
Federal Communications Commission

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

In the Matter of)	
)	
Tabback Broadcasting Co.)	File Number: EB-07-SD-319
)	
Licensee of Station KAZM(AM))	NAL/Acct. No.: 200832940001
Sedona, Arizona)	FRN: 0003707825
Facility ID # 64494)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 21, 2007

By the District Director, San Diego Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Tabbac Broadcasting Co. ("Tabbac"), licensee of station KAZM(AM), in Sedona, Arizona, apparently willfully and repeatedly violated Section 73.1745(a) of the Commission's Rules ("Rules")¹ by failing to operate KAZM(AM) in accordance with the station's authorized power, hours of operation and directional antenna pattern as specified. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that Tabbac is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

2. KAZM(AM) is authorized to operate with a non-directional antenna pattern on 780 kHz with 5,000 watts during daytime hours and 250 watts during nighttime hours with a directional antenna pattern.³ Daytime is defined as the "period of time between local sunrise and local sunset" and nighttime is defined as the period "between local sunset and local sunrise."⁴ In Sedona, Arizona, during the month of October, local sunrise occurs at 6:30 a.m. and local sunset occurs at 6:00 p.m. and for the month of November, local sunrise occurs at 7:00 a.m. and local sunset occurs at 5:30 p.m.⁵

3. On October 30, 2007, in response to a complaint from another licensee of nighttime interference from KAZM(AM) an agent from the Enforcement Bureau's San Diego Office monitored KAZM(AM) and measured its field strength levels. The agent also monitored KAZM(AM) and took

¹ 47 C.F.R. § 73.1745(a).

² 47 U.S.C. § 503(b).

³ Authorized power levels, directional antenna pattern and hours of operation are specified within station license BL-811119AA. The directional antenna pattern is designed to protect the nighttime service of co-channel radio stations KKOH(AM) in Reno, Nevada (null along the 333.5° radial) and WBBM(AM) in Chicago, Illinois (null along the 66.5° radial).

⁴ 47 C.F.R. § 73.14.

⁵ All times indicated are local Mountain Standard Time.

multiple field strength measurements on October 31, 2007, November 1, 2007, and November 2, 2007, at multiple locations around the KAZM(AM) transmitter site.

4. On October 30, 2007, the San Diego agent's measurements and monitoring revealed that KAZM(AM) reduced its power at 7:03 p.m., to approximately 1000 watts, and maintained that power throughout the nighttime hours. On October 31, 2007, the agent's measurements and monitoring revealed that KAZM(AM) reduced its power at 7:24 p.m., to approximately 1000 watts, maintained that power throughout the nighttime hours, and failed to change from its non-directional daytime pattern to its authorized nighttime directional pattern.

5. On November 1, 2007, the agent's measurements and monitoring revealed that KAZM(AM) reduced its power at 7:06 p.m., to approximately 1000 watts, maintained that power throughout the nighttime hours, and failed to change from its non-directional daytime pattern to its authorized nighttime directional pattern. On November 2, 2007, the agent's measurements and monitoring revealed that KAZM(AM) reduced its power at 5:32 p.m., to approximately 1000 watts, maintained that power throughout the nighttime hours, and failed to change from its non-directional daytime pattern to its authorized nighttime directional pattern. The monitoring performed by the San Diego agent also revealed that commercial programming was being broadcast by KAZM(AM) during the nighttime hours of October 30, 2007 to November 2, 2007.

6. On November 2, 2007, the San Diego agent conducted an inspection of KAZM(AM) and interviewed the owner of Tabback, the station's licensee. The agent advised the owner that the inspection was in response to a complaint from another licensee of nighttime interference. The owner provided the San Diego agent with copies of eight letters that Tabback had sent to "FCC, Broadcast Bureau, AM Branch" in Washington DC. These letters were dated between February 14, 2007, and October 24, 2007. The letters advised that KAZM was operating at 1000 watts non-directional at nighttime for emergency purposes in order "to service people in our market, who lose our signal at night, about dangerous driving conditions and road closures caused by storm activity and highway construction." The letter concluded "KAZM will continue aforementioned nighttime operation until storm and dangerous road conditions subside." The letters stated that the change in nighttime parameters was taken in accordance with "FCC regulation 73.1250."⁶

III. DISCUSSION

7. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁷ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁸

⁶ 47 C.F.R. § 73.1250.

⁷ 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', when used with reference to the commission or omission of any act, 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).

⁸ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[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."

8. The Rules state that each licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules and in accordance with the terms of the station license.⁹ Specifically, Section 73.1745(a) of the Commission's Rules states that no broadcast station shall operate at times or with modes or power, other than those specified and made part of the license. KAZM(AM) is authorized to operate with a non-directional antenna pattern on 780 kHz with 5,000 watts during daytime hours and 250 watts during nighttime hours with a directional antenna pattern.

9. Between October 30, 2007, and November 2, 2007, monitoring and measurements by a San Diego agent revealed that KAZM(AM) was not reducing its operating power to 250 watts in a directional pattern at sunset, as required by its authorization. Despite assertions by KAZM(AM)'s owner that the station's over-power nighttime operation was covered by the "emergency" provisions of Section 73.1250 of the Rules, we find that none of the letters referenced "emergency" operations between October 30, 2007 and November 2, 2007, and that KAZM(AM) broadcasted commercial programming during the nighttime hours of that period, in contravention of the requirements of Section 73.1250.¹⁰ Tabbac was aware of the requirement to operate KAZM(AM) at the power levels, hours of operation, and nighttime directional pattern authorized on its license, but failed to do so. Therefore, the violation was willful. The violation occurred on more than one day, therefore, the violation was repeated.

10. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base forfeiture amount for exceeding power limits is \$4,000 and the base forfeiture amount for failure to maintain a directional pattern within prescribed parameters is \$7,000.¹¹ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹² While KAZM(AM) was operating with both excessive power and an improper non-directional pattern at night, we believe both violations are part of the same action. Consequently, applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Tabbac is apparently liable for a \$7,000 forfeiture.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Tabbac Radio Corporation is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand dollars (\$7,000) for violations of Section 73.1745(a) of the Rules.¹³

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Tabbac Radio

⁹ 47 C.F.R. § 73.1745(a).

¹⁰ Section 73.1250(f) of the Rules allows AM broadcast stations to use "their full daytime facilities during nighttime hours to broadcast emergency information . . . , when necessary to the safety of life and property, in dangerous conditions of a general nature and when adequate advance warning cannot be given with the facilities authorized. Because of skywave interference impact on other stations assigned to the same channel, such operation may be undertaken only if regular, unlimited-time service, is non-existent, inadequate from the standpoint of coverage, or not serving the public need. All operation under this paragraph must be conducted on a noncommercial basis. Recorded music may be used to the extent necessary to provide program continuity." 47 C.F.R. § 73.1250(f).

¹¹ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹² 47 U.S.C. § 503(b)(2)(D).

¹³ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.1745(a).

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Corporation **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. 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 Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, San Diego Office, 4542 Ruffner St., Suite 370, San Diego, California, 92111 and must include the NAL/Acct. No. referenced in the caption.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.¹⁴

17. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Tabback Radio Corporation at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

William R. Zears Jr.
District Director
San Diego Office
Western Region
Enforcement Bureau

¹⁴ See 47 C.F.R. § 1.1914.