthermore, we cannot accept Centel's "buffer zone" argument. This argument fails to take into consideration the fact buffer zones exist and must be protected to ensure the safety of aircraft. Aircraft do not always operate in the most ideal conditions, and an aircraft facing an emergency situation, or operating in severe meteorological conditions, may be forced to descend into the buffer zone. Under such circumstances the aircraft could strike an unforeseen (and unlit) tower. Centel's argument also

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[36] *Centel*, 10 FCC Rcd at 917. In this context, the following passage from the NALF also bears repeating:

> The Commission places extreme importance on tower safety because obstructions to air navigation pose serious threats to the safety of life and property and are contrary to one of the core purposes of the Act. *See* 47 U.S.C. § 151. Consequently, the Commission views violations of tower safety rules that create such safety risks as matters warranting prompt and strict penalties. In 1989, the Commission specifically alerted licensees to the seriousness of tower lighting violations. *Air Hazards Caused by Improperly Marked and Lighted Communications Towers*, 66 Rad. Reg. 2d (P&F) 924 (1989). Licensees were warned that, "Appropriate action, including issuance of fines and/or revocation of the station license, will be taken against the user or owner" of any improperly lighted or marked radio tower. *Id.* Licensees must adhere strictly to all FAA and Commission rules and regulations concerning antenna structure construction that are designed to protect the public against such safety hazards.

Id. at 916.

[37] Response at 8.

[38] In *Radio Beaumont, supra*, we were urged by a licensee that its tower light malfunctions presented "minimal" risk to air navigation. In rejecting that argument, we stated that accepting the licensee's proposition "would, in effect, permit *each licensee* to determine whether its antenna is an aviation hazard." 13 FCC 2d at 966 (emphasis added). This argument was "untenable" in 1968, *id.*, and it is still without merit today.

[39] *See, e.g.*, 47 U.S.C. § 151. The Communications Act of 1934 was enacted "for the purpose of promoting safety of life and property through the use of wire and radio communication." Any compromise in our position on tower safety issues would frustrate the core purpose of the Act.

fails to recognize that helicopters, as opposed to fixed-wing planes, might be flying within the vicinity at a lower altitude. In short, FAA rules exist to prevent potential hazards near an airport, and Centel's failure to comply with appropriate FAA requirements caused a significant threat to air navigation safety.

13. Next, "with respect to the violator," Section 503 requires us to consider "the degree of culpability, and any history of prior offenses, ability to pay, and other such matters as justice may require." As to the "history of prior offenses," Centel claimed that this forfeiture would constitute a first-time violation by the company, and that the Commission, in other cases, has considered a lack of past record of violation as an important factor in determining the appropriate forfeiture amount.[40] While we recognize Centel's status as a first-time violator,[41] we note that a "history of prior offenses" is only one of the many specified factors in Section 503, and in light of the unique facts of this case, in assessing the forfeiture, we gave more weight to other Section 503 factors, such as the nature, extent and gravity of the harm, and culpability of the violator, in assessing the forfeiture amount.[42] Therefore, we believe that we properly considered all the relevant facts underlying Centel's violations in light of the Section 503 factors discussed above, and accordingly, we believe that no reduction in the amount of forfeiture is called for based on a review of the Section 503 factors argued by Centel in its Response.

14. As a further mitigating factor, Centel also asserted that "at all times [it] believed it was acting responsibly and consistent with FCC and FAA rules and concerns."[43] For example, Centel asserted that following the Commission's March 23, 1994 letter, Centel "initiated almost weekly contacts with the Commission as it attempted to identify the unspecified problem with the Guilford tower," and once Centel "discovered that the tower required FAA notification, it immediately disclosed such information to the FAA."[44] Centel additionally claimed that "at all times, [it] believed it was acting appropriately and neither the FCC nor FAA indicated otherwise

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[40] In support, Centel cited *WNNX License Investment Co.*, 9 FCC Rcd 6761 (Mass Media Bur. 1994); *Seawest Yacht Brokers dba San Juan Marina*, 9 FCC Rcd 6099 (1994); *New England Telephone and Telegraph*, DA 94-1156 (Com. Car. Bur. released Oct. 14, 1994); *Private Station, supra*; *Dial-A-Page, Inc.*, 7 FCC Rcd 2204 (1992), *recon. granted* 8 FCC Rcd 2767 (1993); and *Standards for Assessing Forfeitures*, 7 FCC Rcd 5339, 5345 (1992) (identifying "history of overall compliance" as a mitigating factor warranting reduction of forfeiture amount by 20 to 50 percent). Response at 7 n.8. "History of overall compliance" is not a factor specifically listed in Section 503 of the Act.

[41] *Cf. Virginia Metronet, Inc. d/b/a Centel Cellular Company of Virginia*, 5 FCC Rcd 740 (1990) (Consent decree stating that prior allegations of tower lighting offenses against a Centel affiliate involved no Commission findings of violation or liability, and that the allegations against the affiliate "will not be used against Centel Cellular Company . . . in any other current or further proceeding.").

[42] Additionally, in its Response, Centel did not claim an inability to pay the forfeiture. We thus conclude, pursuant to Section 503, that Centel has the ability to pay the forfeiture.

[43] Response at 7.

[44] *Id.* at 8.

until May 16th," and that once contacted, Centel "addressed the agencies' concerns within 24 hours" and in good faith.[45] However, an examination of the record demonstrates otherwise. Centel has not explained why it took over a month from the time of the Commission's initial inquiry for Centel to even acknowledge that it never received an FAA Determination for the Guilford tower, despite the fact that Centel earlier represented to the Commission that it had, in fact, received such a Determination.[46] Furthermore, contrary to Centel's claim that the Commission raised an "unspecified problem with the Guilford tower,"[47] the Commission's March 23, 1994 letter specifically informed Centel's counsel that the FAA aeronautical study number 93-ASO-1237-OE indicated by Centel on its FCC Form 489 filing did not correspond to the coordinates of the Guilford tower.

15. We also find that, contrary to Centel's claim, it failed to act promptly to light or lower the tower when it was informed of the tower's threat to air safety. For example, although the FAA informed Centel of this hazard as early as May 11, 1994, Centel waited until May 16, and only after the FAA specifically requested the Commission to intervene, to light the tower, and it did not lower the tower until May 17, 1994.[48] In addition, Centel nowhere explains why it failed to take immediate action earlier, when in response to the Commission's inquiry it first discovered that its tower intruded into navigable airspace. We also note that the record indicates instances where Centel's account of its actions are disputed by Commission staff.[49] It is incumbent upon licensees to promptly rectify inconsistencies relating to antenna towers, especially with regard to questions concerning FAA Determinations because of the threat to public safety. We find that Centel failed to do so. Therefore, under the totality of the circumstances in this case, we cannot agree with Centel that it demonstrated "good faith and cooperative behavior."[50] Finally, we note that Centel's post-violation revisions to its internal tower construction procedures

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[45] *Id.*

[46] Centel's reply to the Commission's March 23, 1994 letter is dated April 29, 1994.

[47] Response at 8.

[48] *See* Memorandum from R. Shipp, Jr., Specialist, Airspace Section, to D. Emrick, Chief, Investigations Branch, Compliance and Information Bureau (Oct. 19, 1994), noting that the FAA reminded Centel that the tower had been up since December 1993, that it exceeded the notice criteria of Federal Aviation Regulations Part 77, and that the FAA's May 11, 1994 letter to Centel should have served to compel Centel to take immediate action to stop the continuing air safety hazard.

[49] For example, while Centel stated to the Commission that "*[p]rior to nightfall*, two red flashing temporary beacons were installed at the top of the tower", letter from R. Wiley, Esq., Centel's counsel, to J. Freeman, Engineer in Charge, Norfolk Field Office, Compliance and Information Bureau (May 20, 1994) (emphasis added), the CIB staff who was on hand observed that the red light was not illuminated until more than two hours after nightfall.

[50] Response at 8.

adopted to ensure future compliance with Commission rules[51] do not mitigate the extremely serious nature of the violations found by us in the NALF.[52]

(2). That Because the Violations Arose Out of a Single Failure to Act, the Forfeiture Amount Exceeds the Maximum Permitted Under the Communications Act

16. In its Response, Centel also argued that the three Rule violations we found in the NALF resulted from only "a single act," and thus, Centel asserted that the $3,000,000 forfeiture exceeds the maximum permitted under the Act. According to Centel, a "cap of $1,000,000" in the Act applies to "any number of violations" resulting from a single act or failure to act, and it stated that "nowhere in the NAL[F] does the Commission cite any authority for its apparent interpretation that each separate Commission rule violation constitutes a separate 'act or failure to act,' and, in fact, none appears to exist."[53] Centel relies on legislative history and a number of cases[54] to argue that the Commission cannot impose a penalty greater than $1,000,000 against Centel for all three violations. We cannot agree with Centel's interpretation of the statute. The language of the Act is unambiguous, and therefore, reliance upon the legislative history is unnecessary.[55] Section 503(b)(2)(B) of the Act clearly states that "the amount assessed for any continuing violation shall not exceed a total of $1,000,000 for any single act or failure to act described in paragraph (1) of this subsection."[56] Cross-referencing to paragraph (1), subpart (B) of subsection (b), we find that the single act or failure to act referred to in paragraph (2) is a failure to comply with *any* of the provisions of the Act, or of *any rule*, regulation or order issued

[51] *See* Letter and enclosure from N. Victory, Esq., Centel's counsel, to J. Cimko, Chief, Mobile Services Division, Common Carrier Bureau (June 30, 1994) at 5-6; letter and enclosure from J. Keithley, Vice President, Sprint, to A. Metzger, Jr., Acting Chief, Common Carrier Bureau (July 8, 1994) at 3-4.

[52] *See, e.g., TCI Cablevision of Colorado, Inc.*, 7 FCC Rcd 6015 (1992) (Commission refused to mitigate forfeiture based on licensee's corrective actions taken after the violation).

[53] Response at 10.

[54] *Id.* at 11 n.20. Centel cited the following: *Virginia RSA 6 Cellular Limited Partnership*, 7 FCC Rcd 8022 (1992); *Dial-A-Page, supra*; *Metro Program Network, Inc.*, 5 FCC Rcd 2940 (1990); *Yavapai Telephone Exchange*, 5 FCC Rcd 1353 (Com. Car. Bur. 1990); *Radio Relay, supra*; and *Oro Spanish, supra.* Contrary to Centel's claim, however, none of those cases stands for the proposition that "Commission precedent confirms that the forfeiture penalty must be based on each separate action, not each rule violation." Response at 11. We also find no dichotomy between *AT&T Communications*, 10 FCC Rcd 1664 (1995), cited by Centel, and the instant matter. In the NALF issued in *AT&T*, we found that the common carrier was apparently liable for $1,000,000 for a continuing violation of Section 201(a) of the Act. Here, we found three instances of continuing violations by Centel, of three separate Rules, for a total liability of $3,000,000.

[55] *See Arkansas AFL-CIO v. FCC*, 11 F.3d 1430, 1440 (8th Cir. 1993) ("If the intent of Congress is clear from the plain language of the statutory provision, that will be the end of the judicial inquiry.").

[56] 47 U.S.C. § 503(b)(2)(B).

by the Commission under the Act.[57] Once we find a violation of *any* Commission Rule, we are authorized to assess "*a* forfeiture penalty" for that violation, which can be assessed "*in addition to* any other penalty" provided by the Act.[58] In this case, we found in the NALF that there were three separate failures to act: (1) failure to notify the FAA prior to constructing the tower; (2) failure to light the tower; and (3) failure to obtain FAA approval for the construction prior to building the tower at an unauthorized height,[59] and we chose to assess the statutory maximum of $1,000,000 for each of the three Rule violations because of the serious magnitude of those violations. Nothing in the Act prohibits us from taking that action.

17. Moreover, even if it was deemed relevant, the legislative history cited by Centel does not support its argument that "liability should be based upon discrete actions or failures to act – not, as the Commission seeks to do here, on the number of rules technically violated."[60] In making this argument, Centel cited to a sentence out of context[61] from a House Report revising Section 503(b)(2) of the Act, which increased the maximum limit on forfeiture against a common carrier violator from $20,000 to $1,000,000. The full context of that House Report provides as follows:

> The Committee intends that the increases contained in [Section 503(b)(2)] will strengthen the Commission's enforcement activities. It is the Committee's intention to update penalties that are 55 years old, and restore their deterrent effect to the level contemplated in 1934. . . . These increases are needed to recognize that penalties must be significant if they are expected to serve both as a meaningful sanction to the wrongdoer and a deterrent to others.
>
> In addition, section 503(b) is amended to clarify the manner in which the limits on total forfeiture amounts apply to each act or omission sanctioned thereby. The language makes clear that forfeiture limits would apply to limit forfeitures imposed for one-time continuing violations (i.e., violations the actions of which constitute a "one-time" offense that continues over the duration of the violation), while, for repeated actions that constitute violations, each separate action repeated on successive days would trigger forfeiture amounts up to the maximum provided by the section.

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[57] *See* 47 U.S.C. § 503(b)(1)(B) (emphasis added).

[58] *See* 47 U.S.C. § 503(b)(1) (emphasis added).

[59] *Centel*, 10 FCC Rcd at 917.

[60] Response at 10.

[61] Emphasizing certain words, Centel asserted that "Congress expressed its intent to 'clarify the manner in which the limits on total forfeiture amounts apply to *each act or omission sanctioned.*'" *Id.* at 11.

> For example, an unauthorized transfer of control of a broadcast licensee is accomplished by the sale of stock. The sale is the one-time action which violates the Act. It is a violation of a continuing nature for each day that it fails to obtain necessary authorization. In this case, the $250,000 cap would apply. However, if a licensee broadcast on a frequency for which it had no authorization, causing interference on an emergency frequency for one hour on each of 15 days, the licensee could be fined a maximum of $25,000 for each action. Such a course of action could result in a total of $375,000 (15 x $25,000).[62]

The examples provided are especially helpful to shed light on the proper application of Section 503(b)(2) to Centel's violations. The first example states that the unauthorized sale is the "one-time" action which remains a continuing violation for each day that passes without the conduct coming into compliance. Likewise, Centel's failure to notify the FAA prior to its construction of the Guilford tower was a "one-time" violation which continued for 137 days until Centel provided the necessary notification to the FAA.[63] The example given in the House Report clearly authorizes the "cap" amount to apply to such a situation, and accordingly, we assessed a forfeiture of $1,000,000 against Centel for this violation. Similarly, Centel's failure to light the tower upon completing construction was another "one-time" violation which continued for 150 days until Centel installed the necessary lights.[64] For this violation, we also assessed the "cap" of $1,000,000 against Centel. Finally, Centel's failure to obtain full FAA approval for the tower which the cellular rules required before Centel could build this additional transmitting facility was also another "one-time" violation which continued for 151 days until Centel filed its amended FCC Form 489 with the Commission.[65] As authorized by Section 503, we assessed a separate $1,000,000 forfeiture against Centel for this violation. Accordingly, we reject Centel's argument that the Commission is limited to a "cap of $1,000,000" forfeiture for all three violations.

(3). That as a Matter of Law, there was No Violation of Lighting Requirements

18. Finally, in its Response, Centel argued that it did not violate any lighting and marking requirement "as a matter of law." Centel asserted that neither the FAA's nor the Commission's Rules contain any explicit requirement for lighting and marking antenna towers the height of the Guilford tower, but that such a determination is completely within the FAA's discretion, made

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[62] H.R. REP. NO. 101-247, 101st Cong., 1st Sess. 589 (1989). The Conference Report to Accompany H.R. 3299 contains similar language. *See* H.R. CONF. REP. NO. 101-386, 101st Cong., 1st Sess. 435 (1989). It should be noted that the $250,000 and $25,000 figures apply in the examples given because the violator is a broadcast licensee. If the violator had been a common carrier, the appropriate figures would be $1,000,000 and $100,000.

[63] *See Centel*, 10 FCC Rcd at 918 n.14.

[64] *Id.*

[65] *Id.*

as a result of notification to the FAA under Section 17.7 of the Commission's Rules.[66] Centel claimed that since neither the FAA nor the Commission instructed it to install such lights, there was no independent obligation for Centel to light the tower until the FAA Determination was issued on May 18, 1994. However, since the tower was lighted by that date, Centel asserted that it could not have violated that requirement.

19. We cannot agree with this argument. Section 17.21(a) specifically states that antenna towers "shall be . . . lighted when . . . they require special aeronautical study."[67] It is incomprehensible how the two agencies' failure to order those lights on the Guilford tower – the failure of which was directly caused by Centel's earlier conduct – can now equate with the argument that Centel did not violate any lighting rules "as a matter of law." As indicated above, Centel listed an FAA study number when it filed an FCC Form A-428, along with a Form 489 on the Guilford tower on December 17, 1993. Because the Guilford tower referenced an FAA study number, the Commission staff was led to believe that an FAA aeronautical study was indeed completed for the tower, and that all necessary FAA requirements would have been addressed by Centel, including the placement of tower lights, if any were required by the FAA. Accordingly, the Commission did not have a reason to order Centel to place any lights on the Guilford tower. Furthermore, the FAA did not order any lights on the Guilford tower prior to May 18, 1994, because Centel failed to notify the FAA, and failed to obtain that agency's approval prior to constructing the Guilford tower. If Centel had properly notified the FAA when it should have, the FAA would have indeed required that the tower be equipped with lights. The fact remains that Centel either knew, or should have known, about the two agencies' tower lighting requirements, and yet Centel failed to light its tower until five months after the tower was already constructed and operational. The fact also remains that during that five-month duration, the tower required lights pursuant to both FAA and Commission rules. We thus affirm our finding in the NALF that this Rule was violated by Centel.

C. The Commission's Findings and Conclusion

(1). Violation of Section 17.7 (FAA Notification)

20. Section 17.7(b)(1) of the Commission's Rules required Centel to notify the FAA prior to constructing the Guilford tower due to the location's proximity to the Greensboro/Piedmont Triad International Airport. Centel does not dispute the fact that it failed to comply with this Rule. Instead, Centel attempted to explain its failure to comply by asserting in its Response that "the requirement to notify the FAA is not automatic" for antenna towers which are the height of the Guilford tower.[68] We disagree. The record in this proceeding clearly indicates that Centel knew that its Guilford tower was located in line with the aircraft departure and approach path of

[66] Response at 17.

[67] 47 C.F.R. § 17.21(a).

[68] Response at 13-14 (footnote omitted).

that airport.[69] Being aware of this proximity, it was Centel's responsibility to determine, pursuant to Section 17.7 of the Commission's Rules, whether the proposed tower would require notification to the FAA. The language of that Rule unambiguously states that "notification to the [FAA] is required, . . . for [a]ny construction . . . of greater height than an imaginary surface extending outward and upward at [a slope of] 100 to 1 for a horizontal distance of 6.1 kilometers (20,000 feet) from the nearest point of the nearest runway of each airport"[70] Yet, Centel maintained in its Response that such notification is "not automatic."

21. Curiously, Centel's position that an FAA notification is not automatically required, is inconsistent with an earlier explanation which Centel provided to the Commission. During the Commission's investigation of the violations, Centel sent a letter to CCB which attempted to describe the events surrounding the company's failure to comply with this Rule. In that letter, Centel explained that the Guilford

> situation resulted from an erroneous determination by one [Centel] engineer that negated the efficacy of [its compliance] procedures. In utilizing the [outside expert consultant's] analysis for the Guilford tower location area, the engineer confused the height at which the proposed tower would constitute an obstruction with the height at which FAA notification would be required. Because the 187 foot tower was thought to be below the obstruction slope, the engineer erroneously concluded that FAA notification was not required and that the tower did not need to be lit and marked. The engineer's error was not detected by more senior personnel under [Centel's] internal review processes in part because the engineer had also erroneously indicated that FAA notification had in fact been made and the FCC Form 489 incorrectly referenced an aeronautical study number.[71]

From this explanation, it is clear that, contrary to its assertion in the Response that FAA notification is not automatic in this situation, Centel was well versed in the Commission's rule requiring FAA notification for this tower. In any event, the licensee is fully responsible for the misconduct of its agents under the doctrine of *respondeat superior*.[72]

22. Accepting either version of its explanation for failing to comply with this Rule, we nonetheless find that the gravity and magnitude of this violation fully supports the most severe

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[69] *See* Letter and map attachment from D. Foster, President and Chief Operating Officer, Sprint, to A. Metzger, Jr., Acting Chief, Common Carrier Bureau (Oct. 13, 1994).

[70] 47 C.F.R. § 17.7(b)(1).

[71] Letter and enclosure from J. Keithley, Vice President, Sprint, to A. Metzger, Jr., Acting Chief, Common Carrier Bureau (July 8, 1994).

[72] *See Dial-A-Page, Inc.*, 8 FCC Rcd 2767, 2768 (1993), *recon. denied*, 10 FCC Rcd 8825; *David A. Bayer*, 7 FCC Rcd 5054, 5056 (1992).

penalty authorized by law, and that we justifiably assessed in the NALF an unprecedented $1,000,000 forfeiture against Centel for its violation of this Rule. Furthermore, because Section 17.7 of our Rules works as a safety mechanism to ensure that the FAA is made aware of Commission licensees' proposed tower projects which may effect air navigation, we conclude as discussed above, that the mitigating factors listed in Section 503 of the Act which Centel argued were in its favor do not support a reduction of this forfeiture amount assessed by us in the NALF.

(2). Violation of Section 17.21 (Tower Lighting)

23. Section 17.21(a) of the Commission's Rules requires towers of certain height and/or location to be lighted according to an FAA Determination. As stated above, Centel clearly violated this requirement, and we have concluded that no mitigating factors argued by Centel pursuant to Section 503 of the Act mandate a reduction of the $1,000,000 forfeiture assessed by us in the NALF for this Rule violation. Violations of the tower lighting rules pose an extremely serious threat to public safety. As we did in 1989, we again warn all licensees that "[a]ppropriate action, including issuance of fines and/or revocation of the station license, will be taken against the user or owner" of any improperly lighted or marked radio tower.[73] One of the most difficult and troubling tasks delegated to the CIB staff is to investigate an accident site after an aircraft collides with an antenna tower which stood without appropriate lights. The Commission is dedicated to doing all that we can to prevent tragedies.[74] Thus, we fully affirm the $1,000,000 forfeiture assessed by us in the NALF for Centel's violation of Section 17.21(a) of the Commission's Rules.

(3). Violation of Section 22.117 (Construction without FAA Approval)

24. The former Section 22.117(b)(3) of the Commission's Rules[75] required a cellular licensee to obtain "full FAA approval" prior to constructing and operating additional antenna towers for cellular radio transmissions without further Commission approval. Full FAA approval consists of initially obtaining, prior to construction, the FAA's Determination on the proposed tower's effect on air navigation, and completing the tower according to the FAA's recommendations. In its Response, Centel interpreted this provision as follows: "This approval requirement is the [Commission's] mechanism for reviewing compliance with FAA notification requirements."[76] Therefore, Centel argued that this FAA approval "can only be secured if notification to the FAA is performed . . . [and a] mistaken determination that no FAA notification

[73] *See Air Hazards Caused by Improperly Marked and Lighted Communications Towers*, 66 Rad. Reg. 2d (P&F) 924 (1989).

[74] For example, the various Bureaus of the Commission issue frequent Public Notices to warn licensees of "Air Hazards Caused by Improperly Marked & Lighted Communications Towers."

[75] A similar requirement is now at Section 22.165(b) of the Commission's Rules, 47 C.F.R. § 22.165(b).

[76] Response at 16.

was required would thus automatically violate Section 22.117."[77] We disagree. While the two Rules are interrelated, they nevertheless serve different purposes. Section 17.7 serves to notify the FAA about a tower which could become a hazard to air navigation, while Section 22.117 serves to notify the Commission that, as to the additional tower, the licensee has complied with all procedures required by the FAA, so that the licensee may expand its communications services without prior Commission authorization. Centel's offense in violating Section 22.117, therefore, is for improperly expanding its cellular service by completing construction of the Guilford tower without first obtaining the necessary FAA approval. Accordingly, we affirm our finding in the NALF of a separate and distinct violation by Centel of Section 22.117 of the Commission's Rules.

25. With regard to an assessment of forfeiture for this violation, however, we believe that it is appropriate to mitigate the forfeiture because of the close relationship between the two Rules. As we explained in the NALF, "in order for a licensee to fulfill these Part 22 requirements, it must provide notification to the FAA of a proposed tower construction in the circumstances specified in Section 17.7."[78] Because we have already assessed the statutory maximum forfeiture of $1,000,000 for Centel's violation of the FAA notification requirement, we have decided to exercise our own discretion here and mitigate the forfeiture for Centel's violation of Section 22.117 to zero, thereby reducing Centel's overall forfeiture to $2,000,000. We note, however, that this mitigation should not be read to suggest that we will not strictly enforce the new section 22.165 of the Commission's Rules in other situations involving circumstances different than those found in this enforcement proceeding against Centel.

IV. ORDERING CLAUSES

26. We have fully considered all of Centel's arguments. We find that Centel clearly violated Sections 17.7(b)(1), 17.21(a), and 22.117(b)(3) of the Commission's Rules and moreover, that each violation constituted separate willful and repeated conduct within the terms of the Communications Act. We further find that the serious threat to air navigation safety in the manner created and perpetuated by Centel for five months as a result of the violations is unprecedented and clearly demonstrates the grave nature of Centel's violations. In addition, we find that there is no bar in assessing a $1,000,000 forfeiture for each rule violation, that the totality of the circumstances warrants imposing the maximum forfeiture for the Section 17.7(b) and Section 17.21(a) violations. However, in light of the close relationship between Sections 17.7(b)(1) and 22.117(b)(3) and on our own discretion, we will not impose an additional forfeiture for the Section 22.117(b)(3) violation. Finally, we note that, based on the facts before us, we find no substantial and material questions of fact regarding the licensee's basic qualifications to be a Commission licensee.

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[77] *Id.* at 15-16.

[78] *Centel*, 10 FCC Rcd at 916.

27. 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, Centel Cellular of North Carolina Limited Partnership SHALL FORFEIT TO the United States the sum of two million dollars ($2,000,000) for willful and repeated violations of Sections 17.7(b)(1) and 17.21(a) of the Commission's Rules. Payment of the forfeiture may be made 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, to Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the File Number of the above captioned proceeding. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b)(2).

28. 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(e).

29. IT IS FURTHER ORDERED that a copy of this Notice SHALL BE SENT to Centel Cellular of North Carolina Limited Partnership by Certified Mail, Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary