

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

In the Matter of)	
)	
Clarke Broadcasting Corporation)	File No. EB-02-SF-468
Former Licensee of Station KTIQ (AM))	
Merced, California)	NAL/Acct. No. 200232960001
Facility ID # 87180)	
)	FRN 0003-7254-54

FORFEITURE ORDER

Adopted: September 16, 2003

Released: September 18, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of six thousand dollars (\$6,000) to Clarke Broadcasting Corporation (“Clarke”), for willful violations of Sections 73.1350(a), 73.1350(c) and 73.1400 of the Commission’s Rules (“Rules”) and for willful and repeated violations of Sections 73.1560(a) and 73.1745(a) of the Rules.¹ The noted violations involve Clarke’s failure to provide adequate transmitter control and to maintain the authorized power.

2. On August 30, 2002, the Commission’s San Francisco, California, Field Office (“San Francisco Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Clarke for a forfeiture in the amount of seven thousand dollars (\$7,000).² Clarke filed its response to the NAL on September 26, 2002.

II. BACKGROUND

3. Clarke is the former licensee of AM broadcast station KTIQ, formerly KAXW, in Merced, California.³ On August 24, 2001, the San Francisco Office received a complaint indicating that station KTIQ was interfering with the operation of another station because of its KTIQ’s power was not being reduced after sunset. According to its license KTIQ was required to reduce its operating power from 10 kilowatts to one kilowatt at 4:45 p.m. Pacific Standard Time during the month of November. On November 6, 7, 13, 21, 22, 23, 28 and 29, 2001, FCC agents from the San Francisco Office monitored

¹ 47 C.F.R. §§ 73.1350(a), 73.1350(c), 73.1400, 73.1560(a) and 73.1745(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232940006 (Enf. Bur., San Francisco Office, released July 31, 2002).

³ The station’s call sign was changed from KAXW to KTIQ on February 12, 2002. On May 24, 2002, the Commission granted an application for the assignment of KTIQ from Clarke to Mapleton Communications, LLC. That assignment was consummated on June 1, 2002.

KTIQ's signal between 4:30 and 5:00 p.m. and determined on each date that KTIQ's power was not reduced at 4:45 p.m. On November 13, 22, 23 and 29 the agents observed that KTIQ's field intensity did not decrease between 4:30 and 5:00 p.m.

4. On December 4, 2001, agents from the San Francisco Office inspected station KTIQ. The agents determined that KTIQ's antenna input power was 87.3% of the authorized level.⁴ Logs obtained during the inspection indicate that station personnel did not timely reduce power at 4:45 p.m. on two occasions during November 2001⁵ and that there was no power reduction at all on November 22, 23, 24 and 25, 2001, when all station personnel were on leave and the station's operation was unattended.

5. The agents determined during the inspection that KTIQ's remote control system was not programmed to alert the operator when the station's frequency was out of tolerance and was not calibrated to provide accurate indications of the antenna input power.

6. On February 13, 2002, the San Francisco Office issued an NOV to Clarke for violations detected during its investigation, including Sections 73.1350(a), 73.1560(a) and 73.1745(a) of the Rules. On March 6, 2002, Clarke responded to the NOV indicating that it had corrected the violations.

7. On August 30, 2002, the San Francisco Office issued a *NAL* for a forfeiture in the amount of \$ 7,000 to Clarke for willful violation of Sections 73.1350(a), 73.1350(c) and 73.1400 of the Rules and repeated and willful violation of Sections 73.1560(a) and 73.1745(a) of the Rules. The San Francisco Office calculated the forfeiture amount on the basis of a \$4,000 base amount for exceeding power limits and \$3,000 for failure to provide adequate transmitter control.

8. Clarke responded to the *NAL* on September 26, 2001, seeking cancellation or reduction of the proposed monetary forfeiture. Clarke does not dispute that it willfully violated Sections 73.1350(a), 73.1350(c) and 73.1400 of the Rules and willfully and repeatedly violated Sections 73.1560(a) and 73.1745(a) of the Rules. Rather, it argues that the forfeiture should be cancelled or reduced because it had no intent to violate the Rules, acted in good faith, has a history of overall compliance and took prompt remedial action following the inspection. Clarke also argues that it is "a small, privately owned company and the amount of the forfeiture is significant to an operator of Clarke's size."

III. DISCUSSION

9. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁶ Section 1.80 of the Rules,⁷ and *The*

⁴ As indicated in the Notice of Violation ("NOV") issued on March 6, 2002, a log obtained during the inspection indicates that the antenna input power between 89% of the authorized level on November 2, 2001; 89% on November 9, 2001; 86% on November 16, 2001; 86% on November 20, 2001; 117% November 26, 2001; 118% on November 27, 2001; 122% on November 28, 2001; 117% on November 29, 2001; and 118% on November 30, 2002.

⁵ As indicated in the NOV issued March 6, 2002, KTIQ's power was reduced at 4:56 p.m. on November 7, 2001, and at 5:01 p.m. on November 13, 2001.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

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*”). In examining Clarke’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.⁸

10. Clarke asserts that its violations “resulted primarily from the actions taken and inactions under the station’s former Chief Operator” whom Clarke replaced on the day before the inspection. We find that Clarke’s replacement of the Chief Operator prior to the inspection demonstrates good faith and warrants mitigation of the proposed monetary forfeiture to \$6,000.

11. No mitigation is warranted for a history of overall compliance. On August 2, 2001, the San Francisco Office issued an NOV to Clarke for violations of Sections 11.35(a), 11.52(d), 11.61(a) and 73.182(a)(1) of the Rules⁹ (radio stations KVLM and KZSQ, Sonora, California) and, on August 16, 2001, the San Francisco Office issued an NOV to Clarke for violations of Section 11.52(b) and 73.182(a)(1) of the Rules (radio station KKBN, Sonora, California). Clarke, therefore, has no history of overall compliance.¹⁰

12. Nor is mitigation warranted on the basis of Clarke’s correction of the violations after being notified. 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.”¹¹ Clarke cites *Preferred Entertainment, Inc.*,¹² as authority for reducing a monetary forfeiture on the basis of corrective action. *Preferred Entertainment, Inc.*, however, is inapposite because, in that case, the licensee reported its own violations to the Commission and took corrective action upon its own initiative.

13. Clarke’s argument that the proposed forfeiture is “significant for an operator of Clarke’s size” also does not warrant a reduction in the forfeiture amount. The Commission takes the size of a business into account by evaluating the company’s ability to pay the forfeiture on the basis of documentation provided by the company.¹³ As explicitly stated in the *NAL*, we 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

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 C.F.R. §§ 11.35(a), 11.52(d), 11.61(a) and 73.182(a)(1).

¹⁰ Clarke cites *Tarrant Radio Broadcasting, Inc.*, 17 FCC Rcd 16671 (Enf. Bur. 2002), as authority for finding a history of overall compliance when the licensee owned the station for only three months. *Tarrant Radio Broadcasting* is inapposite because, in that case, the history of compliance was not negated by the issuance of NOVs.

¹¹ See also *Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22629 (2002); *Radio Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966).

¹² 14 FCC Rcd 11105 (1999).

¹³ See *Policy Statement* at 17107.

accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Since Clarke did not provide any financial documentation whatsoever, we cannot determine whether it is unable to pay the proposed forfeiture.

14. We have examined Clarke'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 Clarke willfully and repeatedly violated Sections 73.1560(a) and 73.1745(a) of the Rules and willfully violated Sections 73.1350(a), 73.1350(c) and 73.1400 of the Rules. We find that there is no basis for cancellation or reduction of the proposed monetary forfeiture.

IV. ORDERING CLAUSES

15. 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,¹⁴ Clarke **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of six thousand dollars (\$6,000) for willful and repeated violation of Sections 73.1560(a) and 73.1745(a) of the Rules and willful violation of Sections 73.1350(a), 73.1350(c) and 73.1400 of the Rules

16. 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.¹⁵ 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. 200232960001 and FRN 0003-7254-54. 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. 20554.¹⁶

17. **IT IS FURTHER ORDERED** that copies of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Clarke Broadcasting Corporation, 1175 Fairview Drive, Suite N, Carson City, NV 89701, and to its counsel, Christopher J. Sova, Esq., Leventhal, Senter & Lerman, P.L.L.C., 2000 K Street, N.W., Suite 600, Washington, D.C. 20006-1809.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁴ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁵ 47 U.S.C. § 504(a).

¹⁶ See 47 C.F.R. § 1.1914.