

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

In the Matter of

Liability of
Southern Broadcasting Companies, Inc.
Former Licensee, Station WSTT-AM
Thomasville, Georgia

For a Forfeiture

MEMORANDUM OPINION AND ORDER

Adopted: September 3, 1996

Released: September 6, 1996

By the Chief, Mass Media Bureau:

1. The Commission by the Chief, Mass Media Bureau, acting pursuant to authority delegated by Section 0.283 of the Commission's Rules, has before it for consideration (1) a Memorandum Opinion and Order (MO&O), 8 FCC Rcd 7893 (1993), assessing a forfeiture of \$5,000 against Southern Broadcasting Companies, Inc., former licensee of Station WSTT-AM, Thomasville, Georgia¹, for violation of Section 73.1740(a)(4) of the Commission's Rules,² and (2) a petition for reconsideration and application for remission or mitigation of forfeiture, and supplement thereto, filed by Southern Broadcasting.

2. Section 73.1740(a)(4) in pertinent part requires special temporary authority for licensees to limit or discontinue operation beyond a 30 day period. Southern Broadcasting argues that the "gravamen" of a violation of this provision is "the failure to timely submit an informal written request." Thus it urges that it did not violate the rule, in that it requested and obtained the requisite permission to go silent, failing only to obtain an extension when that authorization expired. We do not understand Section 73.1740(a) to permit extended discontinued operation without notice or authorization, however. Indeed, such an interpretation is inconsistent with the section's stated purpose, namely the establishment of

¹ An application to assign Station WSTT-AM from Southern Broadcasting Companies, Inc., to Malren Broadcasting, Inc., was granted on December 30, 1992. The assignment was consummated on February 5, 1993. The station was subsequently assigned to John H. Pembroke.

² The MO&O considered a response to a Notice of Apparent Liability (NAL) issued against Southern Broadcasting. It granted the response in part, reversing a finding that the licensee had violated the Commission's public file rule, and denied the response in all other respects.

minimum operating schedules for broadcast stations. We therefore affirm our finding of a violation.

3. At the same time, we decline to rescind or reduce the forfeiture on the basis of financial hardship. The licensee's financial showing is inadequate to support its claim, in that it does not provide detailed information as to expenses from broadcast operations, including noncash expenses such as amortization and depreciation, and does not identify payments to principals. We agree, though, that the forfeiture must be recalculated in light of the decision in United States Telephone Ass'n v. FCC, 28 F.3rd 1232 (D.C. Cir. 1994), setting aside the guidelines that governed the original forfeiture. Applying directly the statutory factors in 47 U.S.C. Section 503(b) to the particular facts of this case, and taking into consideration "the nature, circumstances, extent, and gravity of the violation," we conclude that an assessment of \$2,500 is appropriate.

4. Accordingly, IT IS ORDERED, that the petition for reconsideration and application for remission or mitigation of forfeiture filed by Southern Broadcasting Companies, Inc., IS GRANTED to the extent indicated herein, and IS DENIED in all other respects. IT IS FURTHER ORDERED, that Southern Broadcasting Companies, Inc., former licensee of Station WSTT-AM, Thomasville, Georgia, FORFEIT to the United States the sum of two thousand five hundred dollars (\$2,500) for the willful violation of Section 73.1740(a)(4) of the Commission's Rules. Payment of the forfeiture may be made by mailing to the Commission, at the address indicated in the attachment to this Memorandum Opinion and Order, a check or similar instrument payable to the Federal Communications Commission. In regard to the forfeiture proceeding, the licensee may take any of the actions set forth in Section 1.80 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION


Roy J. Stewart
Chief, Mass Media Bureau