

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

In the Matter of
Tarrant Radio Broadcasting, Inc.
Radio Station KZEE
Weatherford, TX
File No. EB-01-DL-0813
NAL/Acct. No. 200232500003
FRN 0006-7721-56

FORFEITURE ORDER

Adopted: September 9, 2002

Released: September 11, 2002

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of three thousand dollars (\$3,000) to Tarrant Radio Broadcasting, Inc. ("Tarrant"), licensee of Station KZEE(AM) in Weatherford, Texas, for willful and repeated violation of Section 73.1560(a)(1) of the Commission's Rules ("Rules").

2. On May 24, 2002, the Commission's Dallas, Texas Field Office ("Dallas Office") issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of four thousand dollars (\$4,000) to Tarrant for the noted violation. Tarrant filed a response to the NAL on June 21, 2002.

II. BACKGROUND

3. On November 8 and 11, 2001, the Commission received complaints alleging that Station KZEE(AM) in Weatherford, Texas did not reduce antenna input power after sunset as required by the station's license. KZEE(AM)'s license authorizes operation at a daytime power level of 500 watts and a nighttime power level of 8 watts. KZEE(AM)'s post-sunset authorization specifies, for the month of January, a power level of 18.2 watts from 5:45 P.M. to 6:45 P.M., and 8.5 watts from 6:45 P.M. to 7:45 P.M. local time.

4. On January 9, 2002, agents from the Dallas Office made field strength measurements of KZEE(AM)'s signal from 5:22 P.M., before local sunset, to 9:25 P.M., well after local sunset. The measurements revealed that KZEE(AM) operated at the daytime power level of 500 watts after sunset.

5. On January 24, 2002, agents from the Dallas Office again made field strength measurements of KZEE(AM)'s signal and inspected the KZEE(AM) transmitter facilities. The inspection and measurements revealed that the KZEE(AM) transmitter operated during the daytime at 130 percent of the station's authorized daytime power of 500 watts. During the inspection, station personnel stated that they did not know how to operate the transmitter's remote control and that station personnel did not adjust the transmitter power level.

1 47 C.F.R. § 73.1560(a)(1).

6. On February 5, 2002, the Dallas Office issued a *Notice of Violation* (“NOV”) for overpower operation of KZEE(AM) in violation of Section 73.1560(a)(1) of the Rules. In its response to the NOV, Tarrant acknowledged the violation and indicated that it had been corrected. On May 24, 2002, the Dallas Office issued an *NAL* in the amount of \$4,000 to Tarrant for operating station KZEE(AM) with an antenna input power greater than 105% of the authorized level in willful and repeated violation of Section 73.1560(a)(1) of the Rules.

7. In its response to the *NAL*, Tarrant argues that the forfeiture amount should be reduced. In support of its argument, Tarrant states that its sole principals had never owned or worked at a radio station and only assumed ownership of KZEE(AM) on October 23, 2001. Further, Tarrant suggests that the owners made no changes to the operation of KZEE(AM) by November 8 and 11, two weeks later when the Commission received complaints regarding KZEE(AM)’s operation. Moreover, Tarrant asserts that at the time of the agent’s inspection, the owners had been in control of the station for only three months and had hardly any time in which to correct the prior licensee’s deficiencies. In addition, Tarrant states that KZEE(AM) was time brokered from the end of October until the end of January 2002. As a result, argues Tarrant, although Tarrant was licensee of Station KZEE(AM), the owners were “complete innocents.” Tarrant acknowledges that there were repeated violations, but contends that had the licensee been notified of the violations after the January 9<sup>th</sup> inspection, the violations would have ceased then. Finally, Tarrant argues that the forfeiture should be reduced on the basis of the licensee’s history of overall compliance.

### III. DISCUSSION

8. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, (“Act”)<sup>2</sup> Section 1.80 of the Rules,<sup>3</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999). In examining Tarrant’s response, Section 503(b) of the Act requires that the Commission take into account 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 other such matters as justice may require.<sup>4</sup>

9. We disagree that the forfeiture amount should be reduced because the licensee had been in control of the station for a short period of time at the time of the inspection. Tarrant’s period of ownership does not provide a basis for reduction of the forfeiture amount as the licensee is responsible for ensuring compliance with our rules.<sup>5</sup> We also reject the licensee’s argument that the repeated nature of the violation could have been avoided by earlier notice. Tarrant had an obligation to ensure that it was in compliance with the Commission’s rules. In any event, the *NAL* did not increase the \$4,000 base amount on the grounds that the violation occurred on two separate days. Finally, Tarrant argues that we should consider its history of overall compliance with the Rules. We will do so and reduce the \$4,000 forfeiture to \$3,000.

### IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>6</sup> Tarrant Radio Broadcasting, Inc. IS LIABLE FOR A

<sup>2</sup> 47 U.S.C. § 503(b).

<sup>3</sup> 47 C.F.R. § 1.80.

<sup>4</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>5</sup> *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979).

<sup>6</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

MONETARY FORFEITURE in the amount of three thousand dollars (\$3,000) for operating Station KZEE(AM) with an antenna input power at a level more than 105% of authorized power in willful and repeated violation of Section 73.1560(a)(1) of the Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>7</sup> Payment shall be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200232500003 and FRN 0006-7721-56. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>8</sup>

12. IT IS FURTHER ORDERED that, a copy of this *Order* shall be sent by Certified Mail, Return Receipt Requested, to Tarrant Radio Broadcasting, Inc. at P.O. Box 92903, Southlake, TX 76092, and to its counsel, Allan G. Moskowitz, Esq., Kaye Sholer LLP, The McPherson Building, 901 Fifteenth Street, N.W., Washington, DC 20005-2327.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>7</sup> 47 U.S.C. § 504(a).

<sup>8</sup> See 47 C.F.R. § 1.1914.