

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

In the Matter of)	
)	
)	
AMERICAN FAMILY ASSOCIATION)	File No. EB-02-IH-0819
)	NAL/Acct. No. 200432080203
)	FRN 0005025911
Licensee of Station KBMP(FM),)	Facility ID No. 91037
Enterprise, Kansas)	

FORFEITURE ORDER

Adopted: November 4, 2004

Released: November 5, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of \$10,000 to American Family Association (“AFA”), licensee of non-commercial educational radio Station KBMP(FM), Enterprise, Kansas. AFA violated the main studio rule by willfully and repeatedly failing to meet the location requirements set forth in section 73.1125(a) of the Commission’s rules, and by willfully and repeatedly failing to maintain a meaningful management and staff presence at its main studio.¹ AFA also willfully failed to comply fully with a Bureau communication that directed it to produce certain information concerning the main studio of Station KBMP(FM).

II. BACKGROUND

2. The Enforcement Bureau issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to AFA on July 28, 2004.² As discussed more fully in the *NAL*, AFA placed Station KBMP(FM) into operation on March 6, 2002 with a main studio co-located with that of co-owned Station KCFN(FM), Wichita, Kansas, prior to Media Bureau action on a main studio rule waiver request to allow such co-location. AFA subsequently requested Media Bureau action on the waiver request “before we are hit with forfeitures” due to the lack of a local main studio for Station KBMP(FM).³ By letter dated October 31, 2002, the Audio Division of the Media Bureau granted AFA’s waiver request, without prejudice to whatever enforcement action might be taken with respect to AFA’s admitted violation of the

¹ See 47 C.F.R. § 73.1125(a); see also *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215 (1987), clarified 3 FCC Rcd 5024 (1988); *Jones Eastern of Outer Banks, Inc.*, 6 FCC Rcd 3615 (1991) (“*Jones Eastern I*”), clarified 7 FCC Rcd 6800 (1992) (“*Jones Eastern II*”).

² *American Family Association*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 14072 (EB 2004).

³ Letter from Patrick J. Vaughn, General Counsel, AFA, to Marlene H. Dortch, Secretary of the Commission, dated September 5, 2002.

Commission's main studio rule.⁴ The Media Bureau referred the matter to the Enforcement Bureau for possible enforcement action. On November 13, 2003, the Investigations and Hearings Division of the Commission's Enforcement Bureau sent a letter of inquiry to AFA, notifying AFA that the Bureau "is investigating allegations that [AFA] . . . violated the Commission's broadcast main studio rule" and directing it to provide nine categories of information and copies of all documents relevant to AFA's responses.⁵ AFA responded with a letter dated November 21, 2003 that only addressed two categories of information and provided only one responsive document.⁶

3. The *NAL* proposed a forfeiture in the base amount of \$7,000 for AFA's apparent violation of Section 73.1125. With respect to the Bureau's letter of inquiry to AFA, the Bureau found that AFA had failed to provide seven out of nine categories of information identified by the Bureau and had not offered any explanation for its incomplete response. The Bureau accordingly proposed a forfeiture in the amount of \$3,000 for this violation, reduced from the base amount of \$4,000 because AFA had provided a partial response.⁷ AFA responded to the *NAL* on August 25, 2004.⁸

III. DISCUSSION

A. AFA Willfully and Repeatedly Failed to Meet the Location and Staffing Requirements of the Main Studio Rule.

4. By AFA's own admission, the main studio for Station KBMP(FM) did not meet the location or staffing requirements for a broadcast station's main studio under section 73.1125(a) from March 6, 2002, when the station commenced operation, until October 31, 2002, when AFA received a waiver of the main studio rule. The record shows that this was a knowing violation by AFA, as AFA noted in its request for expedited processing that it sought action by the Commission's Media Bureau "before we are hit with forfeitures."⁹ In this regard, we note that, in 2002, AFA was assessed a forfeiture in the amount of \$5,000 for operating Station KBKC-FM, Moberly, Missouri, without a main studio.¹⁰ As in this case, AFA put that station on the air after filing a main studio waiver request, but had not received a grant of that request when it commenced operation of the station without a local main studio. A field inspection by the Enforcement Bureau revealed the lack of a local main studio.

5. In its Response, AFA argues that in this case it brought the violation at Station KBMP(FM) to the Commission's attention. We recognize that a forfeiture may be reduced from the base amount under

⁴ Letter from Peter H. Doyle, Chief, Audio Division of Commission's Media Bureau, to Patrick J. Vaughn, dated October 31, 2002.

⁵ Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Mr. Vaughn, dated November 13, 2003.

⁶ *NAL*, 19 FCC Rcd at 14074, ¶ 6.

⁷ *Id.*, 19 FCC Rcd at 14077, ¶ 15.

⁸ Letter from Patrick J. Vaughn to William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, dated August 24, 2004 ("Response").

⁹ Letter from Patrick J. Vaughn to Marlene Dortch, dated September 5, 2002.

¹⁰ See *American Family Association*, Forfeiture Order, 17 FCC Rcd 18,135 (EB 2002), *recon. denied* 18 FCC Rcd 2413 (EB 2003).

our forfeiture guidelines if there was a voluntary disclosure of a violation.¹¹ However, in this case there are countervailing circumstances. AFA is extremely familiar with the requirements of the main studio rule, having obtained waivers of the rule in approximately 60 cases before this one.¹² In this case, AFA committed an intentional violation of the rule for a period of six months, not long after being assessed a forfeiture for a similar violation at another AFA station. Had AFA not disclosed the violation, these circumstances would warrant an upward adjustment from the base forfeiture amount of \$7,000.¹³ Because AFA did voluntarily disclose the violation, we did not make an upward adjustment. Under the totality of the circumstances here, reduction or elimination of the proposed forfeiture is not appropriate.

6. AFA argues that the forfeiture should be cancelled because it was not tardy in applying for a waiver and it vigorously pursued the waiver request. We disagree. As explained above, AFA operated without a local main studio prior to obtaining Commission authority to do so. Diligence in seeking such authority does not justify reduction or cancellation of the forfeiture in this case.¹⁴

7. In its *Response*, AFA contends that the Media Bureau's simultaneous grant of AFA's waiver request and its license application for Station KBMP(FM) compels a finding that "[a]t no time did KBMP operate as a licensed station without complying with the Main Studio Rule."¹⁵ AFA also argues that its construction of the station has served the public interest, particularly the interests of the community of Enterprise, Kansas. However, the grant of the waiver request and license application does not excuse AFA's preceding rule violation. Indeed, the Media Bureau explicitly stated that its action was "without prejudice to whatever action, if any, the Commission deems appropriate in light of AFA's apparent violation of the Commission's main studio requirements."¹⁶ Likewise, every permittee that constructs a station and obtains a license for that station must first be found to serve the public interest, as AFA was in this case. However, such a finding does not excuse the permittee from complying with any of the Commission's rules, which is why the Media Bureau specifically noted that its action was without prejudice to a subsequent enforcement action.

¹¹ See 47 C.F.R. § 1.80(b)(4), Note at Section II, Downward Adjustment Criteria, #2 (good faith or voluntary disclosure).

¹² See *American Family Association*, 18 FCC Rcd at 2414 ¶ 4.

¹³ See 47 C.F.R. § 1.80(b)(4), Note at Section II, Upward Adjustment Criteria, ## 3 (intentional violation), 5 (prior violations of any FCC requirements), and 7 (repeated or continuous violation).

¹⁴ See *Liability of KXOJ, Inc.*, Memorandum Opinion & Order and Forfeiture Order, 15 FCC Rcd 21812 n. 1 (MMB 1999) ("[L]icensees are not excused from their duty to comply with the main studio rule during the pendency of rule waiver requests"). In addition, the rule itself states very clearly that prior approval is needed to locate a studio outside any of the locations specified in the rule and that the filing of a waiver request does not imply approval of that request. See 47 C.F.R. § 73.1125(d)(2).

¹⁵ *Response* at 3.

¹⁶ Letter, n. 4 *supra*, at 3. We further note that Station KBMP's operation pursuant to program test authority has no effect on AFA's obligations under the Commission's main studio rule. The Commission's rule on program test operation specifically states that "[a]ll operation under program test authority shall be in strict compliance with the rules governing broadcast stations and in strict accordance with representations made in the application for license pursuant to which the tests were authorized." 47 C.F.R. § 73.1620(d). In this regard, AFA notes that its license application erroneously certified that the station was operating in compliance with the main studio rule, rather than noting that it had requested a waiver of that rule. *Response* at 2-3. The Bureau was aware of this error, but did not cite the error in the *NAL*. The erroneous certification can only be viewed as inadvertent in light of AFA's prior filings with the Commission concerning Station KBMP(FM).

B. AFA Willfully Failed to Respond in Full to a Bureau Order.

8. Section 403 of the Act authorizes the Commission to institute on its own motion any inquiry into, *inter alia*, any matter relating to the enforcement of the Act or the Commission's rules.¹⁷ Section 308(b) provides that the Commission "may require from an applicant or licensee further written statements of fact during the license term. . . ."¹⁸ Pursuant to that and other authority,¹⁹ the Bureau ordered AFA to provide certain information. AFA did not do so. Out of nine categories of information and documents the Enforcement Bureau's letter of inquiry dated November 13, 2003 directed AFA to provide, Mr. Vaughn responded to two, offering no explanation for not responding to the other categories.²⁰

9. AFA admits its "failure to provide a satisfactory response," but argues that this failure "was not willful but confused."²¹ AFA argues that "it is sometimes confusing to the public to understand the status of a matter in one department that was previously resolved by a different Bureau."²² AFA's argument lacks merit. As noted above, the Media Bureau explicitly noted that its actions were without prejudice to further action by the Commission "in light of AFA's *apparent violation* of the Commission's main studio requirements."²³ Moreover, the first sentence of the Enforcement Bureau letter of inquiry that AFA largely ignored stated that the Bureau "is investigating allegations that [AFA] . . . violated the Commission's broadcast main studio rule."²⁴ Both of these documents placed AFA on notice that its actions were subject to investigation and possible enforcement action. In response, AFA unilaterally chose to ignore the Enforcement Bureau's inquiry in seven of the nine categories of information sought.²⁵ Thus, we find no basis for reducing or eliminating the proposed \$3,000 forfeiture for failing to comply with a Bureau order.

¹⁷ See 47 U.S.C. § 403.

¹⁸ 47 U.S.C. § 308(b). See also 47 C.F.R. § 73.1015.

¹⁹ See 47 U.S.C. § 154(i),(j).

²⁰ *Response* at 2. The *Response* notes that AFA's letter did include a sentence stating, "Please contact me if you have further questions regarding AFA's compliance with 47 C.F.R. Section 73.1125 at KBMP-FM, Enterprise, Kansas." Letter from Patrick J. Vaughn to David Brown, dated November 21, 2003. However, that is no substitute for providing, for each category of information requested, either the information requested or an explanation as to why the information was not available. Licensees are expected to respond fully to requests for information from the Commission. See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002). Allowing licensees to provide incomplete responses, requiring the Bureau to do follow-up inquiries, would be a substantial and wholly unnecessary drain on the Bureau's resources.

²¹ *Response* at 2. It is not pertinent whether a licensee's acts or omissions were specifically intended to violate the applicable law or rule. The term "willful," as used in Section 503(b) of the Act, has been interpreted to mean simply that the acts or omissions were committed knowingly. See *Liability of Cate Communications Corp.*, 60 RR 2d 1386 (1986). In this case, AFA does not argue that its *Response* was submitted without its knowledge.

²² *Id.* at 1.

²³ *Supra* at ¶ 7 and n. 4 (emphasis added).

²⁴ *Supra* at ¶ 2 and n. 5.

²⁵ In this regard, we note that AFA could have alleviated its alleged confusion by simply requesting clarification from the Enforcement Bureau staff person identified as the contact person in the letter of inquiry prior to the date AFA's *Response* was due. (This is the course of action taken in the tax matter example described on page one of AFA's *Response*, so that situation is clearly distinguishable from the present case.) AFA did not do so.

IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, American Family Association IS LIABLE FOR A MONETARY FORFEITURE in the amount of \$10,000 for willfully and repeatedly violating the Commission's main studio rule and for willfully failing to comply with a Bureau order.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, Illinois 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

12. Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Chief, Credit and Management Center, 445 12th Street, S.W., Washington, D.C. 20554.²⁶

13. IT IS FURTHER ORDERED that a copy of this *Order* shall be sent, by Certified Mail/Return Receipt Requested, to Patrick J. Vaughn, General Counsel, American Family Association, P.O. Drawer 2440, Tupelo, MS 38803.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

²⁶ See 47 C.F.R. § 1.1914.