

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

In the Matter of)	
)	File No. EB-02-KC-596
American Family Association, Inc.)	
)	NAL/Acct. No. 200232560027
Licensee of Radio Station KAUF-FM in)	
Kennett, Missouri)	FRN 0005-0295-11
)	
Tupelo, Mississippi)	

MEMORANDUM OPINION AND ORDER

Adopted: August 14, 2003

Released: August 18, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we cancel a proposed monetary forfeiture in the amount of nine thousand dollars (\$9,000), issued to American Family Association, Inc., (“AFA”) licensee of Radio Station KAUF-FM (“Station KAUF”), in Kennett, Missouri, for apparent willful violation of Sections 11.35(a), 73.3527(e)(4), 73.3527(e)(7), and 73.3527(e)(8) of the Commission's Rules (“Rules”).¹ The noted violations involve AFA’s failure to have operational Emergency Alert System (“EAS”) equipment and failure to maintain all required items in the public inspection file (“public file”). While we cancel the proposed forfeiture, we admonish AFA for the public file violations.

2. On September 23, 2002, the District Director of the Commission’s Kansas City, Missouri Field Office (“Kansas City Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of nine thousand dollars (\$9,000) to AFA for the noted violations.² AFA filed a response to the NAL on October 18, 2002.

II. BACKGROUND

3. On July 17, 2002, an agent from the Kansas City Office inspected Station KAUF’s EAS equipment and observed that both EAS receivers were turned off and that, when turned on, both receivers were tuned to default settings rendering them unable to monitor the two required EAS sources. When the agent examined the station log it indicated that Station KAUF had not received an EAS test since the year 2000. Furthermore, the agent discovered that documents were missing from the public inspection file. Specifically the agent determined that the latest ownership report, a copy of The Public and Broadcasting, and the current issues/programs list were not in the public file.

¹ 47 C.F.R. §§ 11.35(a), 73.3527(e)(4), 73.3527(e)(7), 73.3527(e)(8).

² *American Family Association, Inc.*, NAL/Acct. No. 200232560027 (Enf. Bur., Kansas City Office rel. September 23, 2002).

4. The Kansas City Office issued a *NAL* to AFA on September 23, 2002, for the two violations. The *NAL* proposed a \$4,000 forfeiture for the EAS violation and a \$5,000 forfeiture for the public file violations. AFA filed its response on October 18, 2002 seeking reduction or cancellation of the proposed forfeiture. AFA submitted a signed declaration from its Founder and Chairman of the Board, Donald E. Wildmon, in support of the response.

5. In the response, AFA argues that the portion of the forfeiture relating to the EAS violation should be canceled because no EAS violation occurred. AFA asserts that it did not keep Station KAUF's 2001 and 2002 station logs at Station KAUF, but rather kept them at AFA's headquarters in Tupelo, Mississippi. AFA argues that no EAS violation occurred because, first, the Rules do not require AFA to keep the EAS logs at Station KAUF and, second, because the logs show that AFA complied with Section 11.35(a) of the Rules. AFA attached copies of Station KAUF's EAS logs for 2001 and 2002 to its response. The logs indicate that Station KAUF's EAS equipment performed properly until July 9, 2002. AFA notes that on July 9, 2002 the equipment began malfunctioning and that it turned the equipment off to avoid spurious signals. AFA further asserts that Section 11.35(b) of the Rules permit stations to operate without defective EAS equipment for 60 days pending its repair or replacement. AFA concludes that the proposed forfeiture for the EAS violation should be canceled because the inspection occurred on July 17, 2002, only eight days after AFA turned off the defective EAS equipment and well within the 60-day window provided by Section 11.35(b).

6. In response to the apparent public file violations, AFA argues that the proposed forfeiture should be reduced. AFA states that, prior to the inspection it maintained a duplicate public file for Station KAUF at AFA's headquarters and mailed each item for the public file to Station KAUF with explicit filing instructions. AFA submits that it mailed all of the required items to Station KAUF but that the station manager was behind on filing and consequently the items were not in the public file. Moreover, AFA asserts that the station manager was on vacation during the inspection and his substitute did not recognize the items to hand to the agent. AFA argues that the forfeiture should be reduced because AFA has stream-lined Station KAUF's public file so that it now resides on a single, frequently updated, compact disc and that a computer is available in the studio so that the public can access the disc and print copies of public file documents. AFA provided a copy of the new compact disc with its response. AFA concludes that the *NAL* should be canceled on the basis of its history of overall compliance and because the proposed forfeiture amount is disproportionately punitive given Station KAUF's annual revenue.

III. DISCUSSION

7. The District Director assessed the proposed forfeiture amount in this case in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),³ Section 1.80 of the Rules,⁴ and *The Commission's Forfeiture Policy Statement and Amendments of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁵ In examining AFA'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

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 12 FCC Rcd 17,087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁶ 47 U.S.C. § 503(b)(2)(D).

8. In response to the EAS portion of the *NAL*, AFA submitted copies of Station KAUF's EAS logs for 2001 and 2002. After reviewing the EAS logs, we determine that AFA did not violate Section 11.35(a). The EAS logs verify that Station KAUF properly performed its EAS tests during 2001 and through July 7, 2002. The logs further confirm that the EAS equipment began malfunctioning on July 9, 2002 and that AFA turned off the equipment on that date to avoid spurious signals. Section 11.35(b) permits stations to operate without defective EAS equipment for 60 days, without further FCC authority.⁷ The agent inspected Station KAUF's EAS equipment on July 17, 2002, only eight days after AFA turned off the equipment and well within the 60-day time frame permitted by Section 11.35(b). AFA notes that the EAS equipment is now functioning properly. In light of the above, we cancel the portion of the *NAL* relating to the apparent EAS violation.

9. Turning to the public file violations, Section 73.3527(e) of the Rules requires that certain items be retained in the public file. Specifically Sections 73.3527(e)(4), 73.3527(e)(7), and 73.3527(e)(8) require that copies of the latest ownership report, a copy of The Public and Broadcasting, and the current issues/programs list be kept in the public inspection file.⁸ We determine that AFA willfully violated Sections 73.3527(e)(4), 73.3527(e)(7), and 73.3527(e)(8) based on AFA's admission that the station manager was behind on filing and did not place the required items in the public file.⁹ However, AFA declares that the required items were at Station KAUF during the inspection and points out that this is not a situation where they had to go out and create the public file or obtain new documents after the inspection to comply with the public file rules. After reviewing the record before us, we cancel the portion of the *NAL* relating to the public file violations based on AFA's good faith efforts to comply with the requirements of Sections 73.3527(e)(4), 73.3527(e)(7), and 73.3527(e)(8). Based on our findings above, we do not reach a determination on the remainder of AFA's arguments. However, we admonish AFA for the public file violations.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 504(b) of the Communications Act of 1934, as amended,¹⁰ and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹¹ the *Notice of Apparent Liability for a Forfeiture*, NAL/Acct. No. 200232560027, issued to American Family Association, Inc., for violation of Sections 11.35(a), 73.3527(e)(4), 73.3527(e)(7), and 73.3527(e)(8) of the Rules **IS CANCELED**.

11. **IT IS FURTHER ORDERED** that AFA **IS ADMONISHED** for its willful violation of Sections 73.3527(e)(4), 73.3527(e)(7), and 73.3527(e)(8).

⁷ 47 C.F.R. §11.35(b) permits stations to "operate without the defective EAS equipment pending its repair or replacement for 60 days without further FCC authority."

⁸ 47 C.F.R. §§ 11.35(a), 73.3527(e)(4), 73.3527(e)(7), 73.3527(e)(8).

⁹ 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 or any rule or regulation of the Commission authorized by this Act..." *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991) (finding that the term "willful" simply requires that the violator knew it was taking the action in question, irrespective of any intent to violate the Rules.).

¹⁰ 47 U.S.C. § 504(b).

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

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by certified mail return receipt requested to American Family Association, Inc., P.O. Drawer 2440, Tupelo, Mississippi 38803.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau