

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

In the Matter of)

Jason Konarz)

Licensee of WQMA(AM))

Marks, Mississippi)

))))))

File Number: EB-04-OR-094

NAL/Acct. No.: 20043262004

FRN: 0005015425

MEMORANDUM OPINION AND ORDER

Adopted: September 8, 2006**Released:** September 12, 2006

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order (“*Order*”), we deny the petition for reconsideration filed by Jason Konarz, licensee of station WQMA(AM) in Marks, Mississippi, of the *Forfeiture Order* issued October 8, 2004.¹ The *Forfeiture Order* imposed a monetary forfeiture in the amount of \$20,000 to Mr. Konarz for willful and repeated violations of Sections 11.35(a), 73.1745(a), and 73.3526(c) of the Commission’s Rules (“*Rules*”).² The noted violations involved Mr. Konarz’s failing to maintain operational Emergency Alert System (“*EAS*”) equipment, operating his station with excessive power and failing to discontinue operation at night, and failing to make available for inspection all of the required materials in the station’s public inspection file.

II. BACKGROUND

2. On May 11 and 12, 2004, an agent from the Commission’s New Orleans Office of the Enforcement Bureau (“*New Orleans Office*”) monitored station WQMA(AM)’s signal and determined that station WQMA(AM) failed to discontinue operation at 8:00 p.m. CDT in accordance with its station authorization. Station WQMA(AM) is authorized as a daytime only station with a power of 250 watts.

3. On May 13, 2004, the agent made field strength measurements and then inspected station WQMA(AM). At the time of the inspection, the *EAS* encoder/decoder would not function and only one receiver was present. Station personnel reported that the *EAS* encoder/decoder had been broken between three and eighteen months. There were no logs or other evidence that the *EAS* encoder/decoder had ever been in operation or that it was being repaired.³ Also during the inspection, it was determined that the station’s transmitter power output meter displayed 425 watts, 170% of the authorized power of 250 watts. Finally, the station owner was able to produce the station authorization and a contour map for station WQMA(AM), but was unable to find any other elements of the station’s public file.

4. On July 21, 2004, the New Orleans Office issued a *Notice of Apparent Liability for Forfeiture* to Mr. Konarz in the amount of twenty thousand dollars (\$20,000) for the apparent willful and

¹ Jason Konarz, *Forfeiture Order*, 19 FCC Rcd 19562 (Enf. Bur. 2004) (“*Forfeiture Order*”).

² 47 C.F.R. §§ 11.35(a), 73.1745(a), 73.3526(c).

³ See 47 C.F.R. § 11.35(b).

repeated violation of Sections 11.35(a), 73.1745(a), and 73.3526(c) of the Rules.⁴ Mr. Konarz failed to submit a response to the *NAL*, and, on October 8, 2004, the Enforcement Bureau released the *Forfeiture Order*. Mr. Konarz submitted two responses to the *Forfeiture Order*, both styled “Petition for Reconsideration,” and dated November 4, 2004, and December 4, 2004 (“Petitions”). Both Petitions requested reduction or cancellation of the forfeiture based on inability to pay. Mr. Konarz’s Petitions acknowledged all of the violations and stated that they had been corrected.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ and *The 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*”). In examining Mr. Konarz’s petition, 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.⁷

6. In his Petitions, Mr. Konarz asserts that a \$20,000 forfeiture would produce a financial hardship and requests that the forfeiture be cancelled or significantly reduced. In support, Mr. Konarz provides copies of bank account statements, Internal Revenue Service Forms 1099-MISC, and documents entitled “Cash Flow Reports” covering years 2003, 2004, and 2005. As the *NAL* correctly noted, in the absence of supporting financial documentation (i.e., claimant’s federal tax returns, GAPP standard accounting statements, or other reliable, objective information reflecting financial status), the Commission will not consider reductions or cancellations of forfeitures on the basis of inability to pay.⁸ Because none of the documents provided by Mr. Konarz provides us with reliable, objective information reflecting his financial status, we find that no reduction or cancellation of the proposed forfeiture is warranted in this regard.^{9,10}

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 20043262004 (Enf. Bur., New Orleans Office, July 21, 2004) (“*NAL*”).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ *NAL* at ¶ 14.

⁹ See *Webnet Communications, Inc.*, 18 FCC Rcd 6870, 6878 ¶ 16 (2003) (finding that the Rules require that any request to reduce or remove a forfeiture based on an inability to pay claim include detailed and relevant financial documentation, that the carrier did not provide such documentation, and that therefore there was no basis to reduce the total forfeiture on such grounds); see also *Commonwealth License Subsidiary, LLC*, 18 FCC Rcd 20483, 20486 ¶ 10 (Enf. Bur. 2003); *Andre Dominique Hunter*, 14 FCC Rcd 3958, 3959-60 ¶ 6 (CIB 1999).

¹⁰ The FCC has received notice that Mr. Konarz has filed for Chapter 7 bankruptcy. *In re Jason Christopher Konarz*, No. 05-18351 (Bankr. N.D. Miss. filed Nov. 10, 2005). However, the filing for bankruptcy does not necessarily preclude the imposition of a forfeiture. See 11 U.S.C. § 362(b); see also *United States v. Commonwealth Companies, Inc.*, 913 F.2d 518, 522-26 (8th Cir. 1990) (excepting from bankruptcy imposed stays, suits by government to obtain monetary judgment for past violations of the law); *Coleman Enterprises, Inc.*, 15 FCC Rcd 24385, 24389 notes 27-28 (2000), *recon. denied*, 16 FCC Rcd 10016 (2001) (noting that a bankruptcy filing does not preclude the Commission from assessing forfeitures for violations of the Act and Rules). Moreover, the filing for bankruptcy does not necessarily justify an adjustment or cancellation of the forfeiture amount for a violation of the Rules. See *Adelphi Communications*, 18 FCC Rcd 7652, 7654 ¶ 8 (Enf. Bur. 2003) (finding that a Chapter 11 bankruptcy filing -- alone, without financial documentation -- does not support an inability to pay claim and thus does not provide a basis to adjust or cancel an assessed forfeiture); see also *North American Broadcasting Co., Inc.*, 19 FCC Rcd 2754 ¶ 6 (Enf. Bur. 2004); *Pinnacle Towers, Inc.*, 18 FCC Rcd 16365, 16366-67 ¶ 7 (Enf. Bur. 2003);

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,¹¹ and Section 1.106 of the Commission's Rules,¹² Jason Konarz's petition for reconsideration of the October 8, 2004 *Forfeiture Order* **IS** hereby **DENIED**.

8. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,¹³ Jason Konarz **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for willful and repeated violation of Sections 11.35(a), 73.1745(a), and 73.3526(c) of the Rules. For collection, the Commission will file a proof of claim at the appropriate time in Jason Konarz's bankruptcy action.¹⁴

9. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by regular mail and by certified mail, return receipt requested, to Jason Konarz at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

Friendship Cable of Texas, Inc., 17 FCC Rcd 8571, 8572-73 ¶ 9 (Enf. Bur. 2002).

¹¹ 47 U.S.C. § 405.

¹² 47 C.F.R. § 1.106.

¹³ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁴ See *Coleman Enterprises, Inc.*, *supra* at 24390. See also *Commonwealth*, *supra* at 523 note 15.