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

In the Matter of	)	
	)	
KASA Radio Hogar, Inc.	)	File No. EB-00-SD-295
	)	
Licensee of Station KDAP(AM)	)	NAL/Acct. No. 200132940002
	)	
Phoenix, Arizona	)	

MEMORANDUM OPINION AND ORDER

Adopted: August 30, 2001 **Released:** September 4, 2001

By the Chief, Enforcement Bureau:

1. In this Memorandum Opinion and Order, we deny a Petition for Reconsideration filed by KASA Radio Hogar, Inc. ("KASA Radio"), licensee of radio station KDAP(AM). On June 7, 2001, the Enforcement Bureau issued a *Forfeiture Order*[1] assessing a $15,000 forfeiture against KASA Radio for willful violation of the following sections of the Commission's Rules ("Rules"): 73.54(d) (failure to provide a copy of the station's antenna resistance and reactance measurements during an inspection); 73.1350(c)(1) (failure to have the proper monitoring equipment installed at the duty operator position); 73.1590(a)(6) (failure to conduct annual equipment performance measurements); and 73.3526(a)(2) (failure to maintain a public inspection file).[2] In the *Forfeiture Order*, the Bureau rejected KASA Radio's inability to pay claim because KASA Radio submitted financial information only for KDAP(AM), not for the licensee, KASA Radio.

2. On July 6, 2001, KASA Radio filed a Petition for Reconsideration in which it does not dispute the violations, but contends that the Bureau should have considered the financial information for radio station KDAP(AM) only. KASA Radio contends that neither the statute under which the forfeiture was assessed, nor the Commission's Rules, require that financial information from all of a licensee's operations be evaluated in determining whether a proposed forfeiture should be reduced because of a licensee's ability to pay. KASA Radio also asserts that under precedent for determining an ability to pay, entire enterprises are generally evaluated only where violations are common to various sections of the enterprise. In support of this assertion, KASA Radio cites to *Hill Country Radio, Inc.*,[3] in which four separate Notices of Apparent Liability were issued to Hill Country Radio for engaging in unauthorized transfers of control of the four radio stations licensed to it. KASA Radio contends that it was appropriate for the Mass Media Bureau to consider the financial circumstances of Hill Country Radio in determining whether to reduce a forfeiture based on inability to pay because the transfer of control had occurred for the licensee, not for any individual station.

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[1] *KASA Radio Hogar, Inc.*, 16 FCC Rcd 11934 (EB 2001).

[2] 47 C.F.R. §§ 73.54(d), 73.1350(c)(1), 73.1590(a)(6), 73.3526(a)(2).

[3] 14 FCC Rcd 17708 (MMB 1999).

3. In determining an appropriate forfeiture amount, Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"),[4] requires the Commission to consider a violator's ability to pay. The Commission has determined that a company's gross receipts are generally the best indicator of its ability to pay a forfeiture. *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992). The Commission has also concluded that it is appropriate to take into account "*income derived from other affiliated operations*, as well as the financial status of the station(s) in question." *Emery Telephone*, 13 FCC Rcd 23854, 23859-60 (1998), *recon. denied*, 15 FCC Rcd 7181 (1999) (emphasis added). As the Common Carrier Bureau stated in *Hinton Telephone Company of Hinton, Oklahoma*:

> reviewing the data for consolidated operations rather than financial data limited to just [one station] accurately portrays whether a licensee can pay a proposed forfeiture. Our determination of a licensee's ability to pay should reflect whether the licensee in general is financially capable of paying a forfeiture, not whether financial data from a limited portion of its operations can sustain a forfeiture.

7 FCC Rcd 6643, 6644 (CCB 1992), *review denied*, 8 FCC Rcd 5176 (1993). Thus, it is the Commission's general practice to consider the financial condition of a licensee's consolidated operations, not just the financial condition of an individual station or a limited portion of its operations.

4. KASA Radio's reliance on *Hill Country Radio, Inc.* is misplaced. Nothing in *Hill Country Radio, Inc.* indicates that the Mass Media Bureau would not have considered the financial condition of the licensee's consolidated operations if the unauthorized transfers of control had not involved all four of its licenses. Furthermore, in *KTBB Radio, Inc.*, the Mass Media Bureau rejected the inability to pay claim of a licensee cited for unauthorized broadcast of a telephone conversation at an individual station because the licensee failed to provide profit and loss statements for other stations under common ownership.[5] Therefore, Commission precedent does not support KASA Radio's contention that the Commission evaluates entire enterprises only where violations are common to various sections of the enterprise. Consequently, we deny KASA Radio's Petition for Reconsideration and reject its request for rescission or reduction of the forfeiture based on its purported inability to pay.

5. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 405 of the Act[6] and Section 1.106 of the Rules,[7] the Petition for Reconsideration of the *Forfeiture Order* in this proceeding **IS** hereby **DENIED.**

6. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Act[8] and Section 1.80 of the Rules,[9] KASA Radio Hogar, Inc. shall pay the amount of fifteen thousand dollars ($15,000)

[4] 47 U.S.C. § 503(b)(2)(D).

[5] 10 FCC Rcd 13046 (MMB 1995).

[6] 47 U.S.C. э 405.

[7] 47 C.F.R. § 1.106.

[8] 47 U.S.C. § 503(b).

[9] 47 C.F.R. § 1.80.

for the above-stated violations within 30 days of the release date of this Order. Payment may be made by check or money order, drawn on a U.S. financial institution, payable to the Federal Communications Commission. The remittance should be marked "NAL/Acct. No. 200132940002" and mailed to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. 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] Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 Twelfth Street, S.W., Washington, D.C. 20554.[11]

7. **IT IS FURTHER ORDERED** that, a copy of this Memorandum Opinion and Order shall be sent by Certified Mail Return Receipt Requested to Paul Brown, Esq., counsel for KASA Radio of Hogar, Inc., at Wood, Maines & Brown, 1827 Jefferson Place, NW, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

[10] 47 U.S.C. э 504(a).

[11] 47 C.F.R. э 1.1914.