

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Zwerling Broadcasting System, Ltd	)	NAL/Acct. No. MB-202241410024
KSCO(AM), Santa Cruz, California	)	FRN: 0006023261
	)	Facility ID No. 41594
	)	Application File No. 155525
	)	

**MEMORANDUM OPINION AND ORDER AND  
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: October 19, 2022**

**Released: October 19, 2022**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL), we find Zwerling Broadcasting System, Ltd (Zwerling), apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act), and sections 73.1350, 73.1560(a)(1), 73.1635, 73.1690(b), and 73.1745(a) of the Commission's rules (Rules) by operating KSCO(AM), Santa Cruz, California (Station) at a variance from its authorized parameters. Based upon our review of the facts and circumstances before us, we conclude that Zwerling is apparently liable for a monetary forfeiture in the amount of twenty thousand dollars (\$20,000). Upon resolution of the forfeiture proceeding commenced herein and so long as there are no other issues that would preclude such action, we will grant Zwerling's pending application to renew the Station's license for a period of two years.<sup>1</sup>

**II. BACKGROUND**

2. Since 1970, the Station has been authorized to operate in a non-directional mode at 10 kilowatts nominal power during daytime hours, and in a directional mode at 5 kilowatts nominal power during nighttime hours.<sup>2</sup> In 1993, Zwerling obtained special temporary authority (STA) to operate the Station in non-directional mode at night with a reduced power of 1 kilowatt. The Mass Media Bureau extended this STA multiple times. The last extension was granted on October 30, 1996, and expired on November 29, 1996.<sup>3</sup> In its letter granting the extension, the Mass Media Bureau warned Zwerling that the Station needed to "return to licensed operation or to file FCC Form 301 for modification of its nighttime facilities."<sup>4</sup> To date, Zwerling has not filed an FCC Form 301.

3. In 2016, the Enforcement Bureau received complaints about the Station's operations.<sup>5</sup> When the Enforcement Bureau contacted Zwerling about the complaints, Zwerling admitted the Station

<sup>1</sup> See Application File No. 155525.

<sup>2</sup> See Application File No. BL-12621.

<sup>3</sup> Letter from Robert D. Greenberg, Supervisory Engineer, Audio Service Division, Mass Media Bureau, to Michael L. Zwerling, President, Zwerling Broad. System, Ltd (MB Oct. 30, 1996).

<sup>4</sup> *Id.* at 2.

<sup>5</sup> E-mail from Tree Sitter to David Hartshorn, FCC San Francisco Office (April 18, 2016 9:38 PM PDT); E-mail from Tree Sitter to David Hartshorn, FCC San Francisco Office (April 25, 2016 8:03 AM PDT).

was operating non-directionally at night at 1 kilowatt, and stated the Station had been operating in this manner pursuant to STA when Zwerling acquired it. The Enforcement Bureau informed Zwerling that it needed to apply for an STA and then return the Station to its licensed parameters, or apply to modify the Station's authorization to reflect the manner in which it had been operating. Despite this, Zwerling did not request STA or apply to modify the Station's authorization.

4. In 2020, the Commission received another complaint about the Station's operations. The complaint alleged that the Station had been operating at night in non-directional mode at 1 kilowatt for more than 30 years. When Media Bureau staff contacted Zwerling about the complaint, Zwerling admitted the Station had been operating in non-directional mode with a nominal power of 1 kilowatt at night. Zwerling indicated that the Station had "operated for more than thirty years now, at 1000 watts non-directional at night."<sup>6</sup> Zwerling asserted that "in the directional mode [the Station] lose[s] coverage to a significant amount of [its] primary service area."<sup>7</sup> Zwerling also argued that, because of this coverage issue, it "determined that in the absence of any interference complaints from any consumers nor broadcasters . . . , it would NOT be in the public interest, convenience, and necessity for us to cut out coverage to roughly 75% of the population we are here to serve."<sup>8</sup> Finally, Zwerling noted that the Station "has been an incredibly valuable, highly-praised safety resource to Santa Cruz and all communities of the Monterey Bay Area during times of emergencies, i.e., fires, storms, floods, earthquakes, power outages, etc. since day one of its now nearly 75 year operation which began on September 21, 1947."<sup>9</sup>

5. On September 7, 2022, Zwerling requested STA to continue to operate non-directionally at night with reduced power.<sup>10</sup> We recently denied this request because Zwerling did "not provide a justification for the need to operate with an alternate antenna system and reduced power during nighttime hours."<sup>11</sup> We further noted that Zwerling had not "provided any engineering studies to show that the proposed STA facility would protect other co-channel and first adjacent stations."<sup>12</sup> Based on our own interference analysis, we found that the proposed operations were predicted to cause prohibited interference to multiple stations.<sup>13</sup> Accordingly, in addition to denying Zwerling's STA request, we ordered Zwerling to immediately terminate its "unauthorized non-directional operation at night."<sup>14</sup> We indicated that the Station could "either resume operating with its licensed directional nighttime facilities or file a 301 application to modify its nighttime operation."<sup>15</sup>

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<sup>6</sup> E-mail from Michael Zwerling, Zwerling Broad. System, Ltd, to Victoria McCauley, Attorney/Advisor, Audio Division, Media Bureau (Mar. 18, 2022, 11:19 EDT) (Zwerling Email). Some of the Station's non-conforming operations pre-date November 22, 2013 (the date the Station's current license term commenced). *Broadcast Actions*, Public Notice, Report No. 48124, at 44 (MB Nov. 27, 2013). Because we are barred from considering any violations that pre-date the Station's current license term, we do not address any non-conforming operations that occurred prior to November 22, 2013, herein. 47 U.S.C. § 503(b)(6) (allowing the Commission to issue a Notice of Apparent Liability for Forfeiture if (1) the violation charged did not occur more than one year prior to the date of issuance of the Notice of Apparent Liability for Forfeiture or (2) the violation charged did not occur "prior to the date of commencement of the current license term").

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Letter from Bill Graff, Chief Engineer, KSCO, to FCC Audio Filings Team (rec'd Sept. 9, 2022).

<sup>11</sup> *Zwerling Broad. System, Ltd*, Letter Order, at 1 (MB Oct. 5, 2022).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 2.

<sup>15</sup> *Id.*

### III. DISCUSSION

#### A. Non-Conforming Operations

6. Zwerling has admitted that, despite being licensed to operate at night in directional mode at 5 kilowatts, the Station has been operating in non-directional mode at night with a power of 1 kilowatt. Zwerling indicates that the Station operated in this manner for the entirety of its current license term, and continues to do so. The Station's non-conforming nighttime operations contravene section 301 of the Act and sections 73.1350(a), and 73.1745(a) of the Rules, each of which require licensees to operate in accordance with their Commission-granted authorizations.<sup>16</sup> Furthermore, the Station's operation at 1 kilowatt non-directionally (rather than 5 kilowatts directionally) violates Section 73.1560(a)(1) of the Rules. That section requires AM stations to maintain their antenna input power "as near as practicable to the authorized antenna input power" and specifies that it "may not be less than 90 percent nor greater than 105 percent of the authorized power."<sup>17</sup> Finally, we note that Zwerling should have requested special temporary authority to operate the Station at a variance from its licensed parameters, and/or applied for a construction permit to alter the Station's facilities. Its failure to do the former violated section 73.1635,<sup>18</sup> while its failure to do the latter violated section 73.1690(b).<sup>19</sup>

#### B. Proposed Forfeiture

7. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with . . . any rule, regulation, or order issued by the Commission . . ."<sup>20</sup> In exercising our forfeiture authority, we must consider 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>21</sup> The Commission has established forfeiture guidelines, base penalties for certain violations and has identified criteria that it considers when determining the appropriate penalty in any given case.<sup>22</sup> Under these guidelines, we may adjust a forfeiture downward for violations that are minor, violations that are voluntarily disclosed, where there is a history of compliance, or where there is an inability to pay.<sup>23</sup> We may adjust a forfeiture upward for violations that are egregious, intentional, repeated, that cause substantial harm or generate substantial economic gain for the violator, where there is an ability to pay, or where there is a history of prior violations of FCC requirements.<sup>24</sup>

8. Section 1.80(b)(10) of the Rules sets forth a base forfeiture of \$10,000 for operating without an instrument of authorization, and a base forfeiture of \$3,000 for failure to file required forms or information.<sup>25</sup> Taking into consideration the factors outlined in the Commission's Forfeiture Policy

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<sup>16</sup> 47 U.S.C. § 301; 47 CFR §§ 73.1350(a), 73.1745(a).

<sup>17</sup> 47 CFR § 73.1560(a).

<sup>18</sup> 47 CFR § 73.1635 (requiring a licensee to request special temporary authority to operate for a limited time at variance from the terms of its authorization and to do so ten days prior to beginning operation at variance from the terms of its authorization).

<sup>19</sup> 47 CFR § 73.1690(b)(4) (requiring an AM licensee to obtain a construction permit prior to making changes "in the directional radiation characteristics of an AM directional antenna system").

<sup>20</sup> 47 U.S.C. § 503(b).

<sup>21</sup> 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10).

<sup>22</sup> 47 CFR § 1.80(b)(10).

<sup>23</sup> *Id.* at Table 3.

<sup>24</sup> *Id.*

<sup>25</sup> *The Commission's Forfeiture Policy Statement and Amendment to Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(10), Table 1.

Statement, section 1.80 of the Rules, and section 503 of the Act, we conclude that an upward adjustment of the base forfeiture amounts is appropriate here. The Station's non-conforming operations spanned the entirety of its current license term, and continue to this day. Furthermore, the violations were intentional. On at least two occasions, Commission staff informed Zwerling that STA was required to operate the Station at variance from its licensed nighttime parameters, and that it needed to file an application to modify the Station's authorization if it wished to continue to operate the Station non-directionally with reduced power. Despite this, Zwerling did not request STA or file an application to modify the Station's authorization. Therefore, we propose a total forfeiture of twenty thousand dollars (\$20,000), for which Zwerling is apparently liable.<sup>26</sup>

### C. Renewal Application

9. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.<sup>27</sup> That Section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.<sup>28</sup> If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under Section 309(e) of the Act—or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”<sup>29</sup>

10. In this case, Zwerling's operation of the Station during its most recent license term does not warrant routine license renewal. As discussed above, Zwerling knowingly operated the Station at a variance from its licensed nighttime parameters and never sought Commission approval to modify its license or obtain an STA to operate the Station at a variance from the license. Additionally, Zwerling did so for the entirety of the Station's current license term, and continues to do so. Moreover, Zwerling has not accepted responsibility for its violations, instead arguing that it—not the Commission—should be the arbiter of how its Station can best serve the public interest.<sup>30</sup>

11. Despite this, we find that Zwerling's violations of section 301 of the Act, and sections 73.1350, 73.1560(a)(1), 73.1635, 73.1690(b), and 73.1745(a) of the Rules do not constitute “serious violations” under section 309(k) of the Act. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse. Finally, we find that the Station served the public interest, convenience, and necessity during the subject license term. Based on these findings, we do not conclude that designation for evidentiary hearing is warranted here, particularly in light of the forfeiture proposed herein. Instead, we put in place additional measures to ensure that the Station complies with the Act and the Rules in the future. Specifically, pursuant to Section 309(k)(2) of the Act, upon resolution of the forfeiture proceeding commenced herein and so long as there are no other issues that would preclude grant, we will renew the Station's license for a term of two years. This short-term renewal will afford the Commission an opportunity to review the Station's compliance with the Act and the Rules and to take whatever corrective actions, if any, that may be warranted at that time.

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<sup>26</sup> Even if we were to accept the Station's claims about providing safety information to its listeners, we note that this would not excuse its non-conforming operations. Neither does its desire to improve its nighttime coverage of its primary service area, because any variation from authorized operation requires prior Commission review and approval.

<sup>27</sup> 47 U.S.C. § 309(k).

<sup>28</sup> 47 U.S.C. § 309(k)(1).

<sup>29</sup> 47 U.S.C. § 309(k)(2), (k)(3).

<sup>30</sup> See Zwerling Email.

#### IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's rules, that Zwerling Broadcasting System, Ltd, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for its apparent willful and repeated violations of Section 301 of the Communications Act of 1934, as amended, and Sections 73.1350, 73.1560(a)(1), 73.1635, 73.1690(b), and 73.1745(a) of the Commission's rules.

13. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission's rules, that, within thirty (30) days of the release date of this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, Zwerling Broadcasting System, Ltd, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system), or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Below are instructions that payors should follow based on the form of payment selected:

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov) on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN). For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

15. Any request for making full payment over time under an installment plan should be sent to: Associate Managing Director—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, DC 20554. Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

16. Any written response seeking reduction or cancellation of the proposed forfeiture must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission's rules. The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Albert Shuldiner, Chief, Audio Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. A courtesy copy emailed to [Heather.Dixon@fcc.gov](mailto:Heather.Dixon@fcc.gov) will assist in processing the response.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

17. **IT IS FURTHER ORDERED** that, pursuant to Section 73.3526(e)(10) of the Commission's rules, Zwerling Broadcast System, Ltd, **SHALL PLACE** a copy of this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture in the online public inspection file of Station KSCO(AM), Santa Cruz, California (Facility ID No. 41594).

18. **IT IS FURTHER ORDERED** that copies of this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture **SHALL BE SENT**, by First Class and Certified Mail, Return Receipt Requested, to Michael Zwerling, Zwerling Broadcast System, Ltd, 2300 Portola Drive, Santa Cruz, CA 95062.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner  
Chief, Audio Division  
Media Bureau