

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

In re Application of)	
)	
B&C Kentucky, LLC)	
(Assignor))	File No. BALCT-20000228AAG
)	FIN: 23128
and)	
)	
Paxson Lexington License, Inc.)	
(Assignee))	

For Consent to Assignment of License
Of Television Station WAOM(TV),
Morehead, Kentucky

**MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: April 27, 2001

Released: April 30, 2001

By the Chief, Video Services Division:

1. The Mass Media Bureau has before it the above-captioned application for assignment of license of WAOM(TV), Channel 67, Morehead, Kentucky, from B&C Kentucky, LLC to Paxson Lexington License, Inc. James Pridemore filed an informal objection on April 18, 2000, requesting that the Commission defer action on the application until character issues involving Caroline K. Powley, a 50% owner of B&C, are resolved by the Commission. In addition, Pridemore filed a supplement to his objection on May 31, 2000, alleging that B&C has failed to operate WAOM(TV) in compliance with a number of Commission rules.

2. For the reasons set forth below, we conclude that B&C willfully and repeatedly violated Section 73.1125 of the Commission's rules by not maintaining a main studio for WAOM(TV), Section 73.3527 of the rules by not maintaining its local public inspection file at the station's main studio, and Section 73.1201 by failing to regularly broadcast station identification announcements. We have determined that the appropriate sanction for these violations is a monetary forfeiture and admonishment, rather than a hearing designation order or denial of the assignment application. This Order, therefore, also constitutes a NOTICE OF APPARENT LIABILITY FOR FORFEITURE in the amount of twenty thousand dollars (\$20,000), against B&C pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503, and under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's rules.

3. The April Informal Objection. In the informal objection, Pridemore stated that while the instant application admitted the existence of a pending investigation into violations of the Commission's rules by the principals of Danville Television Partnership (DTP), licensee of WDRL-TV, Danville, Virginia, in which Powley claims a 51% interest, Powley failed to disclose character issues raised in connection with applications she filed for assignment of stations KAJG(FM), Centerville, Virginia,¹ and WNGS(TV), Springville, New York.² According to Pridemore, the instant application should not be granted until Powley's alleged lack of candor in connection with the WNGS(TV) application is resolved and the WDRL-TV investigation concluded. B&C filed a motion to dismiss the objection as frivolous, noting that the instant application fully disclosed the WDRL-TV investigation and Pridemore's lack of candor allegations in connection with the previous assignment applications.

4. By separate letter issued today, the investigation involving WDRL-TV, Danville, Virginia has been resolved. The Mass Media Bureau found that DTP, the licensee of WDRL-TV, and Melvin Eleazer, the 49% partner of DTP, engaged in an unauthorized transfer of control of the station to Pridemore, the petitioner herein, and that such transfer of control had been continuous. The Bureau further determined that the appropriate sanction for the violation was a monetary forfeiture. In addition, the Bureau found that the submissions made by Eleazer in connection with numerous prior WDRL-TV applications and other filings contained no misrepresentations. Consequently, the allegations against Powley, the putative 51% partner of DTP, of alleged wrongdoing with respect to those submissions did not raise an issue regarding Powley's qualifications.

5. Further, the character issues raised by Pridemore against Powley in connection with the Springville application have been resolved. By separate letter issued today, the Bureau found that the allegations failed to raise a substantial and material question of fact regarding Powley's qualifications to hold a license. However, the Bureau found that Powley made a willful material omission in the Springville application in violation of Section 73.1015 of the Commission's rules and determined that the appropriate sanction for the violation was a monetary forfeiture and admonishment. In view of the Bureau's rulings in connection with WDRL-TV and the Springville application, no further action regarding these violations is necessary here, except to the extent that we take into account these prior violations in determining the appropriate forfeiture amount in connection with WAOM(TV).

6. The May Supplement. In his supplement, Pridemore states that after he attempted to call the WAOM(TV) studio, and discovered that there was no local telephone listing in the Morehead vicinity for WAOM(TV) or B&C, he engaged J. Robert Barker, a field engineer,³ to

¹ File No. BALH-19990728GF, granted January 14, 2000, reconsideration dismissed, May 20, 2000.

² File No. BAPCT-19991116AJT.

³ Barker holds an electronics degree from Rockingham Community College and a certificate in service management from the University of Notre Dame, Center for Continuing Education. Barker states that he has owned a consumer and commercial electronics service business since 1986, and that his customers have included full service television stations, the Commonwealth of Virginia, and telephone service providers.

visit the transmitter site and main studio, inspect the station's public inspection file, and monitor the station's signal. We have carefully reviewed the record developed in connection with Pridemore's supplement, and conclude, as discussed below, that WAOM(TV) has operated in violation of a number of Commission regulations and policies, and that the appropriate sanction for the violations is a monetary forfeiture and admonishment.

7. Main Studio. Prior to October 30, 1998, Section 73.1125 of the Commission's rules required that a station maintain its main studio within the station's principal community contour. Effective October 31, 1998, this rule was amended to allow a station greater flexibility in the location of its main studio. *See Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, 13 FCC Rcd 15691 (1998). In either case, the main studio must serve the needs and interests of the residents of the station's community of license. To fulfill this function, a station must, among other things, have a listed local or free long distance telephone number, and maintain a meaningful management and staff presence at its main studio. *See Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3217-18 (1987), *clarified*, 3 FCC Rcd 5024, 5026 (1998). In *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615 (1991), *clarified*, 7 FCC Rcd 6800 (1992), the Commission defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel. It further stated that there must be "management and staff presence" on a full-time basis during normal business hours to be considered "meaningful." 6 FCC Rcd at 3616 n.6; 7 FCC Rcd at 6800 n.4. In addition, the main studio must be equipped with production and transmission facilities and maintain continuous program transmission capability. *Main Studio and Program Origination Rules*, 3 FCC Rcd at 5026.

8. The Commission granted an application to assign the construction permit for WAOM(TV) from Garcia Communications to B&C on December 11, 1997.⁴ The license application filed by B&C in June 1998⁵ indicated that the main studio was located at 2000 Tower Road in Morehead, the same location as the station's transmitter. According to Barker, the field engineer hired by Pridemore, he visited that site, which consists of a tower and transmitter shelter building, on several occasions in May 2000, and that on each occasion, the site was fenced and locked,⁶ with no personnel present. Barker also called local directory assistance to obtain a telephone number for the station and was told there was no listing. Later, after Pridemore's counsel learned that the WAOM(TV) local public inspection file was maintained at the Rowan County Public Library, Barker inspected the file and found a document entitled "WAOM Contact List." Barker states that he called the two telephone numbers listed for 2000 Tower Road, but was either connected with a computer modem or received no answer.

9. The contact list Barker obtained from the public inspection file further indicated that a Jim Forest could be contacted at the "Studio/Office," and gave the address as WMOR at 309 East Main Street in Morehead. Barker went to the 309 East Main Street location but could

⁴ File No. BAPCT-19970904IJ. The transaction was consummated on February 18, 1998.

⁵ File No. BLCT-19980611KF, which was granted November 9, 2000.

⁶ A "No Trespassing" sign was also affixed to the locked fence gate.

not find any sign of a television studio facility, and contacted the owner of the building, who informed him that he had never leased space to a television station. Barker also visited the video store listed in the local telephone directory as the address for radio stations WMOR AM/FM, and reported that the video store clerk “told me that she did not know anything about a TV station and the radio station just used some space in the back.”⁷ Barker also states that he called the telephone number listed for the studio/office on the contact list, and that:

The phone was answered by the radio station. I talked with Tina Moore. I asked to speak with Jim Forest. She told me he was off. I then asked her about the television station Channel 67 WAOM. She told me she had no knowledge of a television station.

Finally, Barker called the home telephone number of Merv Lawson, the person identified on the contact list as the WAOM(TV) Chief Operator/Engineer, and states that while Lawson confirmed that he was the station engineer and monitored the station, Lawson refused to answer any further questions.

10. In a June 29, 2000 response, B&C admitted that “its operations may not have always been in complete compliance with all Commission rules and policies with regard to main studios.” According to B&C, when it acquired the WAOM(TV) construction permit, it had only four months to construct before the permit expired. While B&C had located a new site that would allow the construction of a more powerful facility, it believed it would be impossible to file a modification application and obtain a grant within the remaining time in the construction period. B&C explained that because it considered the facilities it was constructing as “temporary,” it decided “that it would locate the initial main studio at the station’s transmitter site and that it would only [construct] the most basic main studio facilities.” According to B&C, it also hired Lawson on a full-time basis to serve as chief operator and operations manager.⁸ B&C subsequently moved to the studios of WMOR AM/FM, and states that it “made arrangements for staff presence at that location.” In May 1999, B&C was informed that it could no longer use the WMOR studios, and “once again decided that the studio should be at the transmitter site.” B&C further states that while it expected that use of the transmitter site as the main studio location would be of very short duration, given the fact that its modification application had been granted, unexpected local aeronautical and zoning issues delayed construction of the modified facilities and studio for another year.⁹ B&C concludes that the studio situation has been resolved with construction of the new facilities, and that it “has made arrangements for both a management level employee and a staff person to be based at the new main studio location during regular business

⁷ A photograph submitted with the supplement shows that a sign was posted on the storefront indicating that it was the “Office of WMOR AM & FM.”

⁸ B&C submitted an affidavit from Lawson, stating that he was the chief operator and chief engineer, and that he monitors the performance of the station, both off the air and through computers.

⁹ B&C filed a license to cover the modified facilities on June 22, 2000.

hours,” and advertised the new main studio location.¹⁰

11. On August 10, 2000, Pridemore submitted the declaration of James Forest, the majority shareholder, President and General Manager of Morehead Broadcasting Company (MBC), the former licensee of WMOR AM/FM. According to Forest:

In return for payment from B&C, MBC agreed to allow its studio location at 309 East Main Street, Morehead, Kentucky, to be used as an office address, mail drop and monitoring point for Station WAOM. B&C did not maintain its public inspection file in our office. The only mail sent there were parts shipped by B&C for use at its television station. B&C maintained a small black and white television receiver which was used to monitor the television station signal. At no time was there discussion of B&C’s installing any studio or production equipment at our location. We were instructed to represent that we were the main studio location for station WAOM, but in fact never did so, since no one ever inquired. No other services were performed for B&C. This arrangement lasted from October of 1998 to May of 1999, when the [radio] Station was sold . . . B&C also contracted with Merv Lawson, our Chief Operator and full-time employee, for engineering services at the television station. Merv was employed at WMOR at least 40 hours per week. Basically, if something went wrong, Merv was under contract with B&C to go out to the WAOM transmitter site to resolve the operating problem. To the best of my knowledge, B&C maintained no other employees in Morehead.

12. In a response filed August 22, 2000, B&C disputes Forest’s description of the arrangement between the two stations. According to B&C, it had employment agreements with both Forest and Lawson and that “since both of them at that time were also employed at WMOR, B&C determined that it would be best to place the WAOM(TV) main studio at the same site.” B&C concludes that because Lawson could control the station’s equipment by remote control from the WMOR studio, that site also functioned as the WAOM(TV) main studio. B&C admitted, however, that no television production equipment was maintained at the WMOR location, and did not contest Forest’s statement that he provided no services for B&C, other than permitting B&C to use his radio station’s studio as an office address and mail drop.

13. Public File. Effective October 30, 1998, Section 73.3526(b) of the Commission’s rules prescribes, in pertinent part, that every licensee of a commercial television station maintain

¹⁰ With respect the station’s lack of a published local phone number, B&C states that Powley contacted the local telephone service provider for Morehead in May 1998 and arranged for the installation of two business lines; one to be used primarily as a voice line and the other to be used exclusively for equipment monitoring and control. According to B&C, Powley requested that the equipment monitoring line not be listed in the local directory, but that the voice line should be listed. It was not until Pridemore filed his supplement in May 2000, that Powley checked whether a telephone number for WAOM(TV) was listed with directory service or published in the telephone book, and discovered that it was not. With respect to Barker’s claim that when he called the telephone numbers contained in the station’s public file, he received no answer or was connected with a modem line, B&C explained that the voice line was set up with an answering machine and backup modem, and that after power failures or power surges, the answering machine must be reset manually in order to pick up calls, or the line defaults to the modem. According to B&C, “this problem should not recur during normal business hours, as a staff employee of WAOM(TV) is present at the main studio during those times.”

its local public inspection file at the station's main studio.¹¹ According to Barker, when he visited the listed main studio location, there was no posting at the site regarding the location of the WAOM(TV) public inspection file, and when he first contacted the Rowan County Public Library regarding the file, he was informed that no such file existed at the library. Pridemore's counsel also contacted the Mayor's Office, the City Manager's Office, and the Chamber of Commerce, and was informed that they were unaware of the station and the location of the public inspection file. Upon further inquiry, counsel was informed that the library had located the public inspection file. Barker then examined the file and reported that a number of required documents were missing from the file. For example, Barker states that when he inspected the file, it did not contain a copy of the WAOM(TV) construction permit and license authorizations, ownership reports, or TV issues/program lists for the entire time the station had been on the air. Barker also alleged that the children's programming materials contained in the file did not fully comply with the Commission's rules. In July 2000, after the informal objection had been filed, Barker visited the station's newly constructed antenna/transmitter/main studio location in Frenchberg, Kentucky, was permitted to inspect the file, and apparently found the file to be complete.

14. In its June 29th response, B&C admits that until recently, the WAOM(TV) public inspection file was kept at the Rowan County Public Library, not the location specified as the station's main studio. B&C claims, however, that it was unaware of the rule change, and that in any event, the public library was more accessible to viewers than the studio. B&C also states that in the past, it had sent all necessary filings to Lawson for inclusion in the public file, and it was B&C's understanding that he did, in fact, place those documents in the public file at the library. Finally, B&C asserts that all of the required children's programming materials were included in the file, and that they accurately reflected the programming aired.

15. Station Identification. Section 73.1201 of the Commission's rules requires hourly identification of a station's call letters, community of license, and channel, either visually or aurally. Barker states that he monitored the station signal in May 2000, and on several occasions observed an American Independent Network (AIN) identification announcement, with a dropout for a local ID, but did not observe the local ID for WAOM(TV). In response, B&C concedes that violations occurred over some unspecified period of time, but argues that it was aware of the problem, and had been taking steps to correct the violation, prior to Barker's monitoring of the station.¹²

¹¹ Prior to October 30, 1998, the rule required that the file be maintained at the station's main studio or "at any accessible place . . . in the community to which the station is or is proposed to be licensed." Section 73.3526(b) (1997).

¹² B&C states that it uses typical ad insertion equipment, which is triggered by tones sent by a satellite network, which in this case was AIN. According to B&C, while it made some technical changes in the equipment, which resulted in an improvement in the number of identifications triggered, the station still was not in compliance with Section 73.1201, and that "over a period of direct observation of the unit as tones came in, it was determined that a number of factors were at fault, including a failure of AIN to send tones or to send complete tones." B&C states that it has resolved the matter by incorporating station identifications into every commercial break, and is looking at other types of ad insertion equipment.

16. Station Hours of Operation. According to B&C, WAOM(TV) began operating with program test authority on June 5, 1998. Section 73.1740 of the Commission's rules requires that during the first 36 months of operation, television stations must air not less than two hours daily in any 5 broadcast days per calendar week, and not less than 12 hours per week during the first 18 months, and 16 hours per week during the 19th through 24th month. According to Barker, he observed that the station was not operating during his visit on May 8-10, 2000, and that the station engineer for another local television station told him that the station was not usually on the air. Thus, Pridemore contends that "it is questionable whether the station has been operating the minimum operating schedule set forth in the Commission's rules."

17. In response, B&C states that since beginning operations, WAOM(TV) has regularly broadcast a seven days per week, 24 hours per day schedule. It also submitted two declarations from Lawson, disputing that the station was off the air on those dates in May 2000. He also acknowledged that at times the station experienced technical difficulties which caused it to reduce power or go off the air for periods of time, but that these periods generally were quite brief.

18. Discussion. Section 503(b)(2)(D) of the Act directs us to consider two distinct matters in determining the appropriate amount of a forfeiture.¹³ First, as to the violations, we must take into account their nature, circumstances, extent, and gravity. Second, with respect to the violator, we must consider the degree of culpability, history of prior offenses, ability to pay, and such other matters as justice may require.

19. The information before us indicates that B&C willfully and repeatedly violated Section 73.1125 of the Commission's rules by failing to maintain the required main studio. It is apparent that from June through September, 1998, and then from May 1999 until June 2000, WAOM(TV) had no main studio presence in the community. While the license application it filed with the Commission gave the address of the structure housing the station's transmitting equipment as the main studio, no employees regularly worked at that location, no production equipment or station files were maintained there, and the building was inaccessible to the public. We also conclude that B&C's specification of the WMOR studio as WAOM(TV)'s main studio location between October 1998 and April 1999 did not comply with the Commission's main studio requirements. In this regard, the television station did not have a locally listed telephone number that could be answered at the WMOR studio, the public inspection file and other station documents were not maintained there, and the WMOR studio contained no television production equipment. Moreover, as discussed above, the Commission requires a meaningful staff presence, and even if Lawson, who was a full-time employee of WMOR and only monitored the WAOM(TV) signal, could be considered a full time employee of B&C, WAOM(TV) still failed to have sufficient employees at the WMOR studio to qualify as a meaningful presence. *See Jones Eastern*, 6 FCC Rcd at 3616. We also conclude that the main studio violation was intentional in

¹³ 47 U.S.C. § 503(b)(2)(D). *See also 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)(*Forfeiture Policy Statement*).

light of B&C's admitted knowledge of the main studio rule,¹⁴ and its decision not to construct and staff a main studio for two years.

20. The information before us also indicates that B&C willfully and repeatedly violated Section 73.3526 of the Commission's rules by failing to maintain the station's public file at the location specified in its license application as the main studio between October 30, 1998 and June 2000.¹⁵ We are not persuaded by B&C's assertion that the public library was more accessible to members of the community than the WAOM(TV) studio, given the fact that B&C deliberately made the decision not to construct or staff a main studio in the community, until it was able to complete construction of its modified facilities. We also conclude that B&C willfully and repeatedly violated Section 73.1201, the Commission's station identification rule. While B&C points to the fact that it was aware of problems prior to Barker's monitoring the station, the fact of the matter is that B&C chose not to staff the station in order to make identification announcements, notwithstanding the known failure of its automated system. Thus, we conclude that the failure to broadcast station identification announcements over WAOM(TV) was also intentional, in light of B&C's knowledge of the rule, coupled with its knowledge of the failure of the ad insertion equipment and its decision not to staff the station. *See Bay Broadcasting Corp.*, 15 FCC Rcd 9387 (EB 2000).¹⁶

21. The forfeiture guidelines set forth in the Commission's *Forfeiture Policy Statement* provide for a forfeiture of \$7,000 as the base amount for violations of the main studio rule, \$10,000 for violations of the public file rule, and \$1,000 for violation of the station identification rules. In this case, we believe that the base amounts set by the *Forfeiture Policy Statement* are insufficient. With respect to the main studio and station identification violations, the principals of B&C are experienced broadcasters who deliberately chose not to comply with the rules. We therefore conclude that an upward adjustment of \$1,500 for the repeated and intentional main studio violation, and \$500 for the repeated and intentional violation of the station identification rule is warranted.¹⁷

22. Accordingly, IT IS ORDERED, That the informal objection, as supplemented, filed by James Pridemore IS GRANTED to the extent indicated herein and IS otherwise DENIED.

23. IT IS FURTHER ORDERED THAT, pursuant to Section 503(b) the Act, as

¹⁴ Indeed, in 1998, in connection with the Danville proceeding, Powley alleged that WDRL(TV) was in violation of the main studio rule and policies, citing *Jones Eastern*.

¹⁵ Because we conclude that B&C is liable for forfeiture based upon the location of the file, we need not consider the conflicting declarations regarding whether the file contained all the required materials in May 2000.

¹⁶ With respect to Pridemore's assertion that it is questionable whether WAOM(TV) has complied with the minimum operating schedule for television stations, based upon the record before us, we conclude that Pridemore has failed to demonstrate that the station, which is scheduled to broadcast seven days a week, 24 hours per day, operated in violation of Section 73.1740 of the rules.

¹⁷ *See* 47 C.F.R. § 1.80(b) and accompanying Note.

amended, and Sections 0.283 and 1.80 of the Commission's Rules, B&C Kentucky, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty thousand dollars (\$20,000.00) for willfully and repeatedly violating Sections 73.1125, 73.1201 and 73.3527 of the Commission's Rules.

24. 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, B&C Kentucky, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, and addressed to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL number of this proceeding (NAL No. 118420008). Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.

25. IT IS FURTHER ORDERED, That a copy of this Notice of Apparent Liability for a Forfeiture SHALL BE SENT by Certified Mail – Return Receipt Requested, to B&C Kentucky, LLC's counsel of record: Vincent J. Curtis, Jr., Esq., Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209-3801.

26. IT IS FURTHER ORDERED, That having determined the applicants are qualified in all respects, we find that grant of the application to assign the license of station WAOM(TV) from B&C Kentucky, LLC to Paxson Lexington License, Inc. will serve the public interest, convenience and necessity, and the application (BALCT-20000228AAG) IS HEREBY GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau