

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

In the Matter of
FTP Corporation
Licensee of Radio Station KNTB-AM
Lakewood, Washington
File No. EB-02-ST-307
NAL/Acct. No. 200332980004
FRN 0003764974

FORFEITURE ORDER

Adopted: August 10, 2004

Released: August 12, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of three thousand two hundred dollars (\$3,200) to FTP Corporation ("FTP"), licensee of Radio Station KNTB-AM ("KNTB") in Lakewood, Washington, for repeated violation of Section 73.1745 of the Commission's Rules ("Rules.")

II. BACKGROUND

2. FTP is authorized to operate Station KNTB on 1480 kHz with 1000 watts from 6:00 a.m. until sunset. According to the terms of KNTB's license, the average hour of sunset in the month of November is 4:30 p.m. On November 5, 2002, an agent from the Commission's Seattle, Washington District Office ("Seattle Office") monitored the signal of KNTB near Lakewood beginning at 7:45 p.m. and determined that the station was operating at night, with the station's authorized daytime power of 1000 watts.

3. On December 12, 2002, Seattle Office agents conducted an AM broadcast inspection of radio station KNTB. The station's public inspection file contained a copy of the current station license showing the station only had daytime operation authority. FTP's station manager stated that he understood the station did have authority to operate at nighttime with reduced power. The agent provided FTP information on how to obtain the requisite license to operate with reduced power, 111 watts, at night, as proposed. However, the agent also advised FTP that operation of KNTB at night with its authorized daytime power of 1000 watts was a serious violation of the terms of its authorization.

1 47 C.F.R. § 73.1745.

2 File No. BL 780911AM.

that the station had remote operation and control of the transmitter as required by the Rules, but there was no indication that the transmitter was programmed to reduce power or shut down at sunset. Station KNTB's transmitter logs contained no indication that the station's transmitter power had changed or been reduced on November 5 or November 6, 2002, at sunset, nor was there any indication in the logs that the station's transmitter power had been reduced below its authorized daytime power of 1000 watts at any time during the month of November.

4. On April 30, 2003, the Seattle Office released a *Notice of Apparent Liability for Forfeiture* ("NAL") to FTP proposing a forfeiture in the amount of four thousand dollars (\$4,000) for repeated violation of Section 73.1745 of the Rules.³ FTP filed a response on May 20, 2003. In its response, FTP does not contest the violation. FTP seeks cancellation of the forfeiture based upon its post-inspection mitigation efforts, inability to pay, and its history of overall compliance.

III. DISCUSSION

5. The forfeiture amount in this case was proposed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁴ Section 1.80 of the Rules,⁵ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁶ In examining FTP'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 such other matters as justice may require.⁷

6. Section 73.1745 of the Rules provides that no broadcast station shall operate at times or with modes or power, other than those specified and made a part of the license. The licensee does not dispute the findings of the *NAL* that the station violated Section 73.1745 at the times of the inspections. Rather, it states that the systems in place to change power to comply with its authorization and the Rule apparently failed "due to possibly human error or a computer glitch." In support of its mitigation effort, FTP maintains that it took "immediate action after hearing from the FCC Inspector" and that it has undertaken corrective actions to ensure that Station KNTB will not operate improperly again. While commendable, no mitigation is warranted on the basis of FTP's post-inspection correction of the violation. 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 policies is expected, and does not nullify or mitigate any prior forfeitures or violations."⁸

7. FTP claims "financial hardship," that "KNTB operates at a loss" and that paying the proposed forfeiture "would cause great harm to" KNTB. FTP was directed in Paragraph 14 of the *NAL* to submit financial documentation to "specifically identify the basis" for any requested reduction or cancellation of a forfeiture on the basis of inability to pay. The Commission has determined that, in general, a licensee's gross revenues are the best indicator of ability to pay a forfeiture⁹ and would not

³ See *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332980004 (Enf. Bur. Seattle Office, April 30, 2003).

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 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).

⁹ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992).

consider forfeiture cancellation or reduction without submission of three years of tax returns or similar financial data. In support of its request for cancellation or elimination of the proposed forfeiture, FTP submits federal income tax returns only for tax year 2001. Therefore, FTP has failed to substantiate its request by submitting sufficient information to support its claim of inability to pay.¹⁰

8. Finally, in support of its request for cancellation or reduction, FTP states that it has a history of being “in good standing with the FCC.” We have reviewed Commission records in regards to FTP’s history of overall compliance and concur.

9. Based on the findings of the *NAL* and FTP’s response thereto, we conclude that FTP’s violation of Section 73.1745 was repeated.¹¹ Considering the entire record and the factors listed above, we find that reduction of the proposed forfeiture is warranted because of FTP’s history of compliance with the Commission’s Rules. Accordingly, the forfeiture amount is reduced from four thousand dollars (\$4,000) to three thousand, two hundred dollars (\$3,200).

IV. ORDERING CLAUSES

10. 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,¹² FTP Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand, two hundred dollars (\$3,200) for its repeated violation of Section 73.1745 of the Rules.

11. 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.¹³ 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 must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption. 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. 20554.¹⁴

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to FTP Corporation, 1940 Fillmore Street, San Francisco, CA 94115.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁰ See *Melodynamic Broadcasting Corporation*, DA 04-1392 (Enf. Bur. 2004).

¹¹ 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).

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

¹³ 47 U.S.C. § 504(a).

¹⁴ See 47 C.F.R. § 1.1914.