

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

In re)
)
Fayetteville Cellular Telephone Company L.P.) File No. 620EF0021
)
Notice of Apparent Liability for Forfeiture)
for Cellular Radiotelephone Service)
Station KNKA485)
Fayetteville, North Carolina)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 26, 1996;

Released: September 27, 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 Fayetteville Cellular Telephone Company L.P. ("FCTC"), licensee of Cellular Radiotelephone Service Station KNKA485, Fayetteville, North Carolina. Specifically, we find that FCTC failed to give a directional AM broadcast station prior notice before carrying out planned construction of a tower near the station in apparent violation of Section 22.371(b) of the Commission's Rules, 47 C.F.R. § 22.371(b).

2. Communications Engineering Services, P.C. ("CES") was hired by FCTC to construct its cellular base station. In correspondence dated August 4, 1995, CES told WIDU Broadcasting, Inc., licensee of Radio Station WIDU (AM), Fayetteville, North Carolina, that CES had erected a 190 foot tower approximately 0.87 km (0.54 miles) from the antenna system of WIDU.¹ Further, CES admitted that through an oversight, it did not recognize the proximity of WIDU to the cellular base station location until after construction.

3. On October 3, 1995, WIDU filed a complaint with the Chief, AM Branch, Audio Services Division of the Mass Media Bureau. It stated that FCTC constructed a cellular telephone tower and antenna within the vicinity of its directional AM broadcast station array without prior notification as required by Section 22.371(b).

¹ Letter from B. Scott Baxter, CES engineer, to Wes Cookman, Station WIDU (Aug. 4, 1995).

4. Section 22.371(b) of the Commission's Rules provides in pertinent part:

If tower construction or modification is planned within 3 kilometers (1.9 miles) of a directional AM broadcast station array, the Public Mobile Service licensee *must notify* the licensee of the AM broadcast station *in advance* of the planned construction or modification.

47 C.F.R. § 22.371(b) (emphasis added).

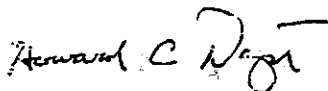
5. There is no dispute that FCTC failed to give prior notice to the directional AM broadcast station in advance of the antenna tower construction within 3 km (1.9 miles) of WIDU's AM broadcast station array. Thus, FCTC willfully and repeatedly violated Section 22.371(b) of the Commission's Rules. Taking into account previous forfeiture penalties assessed for violations of similar nature, and the factors listed in Section 503(b) of the Act, the Commission determines that a forfeiture of \$4,000 is justified for FCTC's failure to give prior notice in violation of Section 22.371(b). See *AllCity Paging, Inc.*, 9 FCC Rcd 6485 (1994).

6. 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, FCTC is hereby advised of its APPARENT LIABILITY FOR FORFEITURE in the amount of four thousand dollars (\$4,000) for repeated violation of Section 22.371(b):

7. 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.

8. A copy of this Notice is being sent to Suzanne Carmel, GTE Mobilnet of Fayetteville Inc.,² 1850 M Street, N.W., Suite 1200, Washington, DC 20036-5801, by Certified Mail, Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION



Howard C. Davenport
Chief, Enforcement Division
Wireless Telecommunications Bureau

² GTE Mobilnet of Fayetteville is the general partner of the Fayetteville Cellular Telephone Company Limited Partnership.