

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

In the Matter of	)	
	)	
Horne Radio, LLC	)	File No. EB-02-AT-341
Licensee of Radio Station WMTN	)	
Morristown, Tennessee	)	NAL/Acct. No. 200332480011
Knoxville, Tennessee	)	
	)	FRN 0004-3408-99

**FORFEITURE ORDER**

**Adopted: March 30, 2004**

**Released: April 1, 2004**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to Horne Radio, LLC (“Horne”), licensee of AM broadcast station WMTN, for willful and repeated violations of Section 73.1745(a) of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violation involves Horne’s failure to maintain the authorized power.

2. On November 5, 2002, the Commission’s Atlanta, Georgia, Field Office (“Atlanta Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Horne for a forfeiture in the amount of four thousand dollars (\$4,000).<sup>2</sup> Horne filed its response to the *NAL* on December 6, 2002.

**II. BACKGROUND**

3. On July 30, 2002, an agent from the Atlanta Office monitored WMTN and made field strength measurements indicating that Horne did not reduce WMTN’s power after sunset.<sup>3</sup> The agent monitored WMTN until 11:00 p.m. and observed no reduction of WMTN’s power.

4. On July 31, 2002, the same agent again monitored WMTN and made field strength measurements indicating that Horne did not reduce WMTN’s power after sunset. The agent again monitored WMTN until 11:00 p.m. and observed no reduction of WMTN’s power.

<sup>1</sup> 47 C.F.R. § 73.1745(a).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332480011 (Enf. Bur., Atlanta Office, released November 5, 2002).

<sup>3</sup> According to its license, WMTN is authorized to operate with a power of 5,000 watts during daylight hours and 96 watts between sunset and sunrise.

5. The FCC agent contacted WMTN's general manager on September 12, 2002. The general manager stated that he was aware of WMTN's overpower operation during July 2002, that WMTN's transmitter control system was inoperative and that the operator on duty had failed to lower the station's power at sunset.

6. On November 5, 2002, the Atlanta Office issued a *NAL* for a forfeiture in the amount of \$4,000 to Horne for willful and repeated violation of Section 73.1745(a) of the Rules. Horne responded to the *NAL* on December 6, 2002, seeking cancellation or reduction of the proposed monetary forfeiture. Horne does not dispute the violation of Section 73.1745(a). It states that it is taking every step possible to correct that violation including replacement of the general manager. Horne argues that payment of the proposed forfeiture would be a financial hardship. To support its financial hardship argument, Horne provides copies of its 1999, 2000 and 2001 federal income tax returns.

### III. DISCUSSION

7. 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>4</sup> Section 1.80 of the Rules,<sup>5</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*"). Section 503(b) of the Act requires that, in examining Horne's response, 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 justice may require.<sup>6</sup>

8. Section 73.1745(a) of the Rules prohibits broadcast stations from operating at times or with modes or power other than those specified by the station's license. The FCC agent's observations and the admission of WMTN's general manager establish that WMTN operated with excessive nighttime power on at least two occasions. We conclude that Horne willfully<sup>7</sup> and repeatedly<sup>8</sup> violated Section 73.1745(a) of the Rules.

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<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>7</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 ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>8</sup> As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues 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). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

9. No mitigation is warranted on the basis of Horne's correction of the violation. As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."<sup>9</sup>

10. In support of its financial hardship claim, Horne submits copies of its 1999, 2000 and 2001 federal income tax returns. The Commission has determined that, in general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.<sup>10</sup> After reviewing the financial data submitted, we find that the proposed forfeiture amount should not be reduced on the basis of financial hardship.<sup>11</sup>

11. We have examined Horne's 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 Horne willfully and repeatedly violated Section 73.1745(a) of the Rules. We also find that there is no basis for cancellation or reduction of the proposed monetary forfeiture.

#### IV. ORDERING CLAUSES

12. 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>12</sup> Horne **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand dollars (\$4,000) for willful and repeated violation of Section 73.1745(a) of the Rules.

13. 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>13</sup> Payment may 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 reference NAL/Acct. No. 200332480011 and FRN 0004-3408-99. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>14</sup>

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<sup>9</sup> See also *Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22629 (2002); *Radio Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966).

<sup>10</sup> See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992).

<sup>11</sup> *Id.* at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Afton Communications Corp.*, 7 FCC Rcd 6741 (Com. Car. Bur. 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).

<sup>12</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>13</sup> 47 U.S.C. § 504(a).

<sup>14</sup> See 47 C.F.R. § 1.1914.

14. **IT IS FURTHER ORDERED** that copies of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Horne Radio, LLC, P.O. Box 24250, Knoxville, Tennessee 37933-2250.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau