

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

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|----------------------------------------|---|----------------------------|
| In the matter of                       | ) |                            |
|                                        | ) | File No. EB-02-DL-679      |
| East Texas Broadcasting, Inc.          | ) |                            |
| Licensee of Station KPLT(AM) and       | ) | NAL/Acct. No. 200332500002 |
| Owner of Antenna Structure No. 1236893 | ) |                            |
| in Paris, Texas                        | ) | FRN: 0005-0139-41          |
| Mount Pleasant, Texas                  | ) |                            |

**FORFEITURE ORDER**

**Adopted: November 10, 2004**

**Released: November 16, 2004**

By the Assistant Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to East Texas Broadcasting, Inc., (“East Texas”), the licensee of KPLT(AM), and owner of Antenna Structure Registration (“ASR”) No. 1236893 in Paris, Texas, for willful and repeated violation of Section 17.4(a) of the Commission’s Rules (“Rules”) and willful violation of Section 73.49 of the Rules.<sup>1</sup> The noted violations involve East Texas’ failure to register its antenna structure for radio station KPLT and its failure to enclose its antenna tower within an effective locked fence.

2. On March 4, 2003, the Commission’s Dallas, Texas District Office (“Dallas Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to East Texas for a forfeiture in the amount of ten thousand dollars (\$10,000).<sup>2</sup> East Texas filed a response to the *NAL* on April 3, 2003.

**II. BACKGROUND**

3. On November 4, 2002, an agent from the Dallas Office inspected East Texas’s antenna structure located in Paris, Texas. The agent determined that the structure was used by AM Station KPLT, and had radio frequency (“RF”) potential at the base of the tower. During the inspection, the agent found the gate to the tower base fence unlocked. The station manager arrived after several minutes and secured the gate. In addition, a sign at the base of the tower structure displayed ASR number 1053395. The Commission’s records indicated that ASR number 1053395 had been purged from the database with the notation “Aged Return Deletion.” The KPLT station manager informed the Dallas Office agent that KPLT had purchased the station one year previously.

4. On November 14, 2002, the Dallas Office received information from East Texas indicating that the previous owner of the tower had tried and failed to properly register the tower. The registration failure was due to the previous owner’s failure to provide correct coordinates for the tower. On December 2, 2002, East Texas successfully registered the tower with the Commission’s automatic

<sup>1</sup> 47 C.F.R. §§ 17.4(a), 73.49.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332500002 (Enf. Bur., Dallas Office, released March 4, 2003).

tower registration system using the same incorrect data with which the previous owner used in its failed registration attempts.<sup>3</sup> East Texas has owned the subject tower since August 2001.

5. On March 4, 2003, the Dallas Office issued a NAL to East Texas for ten thousand dollars (\$10,000) for apparent willful and repeated violation of Section 17.4(a) of the Rules and apparent willful violation of Section 73.49 of the Rules. East Texas responded to the NAL pointing out its history of compliance with the Rules, and its prompt remedial efforts to correct the violations. It states that it believed the tower was registered because when it acquired the tower, “it had been represented to it that the prior licensee was in compliance with all” of the Rules. East Texas relied upon that representation, which was compounded by the existence of a sign at the base of the structure displaying ASR number 1053395.

6. East Texas also states that it has participated in the Alternative Broadcast Inspection Program (“ABIP”) for several of its other stations and has devoted substantial time and resources to prepare Station KPLT for that program. In support of its argument that it has been diligent in serving its customers and complying with the Rules, East Texas supplies a lengthy list of improvements and modifications it has made to KPLT since it acquired the station, including replacing the transmitter, repairing the transmitter building and replacing its roof, installing upgraded electrical system and air conditioning, and replacing all wiring on the tower lights.

7. East Texas suggests that the forfeiture is not warranted, given its overall participation in ABIP, its history of compliance, and the substantial station improvements it has made to Station KPLT. At a minimum, it argues, the forfeiture should be reduced by the sum of \$3,900, citing *Truth Broadcasting Corporation*<sup>4</sup> and *NetCom Technologies*.<sup>5</sup> In addition, East Texas argues that we should take into account that KPLT is in the small market of Paris, Texas, and the Commission has recognized that forfeitures impose a “far greater hardship” on a small market station than on others, citing *Dominga Barreto Santiago*<sup>6</sup> and *Canby Telephone Association*.<sup>7</sup>

### III. DISCUSSION

8. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, (“Act”),<sup>8</sup> Section 1.80 of the Rules,<sup>9</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) (“*Policy Statement*”). In examining East Texas’ 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 such other matters as

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<sup>3</sup> The previous owner’s application was reviewed by FCC staff prior to ubiquitous public use of the automated tower registration system. According to correspondence between the tower’s previous owners and the Commission, the data provided is in error by more than one second. The tower requires a new Federal Aviation Administration (“FAA”) study and corrected data for the tower registration in the Commission’s database.

<sup>4</sup> 17 FCC Rcd. 24376 (Enf. Bur. 2002).

<sup>5</sup> 16 FCC Rcd 9524 (Enf. Bur. 2001).

<sup>6</sup> 14 FCC Rcd 6065 (CIB 1999).

<sup>7</sup> 5 FCC Rcd 731 (Mobile Services Div. 1990).

<sup>8</sup> 47 U.S.C. § 503(b).

<sup>9</sup> 47 C.F.R. § 1.80.

justice may require.<sup>10</sup>

9. Section 73.49 of the Rules requires broadcast licensees to maintain an effective locked fence or other enclosures around the base of an antenna tower having radiofrequency potential at the base. The Dallas Office agent's observation was that AM Station KPLT has radio frequency potential at the base of its antenna tower, thereby requiring an effective locked fence or other enclosure. At the time of the inspection on November 4, 2002, the KPLT antenna structure was not enclosed within an effective locked fence or other enclosure as required by Section 73.49. East Texas does not contest that its antenna tower was without an effective locked enclosure around the base. Accordingly, we conclude that East Texas willfully<sup>11</sup> violated Section 73.49 of the Rules.

10. Section 17.4(a) of the Rules requires that the owner of any proposed or existing antenna structure that requires notice of proposed construction to the FAA must register the structure with the Commission. East Texas owns the tower structure for KPLT, and the structure is approximately 92 meters in height, requiring that it be registered with the FAA. East Texas believed that the tower was registered when it purchased the tower, however, it is well established that mistake or inadvertence resulting in a rule violation is considered willful.<sup>12</sup> Moreover, because the violation continued for at least a year, it is repeated.<sup>13</sup> Accordingly, we conclude that East Texas willfully and repeatedly violated Section 17.4(a) of the Rules.

11. As East Texas acknowledges, remedial action taken to correct the violation is not a mitigating factor, and indeed, East Texas did not take action prior to the inspection to correct the subject violations. East Texas contends, nevertheless, that it deserves consideration for the significant improvements it has made to the station to bring it into compliance and to maintain compliance with the Rules. Station improvements are commendable, but compliance with our rules is expected and does not constitute grounds for a reduction in the proposed forfeiture.<sup>14</sup> We conclude, therefore, that East Texas is not entitled to a reduction in the forfeiture amount for its station improvements.

12. East Texas argues that its participation in ABIP in other stations it owns, and its plan to place Station KPLT in the ABIP program, deserves consideration. We conclude that these efforts are not grounds for a reduction in forfeiture because neither Section 1.80 of the Rules nor the *Policy Statement* authorizes remediation of a forfeiture for these actions.

13. East Texas also argues that it should have a reduction of the forfeiture because it operates

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<sup>10</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>11</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means 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 ...." *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>12</sup> A violation resulting from an inadvertent mistake or a failure to become familiar with the FCC's requirements is considered a willful violation. See *PBJ Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992); *Standard Communications Corp.*, 1 FCC Rcd 358 (1986); *Triad Broadcasting Co., Inc.*, 96 FCC 2d 1235, 1242 (1984).

<sup>13</sup> As provided by 47 U.S.C. § 312(f)(2), "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97<sup>th</sup> Cong. 2d Sess. 51 (1982). *Southern California Broadcasting Co., supra*.

<sup>14</sup> *AT&T Wireless Services, Inc.*, 17 FCC Rcd 7891 (2002), *forfeiture ordered*, 17 FCC Rcd 21866, 21875-76 at ¶¶ 26-28 (2002), *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 ¶ 7 (1994).

in a small market. The cases cited in support of this position by East Texas, however, illustrate the general rule that reduction of a forfeiture for small market status is always accompanied by showing of financial hardship and/or inability to pay with the required documentation.<sup>15</sup> East Texas provided no documentation showing its inability to pay, and accordingly, we find no merit in its request for reduction based on small market status.

14. Finally, East Texas argues it has never been cited for a previous violation of the Commission's Rules, and citing *Truth Broadcasting Corporation, supra* and *NetCom Technologies, supra*, seeks a reduction in the forfeiture amount on that basis. Our records show that East Texas is correct. Accordingly, we find that a reduction of \$2000 of the proposed forfeiture is warranted for East Texas' history of compliance.

15. A search of the Commission's ASR database reveals that as of the adoption date of this *Order*, East Texas still had not corrected the registration information for its antenna structure with the Commission. Accordingly, we will require, pursuant to Section 308(b) of the Act,<sup>16</sup> that East Texas submit a report to the Enforcement Bureau within 30 days of the release date of this *Order* demonstrating that it is in compliance with our antenna registration Rules as required by Section 17.4(a). East Texas's report must be submitted in the form of an affidavit or declaration, under penalty of perjury, and signed by an officer or director of the licensee. East Texas should note that its continued noncompliance could result in additional enforcement action.

16. We have examined East Texas' response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that East Texas willfully violated Section 73.49 of the Rules, and that it willfully and repeatedly violated Section 17.4 of the Rules, but we find that the proposed forfeiture should be reduced to \$8,000 for these violations because of its history of compliance.

#### IV. ORDERING CLAUSES

17. 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>17</sup> East Texas Broadcasting, Inc., licensee of Station KPLT(AM), in Paris, Texas, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for its violation of Sections 17.4 and 73.49 of the Rules.

18. **IT IS FURTHER ORDERED** that, pursuant to Section 308(b) of the Act, East Texas Broadcasting, Inc. must submit the report described in paragraph fifteen (15) above no later than thirty (30) days from the release date of this *Order* to: Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, Attention: Susan Magnotti, Esquire.

19. 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>18</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section,

<sup>15</sup> *Dominga Barreto Santiago and Canby Telephone Association, supra*.

<sup>16</sup> 47 U.S.C. § 308(b).

<sup>17</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>18</sup> 47 U.S.C. § 504(a).

Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. 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>19</sup>

20. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to East Texas Broadcasting, Inc., PO Box 990, Mount Pleasant, Texas 75456, and to its counsel Howard J. Barr, Esq., Womble Carlyle Sandridge & Rice, Seventh Floor, 1402 Eye Street, N.W., Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon  
Assistant Chief, Enforcement Bureau

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<sup>19</sup> See 47 C.F.R. § 1.1914.