

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

In the Matter of)	
)	
Truth Broadcasting Corp.)	File Number EB-01-NF-286
Licensee of AM Radio Station WTOB, Winston-)	NAL/Acct.No. 200232640004
Salem, North Carolina, and)	FRN 4985149
Owner of Antenna Structures located at 36° 08')	
53" North Latitude by 080° 19' 11" West)	
Longitude)	
Winston-Salem North Carolina)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 12, 2002

By the Enforcement Bureau, Norfolk Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that Truth Broadcasting Corp. ("Truth"), licensee of AM radio station WTOB, Winston-Salem, North Carolina, and owner of antenna structures used as part of station WTOB located at 36° 08' 53" North Latitude by 080° 19' 11" West Longitude, willfully and repeatedly violated Sections 17.4(a), 73.49, and 73.1350(a) of the Commission's Rules.¹ Truth failed to register its antenna structures, failed to enclose three of its antenna towers within an effective locked fence or other enclosure, and failed to operate in accordance with the terms of the station authorization in that the station exceeded authorized field strength limits. We conclude that Truth is apparently liable for forfeiture in the amount of eleven thousand two hundred dollars (\$11,200.00).

II. BACKGROUND

2. On January 22, 2002, in response to a complaint that station WTOB operated with excessive power at night, an agent from the FCC's Norfolk Resident Agent Office ("Norfolk Office") observed the antenna structures that Truth owned and used for its AM broadcast station WTOB, Winston-Salem, North Carolina. The agent noted that the structures were without posted registration. The agent inspected the wooden base fencing around each tower and observed numerous wooden fence boards either broken or missing on three of the towers, allowing access to the tower bases. The agent also measured field strength levels at two monitoring points that exceeded by at least 15 percent the limits specified in Truth's station authorization. On January 23, 2002, the agent again inspected Truth's antenna structures and noted the same conditions.

3. On January 24, 2002, the Norfolk Office agent visited Truth's WTOB studio in Winston-Salem, North Carolina, and interviewed WTOB's chief operator Allan Boaz and business manager

¹ 47 C.F.R. §§ 17.4(a), 73.49, & 73.1350(a).

Forrest Richey. Neither Mr. Boaz nor Mr. Richey provided any explanation of Truth's failure to register the antenna structures or for the condition of the tower base fencing. In addition, neither could recall when Truth had conducted a proof of performance or field strength measurements for WTOB.

4. On January 31, 2002, the Norfolk Office released a Notice of Violation to Truth citing, *inter alia*, violations of Sections 17.4(a), 73.49 and 73.1350(a) of the Rules. Truth replied to the Notice of Violation on February 26 and March 26, 2002, stating that Truth had since registered its antenna structures, repaired the antenna base fencing and corrected transmission problems to comply with field strength limits.

III. DISCUSSION

5. Section 17.4(a) of the Rules requires owners of existing and proposed antenna structures that require notice to the Federal Aviation Administration ("FAA") to register their structures. Truth's structures required notice to the FAA because the structures exceeded 200 feet in height.² From at least January 22, 2002 to February 26, 2002, Truth's antenna structures were unregistered.

6. Section 73.49 of the Rules requires licensees to provide effective fencing or other enclosure around antenna structures with radio frequency potential at the base. On January 22 and 23, 2002, three of Truth's antenna towers used as part of AM radio station WTOB, and energized with radio frequency potential at their bases, were enclosed with wooden fences that had numerous broken or missing boards allowing access to the tower bases.

7. Section 73.1350(a) of the Rules requires licensees to maintain station operation in a manner that ensures compliance with technical rules and in accordance with the terms of its station authorization. WTOB's station authorization limited power by specifying field strength limits at various monitoring points. On January 22 and 23, 2002, Truth operated WTOB with excessive field strength at two of its assigned monitoring points.

8. Based on the evidence before us, we find that Truth willfully³ and repeatedly⁴ violated Sections 17.4(a), 73.49 and 73.1350(a) of the Rules by failing to register its antenna structures from at least January 22 to February 26, 2002, failing to maintain effective antenna tower base fencing on January 22 and 23, 2002, and exceeding authorized field strength limits on January 22 and 23, 2002.

² See 47 C.F.R. § 17.7(a).

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally to 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" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ The 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." 47 U.S.C. § 312(f)(2).

9. Pursuant to Section 1.80(b)(4) of the Rules, the base forfeiture amounts for the noted violations are \$7,000 for failure to comply with AM fencing requirements, \$4,000 for failure to comply with power limits, and \$3,000 for failing to register an antenna structure (failure to file required forms or information).⁵ 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 Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation(s), 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 In reply to the Notice of Violation, Truth stated, “Truth’s record as an FCC licensee is one of overall compliance and, as such, any fine or forfeiture should be mitigated to reflect Truth’s good standing as a licensee.” After considering the entire record, including the lack of any history of prior offenses by Truth, and applying the statutory factors listed above, this case warrants a forfeiture adjusted downward from \$14,000 to \$11,200.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁷ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,⁸ Truth is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of eleven thousand two hundred dollars (\$11,200.00) for willful and repeated violation of Sections 17.4(a), 73.49 and 73.1350(a) of the Rules.

11. 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, Truth SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must note the “FRN” and the “NAL/Acct. No.” listed in the letterhead.

13. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE the “FRN” and the “NAL/Acct. No.” listed in the letterhead.

14. 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

⁵ 47 C.F.R. § 1.80(b)(4).

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80.

financial documentation submitted.

15. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, SW, Washington, D.C. 20554.⁹

16. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Truth Broadcasting Corp, 3789 Will Scarlet Road, Winston-Salem, North Carolina 27104. An additional copy shall be sent to Truth Broadcasting Corp. at 4405 Providence Lane Suite D, Winston-Salem, North Carolina 27106.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Husnay
Resident Agent, Enforcement Bureau

⁹ See 47 C.F.R. § 1.1914.

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