

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

In the Matter of)	
)	
Truth Broadcasting Corporation)	File No. EB-01-NF-286
)	NAL/Acct. No. 200232640004
Licensee of Station WTOB(AM))	FRN 0004-9851-49
Winston-Salem, North Carolina)	

FORFEITURE ORDER

Adopted: November 26, 2002

Released: December 2, 2002

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eight thousand eight hundred dollars (\$8,800) to Truth Broadcasting Corporation (“*Truth*”), licensee of Station WTOB(AM), Winston-Salem, North Carolina, for willful and repeated violation of Sections 73.49 and 73.1350(a) of the Commission’s Rules (“*Rules*”).¹ The noted violations involve *Truth*’s failure to enclose three of its antenna structures within an effective locked fence or other enclosure, and failure to operate in accordance with the terms of the station authorization in that Station WTOB(AM) exceeded authorized field strength limits.

2. On June 12, 2002, the Commission’s Norfolk, Virginia Resident Agent Office (“*Norfolk Office*”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to *Truth* for a forfeiture in the amount of eleven thousand two hundred dollars (\$11,200).² *Truth* filed a response to the *NAL* on July 12, 2002.

II. BACKGROUND

3. On January 22 and 23, 2002, in response to a complaint alleging that WTOB was operating with excessive power at night, an agent from the Norfolk Office inspected the six antenna structures that *Truth* owns and uses for WTOB. On both occasions, the agent observed that the wooden base fencing around each tower and observed that numerous wooden fence boards were either broken or missing on three of the towers, allowing access to the tower bases. Further, the station authorization for WTOB limits the station’s nighttime power level by specifying field strength limits at nine monitoring points. The agent took field strength measurements at two of the nine monitoring points and found that the field strength levels exceeded the limits specified in the station authorization by at least 15 percent.

¹ 47 C.F.R. §§ 73.49 and 73.1350(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232640004 (Enf. Bur., Norfolk Office, released June 12, 2002).

4. On June 12, 2002, the Norfolk Office issued an *NAL* finding Truth apparently liable for a forfeiture for willfully and repeatedly violating Sections 73.49 and 73.1350(a) of the Rules by failing to maintain effective antenna tower base fencing and exceeding authorized field strength limits on January 22 and 23, 2002.³ The Norfolk Office noted that the base forfeiture amounts for these violations are \$7,000 for failure to comply with AM fencing requirements and \$4,000 for failure to comply with power limits. However, taking into account Truth's history of compliance with the Commission's rules, the Norfolk Office reduced the proposed forfeiture for failure to comply with AM fencing requirements from \$7,000 to \$5,600 and reduced the proposed forfeiture for exceeding authorized field strength limits from \$4,000 to \$3,200. On July 12, 2002, Truth filed a response to the *NAL*. In its response, Truth does not dispute that it failed to operate WTOB in accordance with the terms of the station authorization in violation of Section 73.1350(a) or seek reduction of the \$3,200 forfeiture proposed in the *NAL* for this violation. However, Truth argues that the \$5,600 forfeiture proposed for failure to comply with AM fencing requirements should be substantially reduced, if not eliminated entirely.

III. DISCUSSION

5. The forfeiture amount in this case was assessed 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*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). In examining Truth'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.⁶

6. Section 73.49 of the Rules provides that antenna towers having radiofrequency potential at the base must be enclosed within effective locked fences or other enclosures. On January 22 and 23, 2002, an FCC agent observed that numerous wooden fence boards were either broken or missing on three of Truth's six antenna towers, allowing access to the tower bases. Truth acknowledges that numerous boards on its fences were either broken or missing at the time of the inspections. Truth argues, however, that the \$5,600 forfeiture proposed in the *NAL* (adjusted downward from \$7,000 to reflect Truth's history of compliance) for its failure to comply with AM fencing requirements should be substantially reduced, if not eliminated entirely. Truth states that its tower fences were in place and locked and that the *NAL* only found that fence boards were broken or missing, creating gaps in what are otherwise adequate locked fences. Truth also provides a sworn statement from its contract engineer, who states that he fully inspects the WTOB transmitter site on a periodic basis and that he saw no broken or missing boards on the fences in his inspection of the site in November 2001, about two months prior to the FCC's inspection. The engineer further states that vandals have caused damage to the site in the past and that he believes that

³ The *NAL* also found Truth apparently liable for a forfeiture for failing to register its antenna structures in apparent willful and repeated violation of Section 17.4(a) of the Rules, 47 C.F.R. § 17.4(a), and proposed a \$2,400 forfeiture for this violation (adjusted downward from the base forfeiture amount of \$3,000 to reflect Truth's history of compliance). As noted below, we are canceling this forfeiture.

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(D).

trespassing vandals caused the damage observed by the FCC agent. Truth submits that the \$7,000 base forfeiture amount for AM fencing violations would apply in situations where the tower owner installs inherently inadequate fences or negligently leaves fences unlocked, not in situations such as this where the damage is caused by vandals. Finally, Truth asserts that it is increasing the frequency of its transmitter site inspections so that it will in the future detect and repair damage sooner after it occurs.

7. We conclude that Truth willfully and repeatedly violated Section 73.49 of the Rules and that Truth has presented no basis for cancellation or reduction of the forfeiture proposed for this violation. We are not persuaded by Truth's suggestion that a reduction of the proposed forfeiture is warranted because the *NAL* only found that fence boards were broken or missing. The condition of the fences constituted a safety hazard because the fences were inadequate to protect the public from possible contact with the radiating antenna structures.⁷ Moreover, while Truth speculates that trespassing vandals caused the damage to the fences, it provides no evidence that the missing and broken fence boards were in fact the result of vandalism, rather than neglect or some other cause. Further, we do not think that Truth's inspection of the transmitter site approximately two months prior to the FCC's inspection warrants mitigation of the forfeiture amount. Particularly where, as here, a licensee claims that it has a history of vandalism to its transmitter site and the site is in a residential area, we think that more frequent inspections are required. Finally, regarding Truth's assertion that it is now increasing the frequency of its transmitter site inspections, the Commission has repeatedly stated that remedial actions taken to correct a violation are not mitigating factors warranting reduction of a forfeiture.⁸

8. Section 73.1350(a) of the Rules requires licensees to maintain and operate a broadcast station in a manner that complies with the technical rules and in accordance with the terms of the station authorization. The station authorization for WTOB limits the station's nighttime power by specifying field strength limits at various monitoring points. Truth does not dispute that on January 22 and 23, 2002, WTOB's field strength exceeded authorized limits at two of the assigned monitoring points. Accordingly, we conclude that Truth willfully and repeatedly violated Section 73.1350(a) of the Rules and that there is no basis for reduction of the \$3,200 forfeiture proposed in the *NAL* for this violation (adjusted downward from \$4,000 to reflect Truth's history of compliance).

9. The *NAL* also found Truth apparently liable for a \$2,400 forfeiture for failing to register its antenna structures in willful and repeated violation of Section 17.4(a) of the Rules. After considering Truth's response to the *NAL*, we are persuaded that the proposed \$2,400 forfeiture should be cancelled.

10. We have examined Truth'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 Truth willfully and repeatedly violated Sections 73.49 and 73.1350(a) of the Rules, and we find no basis to rescind or reduce the forfeitures proposed for these violations, which total \$8,800. However, we cancel the \$2,400 forfeiture proposed in the *NAL* for violation of Section 17.4(a) of the Rules.

⁷ See *Culpeper Broadcasting Corporation*, 15 FCC Rcd 12594 (Enf. Bur. 2000) (assessing a forfeiture for failure to maintain an effective locked fence where several boards were missing, creating a gap in the fence large enough to permit a person to climb through the fence).

⁸ See *Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973).

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503 of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,⁹ Truth Broadcasting Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand eight hundred dollars (\$8,800) for willful and repeated violations of Sections 73.49 and 73.1350(a) of the Rules.

12. 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.¹⁰ 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. 200232640004 and FRN 0004-9851-49. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹¹

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail return receipt requested to Truth Broadcasting Corporation, 3789 Will Scarlet Road, Winston-Salem, North Carolina 27104, and to its counsel, James P. Riley, Esq., Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209-3801.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

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

¹⁰ 47 U.S.C. § 504(a).

¹¹ See 47 C.F.R. § 1.1914.