

**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)	

ORDER ON RECONSIDERATION

Adopted: June 22, 2006

Released: June 23, 2006

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Order on Reconsideration*, we grant in part and deny in part a Petition¹ filed by American Family Association (“AFA”), the licensee of non-commercial educational radio Station KBMP(FM), Enterprise, Kansas, seeking reconsideration of our *Forfeiture Order* assessing a monetary forfeiture to AFA in the amount of \$10,000.² As discussed below, although we find that the statute of limitations bars us from assessing a forfeiture for AFA’s admitted violation of our main studio rule,³ we uphold the forfeiture for AFA’s failure to respond fully to an Enforcement Bureau letter of inquiry. We therefore reduce the forfeiture amount to \$3,000 and admonish AFA for its main studio violation.

II. BACKGROUND

2. The Enforcement Bureau released a *Notice of Apparent Liability for Forfeiture* (“NAL”) to AFA on July 28, 2004.⁴ As discussed more fully in the *NAL*, AFA placed Station KBMP(FM) into operation on March 6, 2002, with a main studio colocated with that of its commonly owned Station KCFN(FM), Wichita, Kansas, prior to Media Bureau action on a main studio rule waiver request to allow such collocation. 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).⁵

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

¹ “Petition for Reconsideration of Forfeiture Order” filed by American Family Association on November 26, 2004 (“Petition”).

² *American Family Association*, Forfeiture Order, 19 FCC Rcd 22025 (EB 2004) (“*Forfeiture Order*”).

³ The main studio rule is set forth in section 73.1125 of the Commission’s rules (47 C.F.R. § 73.1125).

⁴ *American Family Association*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 14072 (EB 2004).

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

admitted violation of the Commission's main studio rule.⁶ The Media Bureau concurrently granted AFA's application for license for Station KBMP(FM).⁷ The Media Bureau then referred the matter to the Enforcement Bureau for possible enforcement action.

4. 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.⁸ AFA responded with a letter dated November 21, 2003, that only addressed two categories of information and provided only one responsive document.⁹

5. 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 *LOI* 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.¹⁰ After reviewing AFA's response to the *NAL*, the Bureau issued the *Forfeiture Order*, assessing a forfeiture for the full \$10,000 amount specified in the *NAL*.

III. DISCUSSION

A. Section 503(b)(6) Precludes A Forfeiture For The Main Studio Violation.

6. AFA argues that section 503(b)(6) of the Communications Act, as amended (the "Act"),¹¹ bars the Commission from assessing a forfeiture against a broadcast station licensee if the violation charged occurred more than one year prior to the date of issuance of the required notice or notice of apparent liability.¹² AFA claims that its main studio violation at Station KBMP(FM) ended on October 31, 2002, whereas the *NAL* was not issued until July 28, 2004.

7. Section 503(b)(6)(A), which applies to broadcast licensees, provides that no forfeiture may be imposed "if the violation charged occurred – (i) more than 1 year prior to the date of issuance of the required notice or notice of apparent liability; or (ii) prior to the date of commencement of the current term of [the station's] license, whichever is earlier." In this case, AFA's license term began on October 31, 2002, the same date on which the main studio violation ended due to the Media Bureau's grant of AFA's main studio waiver request. Accordingly, at the time of the violation, AFA held no license for Station KBMP(FM). Because AFA was a permittee, rather than a licensee, section 503(b)(6)(A)(ii) does not apply and the applicable statute of limitations was one year, pursuant to section 503(b)(6)(B).¹³

⁶ Letter from Peter H. Doyle, Chief, Audio Division of Commission's Media Bureau, to Patrick J. Vaughn, dated October 31, 2002 ("*Media Bureau Waiver Grant*").

⁷ See File No. BLED-20020306ABB.

⁸ Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Patrick J. Vaughn, dated November 13, 2003 ("*LOI*").

⁹ Letter from Patrick J. Vaughn to David Brown, dated November 21, 2003 ("*Response*"). See *NAL*, 19 FCC Rcd at 14074 ¶ 6.

¹⁰ *NAL*, 19 FCC Rcd at 14077 ¶ 15.

¹¹ 47 U.S.C. § 503(b)(6).

¹² Petition at 5.

¹³ See *Manahawkin Communications Corp.*, Memorandum Opinion and Order, 17 FCC Rcd 342, 356 ¶ 22 (2001).

Although the grant of the station's license was intended to be "without prejudice" to any subsequent enforcement action "in light of AFA's apparent violation of the Commission's main studio requirements,"¹⁴ such action did not extend the applicable statute of limitations. Accordingly, because section 503(b)(6)(B) applies, and that provision would permit the *NAL* to have been issued only within one year of the end of the main studio violation on October 31, 2002, the *NAL* in this case was untimely. Accordingly, we grant reconsideration of the imposition of a \$7,000 forfeiture for AFA's admitted main studio violation, and hereby admonish AFA for that violation.

B. AFA Willfully Failed To Respond In Full To A Bureau Order.

8. AFA has admitted its "failure to provide a satisfactory response" to the Bureau's *LOI*.¹⁵ However, it claims that its Response to the *LOI* was made in good faith, based on its "understanding [that] the Enforcement Bureau was only opening an investigation into this matter over a year after the violation had ceased because it was somehow unaware that the main studio waiver had been granted."¹⁶ This "understanding" was merely an assumption by AFA that it did not verify.¹⁷

9. As noted *supra*, the Media Bureau explicitly stated when it granted the main studio waiver to AFA that its action was without prejudice to further action by the Commission "in light of AFA's apparent violation of the Commission's main studio requirements."¹⁸ Moreover, the first sentence of the Enforcement Bureau *LOI* stated that the Bureau "is investigating allegations that [AFA] . . . violated the Commission's broadcast main studio rule."¹⁹ Both of these documents placed AFA on clear and unambiguous notice that, notwithstanding the Media Bureau's grant of its waiver request, its failure to maintain a main studio for Station KBMP(FM) was subject to investigation and possible enforcement action. In response, AFA unilaterally ignored the Enforcement Bureau's *LOI* in seven of the nine categories of information sought, with no explanation for not responding to the other categories. It apparently did so because it assumed that our enforcement options for AFA's admitted violations were limited to monetary forfeiture and that option was foreclosed by the statute. This assumption, however, is

¹⁴ *Media Bureau Waiver Grant* at 3.

¹⁵ *Forfeiture Order*, 19 FCC Rcd at 22028 ¶ 9.

¹⁶ Petition at 6. 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, which was verified by Mr. Vaughn, its General Counsel, was submitted without its knowledge.

¹⁷ As we explained in the *Forfeiture Order*, AFA could have alleviated its alleged confusion by simply requesting clarification from the Enforcement Bureau staff person identified as the contact person in the *LOI* prior to the date AFA's Response was due. *Forfeiture Order*, 19 FCC Rcd at 22028, n. 25. AFA did not do so. The Petition notes that AFA's Response 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." 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) (forfeiture paid). 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.

¹⁸ *Media Bureau Waiver Grant* at 3 (emphasis added).

¹⁹ *LOI* at 1.

neither accurate²⁰ nor appropriate for a licensee faced with a Commission inquiry. We therefore find no basis for reducing or eliminating the \$3,000 forfeiture imposed on AFA in the *Forfeiture Order* for failing to comply with a Bureau order.

IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.106(j) of the Commission's rules, 47 C.F.R. § 1.106(j), the "Petition for Reconsideration of Forfeiture Order" filed by American Family Association IS HEREBY GRANTED IN PART and IS HEREBY DENIED IN PART.

11. IT IS FURTHER ORDERED THAT AFA IS ADMONISHED for its failure to maintain a main studio for Station KBMP(FM), Enterprise, Kansas, from March 6, 2002 to October 31, 2002, in willful violation of section 73.1125 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

²⁰ The Commission can admonish a licensee regardless of the statute of limitations on forfeiture and, were the transgression serious enough, consider the violation in a licensing context (renewal or revocation). See 47 U.S.C. §§ 309(k), 312(a).