

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

In the Matter of	)	
	)	
Hmong American Community, Inc.	)	File No. EB-06-SE-446
Fresno, California	)	NAL/Acct. No. 200732100043
	)	FRN No. 0007557788
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: August 14, 2007**

**Released: August 16, 2007**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture*, we find Hmong American Community, Inc. (“Hmong American”), former licensee of Low Power FM (“LPFM”) station KFCA-LP, in Fresno, California, apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000) for operating a LPFM station without Commission authority and failing to file a timely renewal application for the station. Hmong American acted in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> and Section 73.3539 of the Commission’s Rules (“Rules”).<sup>2</sup>

**II. BACKGROUND**

2. On December 22, 2006, the Enforcement Bureau (“Bureau”) received a complaint that Hmong American failed to renew its license and continued to operate station KFCA-LP beyond the license term of its authorization. Commission records show that on July 15, 2003, Hmong American was granted a station license under call sign KFCA-LP with an expiration date of December 1, 2005.<sup>3</sup> In addition, Commission records show no application on file to renew the station’s license.

3. In a letter of inquiry (“LOI”) dated January 22, 2007,<sup>4</sup> the Bureau’s Spectrum Enforcement Division (“Division”) directed Hmong American to respond to the allegations in the complaint. The LOI was sent by certified mail to Hmong American at the Fresno, California address reflected in Commission records. On February 12, 2007, the LOI was returned to the Commission as undeliverable, with no forwarding address. Upon further research of public records, the Division found

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 C.F.R. § 73.3539.

<sup>3</sup> File No. BLL-20021016ABT.

<sup>4</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Chuhou Thao, Executive Director, Hmong American Community, Inc. (January 22, 2007).

another address for Hmong American in Fresno, California, and re-mailed the LOI to Hmong American on February 20, 2007.<sup>5</sup>

4. In its March 19, 2007, response to the LOI,<sup>6</sup> Hmong American states that its new executive director was unaware of the need to renew station KFCA-LP's license until informed by an inspector that the license had expired. Hmong American further explains that after learning that its license had expired, and upon inquiry with the FCC about the status of its LPFM station license, it decided to undertake efforts to transfer ownership of the LPFM station to a non-profit organization rather than discontinue operation or return the license for its LPFM station. Hmong American admits that although no assignment or renewal applications were filed with the Commission, it continued to operate the station until February 1, 2007, when the system failed and the station was completely shut down.

### III. DISCUSSION

5. Section 301 of the Act prohibits the use or operation of any apparatus for the transmission of energy or communications or signals by a broadcast radio station except under, and in accordance with, a Commission granted authorization. Additionally, Section 73.3539 of the Rules states that a broadcast station licensee must file a renewal application, "not later than the first day of the fourth full calendar month prior to the expiration date of the license." Absent a timely filed renewal application, a broadcast radio station license automatically terminates.

6. As a Commission licensee, Hmong American is required to maintain its authorization to operate a LPFM station.<sup>7</sup> Hmong American admits to operating the LPFM station without authorization between December 1, 2005 and February 1, 2007. By continuing to operate its station for approximately 14 months without an instrument of authorization, Hmong American apparently violated Section 301 of the Act. Hmong American also acted in apparent violation of Section 73.3539 of the Rules by failing to file a timely renewal application for the station. In addition, we note that, to date, Hmong American still has not filed a renewal application.

7. Section 503(b) of the Act,<sup>8</sup> and Section 1.80(a) of the Rules,<sup>9</sup> provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term "willful" means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission's rules, and "repeatedly" means more than once.<sup>10</sup> Based upon the record before us, it appears that Hmong American's violations of Section 301 of the Act and Section 73.3539 of the Rules were willful and repeated.

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<sup>5</sup> *Id.*

<sup>6</sup> See Letter from Dr. LoXing Kiatoukaysi, Executive Director, Hmong American Community, Inc. to Kathy Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (March 19, 2007).

<sup>7</sup> See, e.g., *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002) (licensee is responsible for compliance with all Commission rules).

<sup>8</sup> 47 U.S.C. § 503(b).

<sup>9</sup> 47 C.F.R. § 1.80(a).

<sup>10</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387-4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

8. In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act directs us to consider factors, such as “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 such other matters as justice may require.”<sup>11</sup> Having considered the statutory factors, as explained below, we find it appropriate to propose an aggregate forfeiture in the amount of \$8,000.

9. Section 1.80(b) of the Rules<sup>12</sup> sets a base forfeiture amount of three thousand dollars (\$3,000) for failure to file required forms or information and ten thousand dollars (\$10,000) for operation of a station without Commission authority. As the Commission recently held, a licensee’s failure to timely file a renewal application and its continued operation without authorization constitute separate violations of the Act and the Rules and warrant the assessment of separate forfeitures.<sup>13</sup> Accordingly, we propose separate forfeiture amounts for Hmong American’s separate violations.

10. We propose a forfeiture of \$3,000 for Hmong American’s failure to file the renewal application for its LPFM station within the time period specified in Section 73.3539 of the Rules. Additionally, we propose a forfeiture of \$5,000 for Hmong American’s continued operation of a LPFM station after the expiration of its license on December 1, 2005.<sup>14</sup> In proposing the \$5,000 forfeiture for Hmong American’s unauthorized operations, we recognize that the Commission considers a licensee who operates a station with an expired license in better stead than a pirate broadcaster who lacks prior authority, and thus downwardly adjust the \$10,000 base forfeiture amount accordingly.<sup>15</sup> Thus, we propose an aggregate forfeiture of eight thousand dollars (\$8,000) (\$3,000 for failure to timely file a renewal application and \$5,000 for unauthorized operations).

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<sup>11</sup> 47 U.S.C. § 503(b)(2)(E); see also *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines (“Forfeiture Policy Statement”)*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>12</sup> 47 C.F.R. 1.80(b).

<sup>13</sup> See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7438 (2004) (“*Discussion Radio*”) (proposing separate forfeitures against a broadcaster who both operated its station for 14 months without Commission authority and failed to timely file its renewal application).

<sup>14</sup> Under Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), we are prohibited from assessing a forfeiture for a violation that occurred more than a year before the issuance of a NAL. Section 503(b)(6), however, does not bar us from considering Hmong American’s prior conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period. See *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, Forfeiture Order, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671 (2000) (although the Commission may not find an entity liable for violations committed more than one year before the issuance of an NAL, “it may lawfully look at facts arising before that date in determining an appropriate forfeiture amount). Accordingly, while we take into account the continuous nature of the violations in determining the appropriate forfeiture amount, our proposed forfeiture relates only to Hmong American’s apparent violations that have occurred within the past year.

<sup>15</sup> See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$5,000 forfeiture for operating a station for 14 months beyond the expiration of its license); *Hare Planting*, 21 FCC Rcd 7530 (assessing a forfeiture in the amount of \$5,000 for continued operation of its PLMRS station for approximately 15 months after the expiration of its license); *Imperial Sugar*, 22 FCC Rcd 4987 (proposing a \$5,000 forfeiture for continued operation of its PLMRS station for approximately 20 months after the expiration of its license).

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act<sup>16</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>17</sup> Hmong American Community, Inc. **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of eight thousand dollars (\$8,000) for willful and repeated violation of Section 301 of the Act and Section 73.3539 of the Rules.

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,<sup>18</sup> within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Hmong American Community, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture must be made by 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 Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. A request for full payment under an installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12<sup>th</sup> Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>19</sup>

14. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

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<sup>16</sup> 47 U.S.C. § 503(b).

<sup>17</sup> 47 C.F.R. §§ 0.111, 0.311 and 1.80.

<sup>18</sup> 47 C.F.R. § 1.80.

<sup>19</sup> See 47 C.F.R. § 1.1914.

16. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Dr. LoXing Kiatoukaysi, Executive Director, Hmong American Community, Inc., 2904 N. Blackstone Avenue, Unit 7, Fresno, California 93703.

**FEDERAL COMMUNICATIONS COMMISSION**

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau