

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

In the Matter of)	
)	
Pittman Broadcasting Services, L.L.C.)	File Number EB-07-OR-002
)	
Licensee of Station KVOL-AM)	NAL/Acct. No. 200732620002
Lafayette, LA)	
ASR No. 1025872)	FRN 0009020538
Facility ID No. 9415)	

FORFEITURE ORDER

Adopted: February 19, 2008

Released: February 21, 2008

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of ten thousand hundred dollars (\$10,000) to Pittman Broadcasting Services, L.L.C. (“Pittman”), licensee of station KVOL-AM, in Lafayette, LA and owner of antenna structure #1025872, for repeated violation of Sections 17.51(a) and 73.1745 of the Commission's Rules (“Rules”).¹ The noted violations involve Pittman’s failure to exhibit its structure’s red obstruction lighting from sunset to sunrise and operation overpower during nighttime hours.

II. BACKGROUND

2. Pittman is the registered owner of antenna structure #1025872. The Antenna Structure Registration (“ASR”) specifies that the structure must be painted and lit.

3. On January 17 and 18, 2007, agents from the Commission’s New Orleans Office of the Enforcement Bureau (“New Orleans Office”) observed antenna structure #1025872 after sunset with a top beacon extinguished. The agents confirmed that no Notice to Airmen (“NOTAM”) regarding the lighting outage had been issued.²

4. On January 17, 2007, agents from the New Orleans Office monitored station KVOL-AM’s signal and noted the transmitter power increase approximately 12 dB at 6:05 PM CST.³ On January 18, 2007, the agents again monitored the station and observed the same increase in transmitter power at approximately 6:02 PM CST.

5. On January 19, 2007, agents from the New Orleans Office inspected the main studio of

¹ 47 C.F.R. §§ 17.51(a) and 73.1745.

² The agents contacted the Federal Aviation Administration (“FAA”) on January 17, 2007 about the outage, but the FAA would not issue a NOTAM at that time, because the agents were not the owner of the structure.

³ Local sunset on this date was 5:30 PM.

station KVOL-AM. The station's Chief Engineer was unaware that the top beacon on the antenna structure was extinguished. After the agents so informed him, he contacted the FAA. Although the station had installed an automatic alarm system, the Chief Engineer explained his ignorance of the outage by surmising that either the person responsible for reading the system did not know how to read it or the system was broken. After checking the station transmitter, the Chief Engineer stated that the transmitter was programmed incorrectly and was mistaking AM for PM. He stated that the transmitter's uninterruptible power supply was not functioning, which may have prevented the unit from remembering the correct time. Accordingly, the station was incorrectly programmed to transmit overpower at night with daytime power. The Chief Engineer stated neither he nor station staff were aware of this, prior to the inspection.

6. On April 6, 2007, the New Orleans Office issued a *Notice of Apparent Liability for Forfeiture* to Pittman in the amount of fourteen thousand dollars (\$14,000), for the apparent repeated violation of Sections 17.51(a) and 73.1745 of the Rules.⁴ Pittman submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture.

III. DISCUSSION

7. The proposed forfeiture amounts in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁵ Section 1.80 of the Rules,⁶ 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) ("*Forfeiture Policy Statement*"). In examining Pittman'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.⁷

8. Section 17.51(a) of the Rules states that all red obstruction lighting shall be exhibited from sunset to sunrise unless otherwise specified.⁸ On January 17 and 18, 2007, agents from the New Orleans Office observed that the top red beacon on antenna structure #1025872 was extinguished after sunset. Despite having an automatic alarm system, Pittman staff was unaware that the light was extinguished prior to the inspection on January 19, 2007. Pittman did not notify the FAA of the lighting outage until January 19, 2007.⁹ Thus, based on the evidence before us, we find that Pittman repeatedly¹⁰ violated Section 17.51(a) of the Rules by failing to exhibit required obstruction lighting.

9. Section 73.1745 of the Rules states that no broadcast station shall operate at times, or with

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732620002 (Enf. Bur., New Orleans Office, April 6, 2007) ("*NAL*").

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ 47 C.F.R. § 17.51(a).

⁹ Section 17.48 of the Rules requires tower owners to notify the nearest Flight Service Station or office of the FAA immediately of a lighting outage that requires more than 30 minutes to correct. 47 C.F.R. § 17.48.

¹⁰ 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. 97th 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).

modes of power, other than those specified and made a part of the license.¹¹ Station KVOL-AM is authorized to operate at 5,000 watts during the day and 1,000 watts at night. On January 17 and 18, 2007, agents from the New Orleans Office observed station KVOL-AM's transmitting power increase at approximately 6 PM CST. On January 19, 2007, the station's Chief Engineer confirmed that the station's transmitter had been programmed incorrectly and was operating with daytime power at night. Thus, based on the evidence before us, we find that Pittman repeatedly violated Section 73.1745 of the Rules by operating overpower at night.

10. Pittman's response to the *NAL* does not dispute either of the violations. Pittman asserts that both problems have been fixed. Pittman claims that the tower lighting violation was short-term in nature and that procedures have been put in place to monitor the structure's lights. Pittman also states that the station's transmitter was programmed properly on December 26, 2006 and that it must have been tampered with or malfunctioned, without the licensee's knowledge, after that day. Pittman, however, has not raised any issues that contradict the repeated nature of the violations. The Commission may issue forfeitures for willful and/or repeated violations.¹² The *NAL* found apparent repeated violations and proposed forfeitures at the base forfeiture amounts for the violations. As the repeated nature of the violations is not in question, we find Pittman has provided no grounds upon which to reduce or cancel the forfeiture. Moreover, corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.¹³

11. Finally, Pittman states that payment of the forfeiture would pose an undue financial hardship. The Commission has determined that, in general, an entity's gross revenues are the best indicator of its ability to pay a forfeiture.¹⁴ After examining the financial documentation submitted by Pittman, we agree and reduce the forfeiture to \$10,000 based on its demonstrated inability to pay.

12. We have examined Pittman's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that a reduction of the proposed forfeiture to \$10,000 is warranted, based on demonstrated inability to pay.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Pittman Broadcasting Services, L.L.C. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violation of Sections 17.51(a) and 73.1745 of the Rules.¹⁵

14. 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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005

¹¹ 47 C.F.R. § 73.1745.

¹² See 47 U.S.C. § 503(b).

¹³ See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

¹⁴ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

¹⁵ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 17.51(a), 73.1745.

Convention Plaza, St. Louis, MO 63101. Payment[s] by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

15. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Pittman Broadcasting Services, L.L.C. at its address of record and to its counsel, Dan J. Alpert, 2120 North 21st Road, Arlington, VA 22201.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau