

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

In the Matter of	)	
	)	
127, Inc.	)	File Number EB-05-KC-143
	)	
Licensee of Station KLFJ	)	NAL/Acct. No. 200632560002
Facility ID# 17137	)	
Springfield, Missouri	)	FRN 0011407814

**MEMORANDUM OPINION AND ORDER**

**Adopted:** February 26, 2007

**Released:** February 28, 2007

By the Assistant Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Memorandum Opinion and Order (“Order”), we deny the petition for reconsideration filed by 127, Inc. of the *Forfeiture Order* issued September 6, 2006.<sup>1</sup> The *Forfeiture Order* imposed a monetary forfeiture in the amount of \$16,800 on 127, Inc. for the willful and repeated violation of Sections 73.1125(a) and 73.1745 of the Commission’s Rules (“Rules”) and the willful violation of Section 73.3526(a) of the Rules.<sup>2</sup> The noted violations involved 127, Inc.’s failure to maintain a main studio, operating overpower during nighttime hours, and failure to make available for inspection the station’s public inspection file.

**II. BACKGROUND**

2. In response to a report of a violation, on December 13 and 14, 2005, an agent from the Commission’s Kansas City Office of the Enforcement Bureau (“Kansas City Office”) monitored station KLFJ’s signal from a location in Springfield, Missouri. The agent’s monitoring indicated no power reduction in KLFJ’s signal from mid afternoon until after sunset, which is inconsistent with the terms of the station authorization. Telephone calls to KLFJ on December 14, 2005 went unanswered at 9:03 AM, 10:38 AM, 1:05 PM, 2:55 PM and 4:00 PM this date.

3. On December 15, 2005, the agent contacted the executive assistant to the station’s owner at Surrey Vacation Resorts/Surrey Grand Crown Resort, by using the phone number provided in KLFJ’s EEO Form 396. The executive assistant stated there was no studio for the radio station and station programming is done via computer from West Hollywood, California. She did not know the location of the public file but suggested checking at the Econo Lodge in Springfield. She stated the KLFJ phone number listed in the Springfield phone book is supposed to be answered and is located at the Econo Lodge along with the computer containing the station’s aired material. She provided the phone number

<sup>1</sup> *127, Inc.*, Forfeiture Order, 21 FCC Rcd 10003 (Enf. Bur. South Central Region September 6, 2006) (“*Forfeiture Order*”).

<sup>2</sup> 47 C.F.R. §§ 73.1125(a), 73.1745, 73.3526(a).

for the contract engineer for KLFJ and stated he would be able to aid with inspection of the transmitter and equipment located at the Econo Lodge.

4. Still on the same date, the agent, accompanied by the KLFJ contract engineer, inspected KLFJ's transmitter site and programming equipment located in Springfield, Missouri. The transmitter was operating at a power of 1125 watts. The contract engineer stated that the station had operated at this power level for two to three months. He stated that there was no studio or studio equipment for KLFJ. The agent found no microphone or other audio mixing capabilities that would allow origination of programming from the Econo Lodge, the transmitter site, or any other location in Springfield. Station programming material is uploaded to one of the two computers located in a back room of the Econo Lodge motel via telephone line from West Hollywood, California. During the inspection, the contract engineer was able to reduce the transmitter power to approximately 25 watts both manually and by using the remote control. He stated that remote control instructions were left at the Econo Lodge prior to the sale of hotel. According to the new owner of the Econo Lodge, current Econo Lodge employees did not have any knowledge of the radio station operation or of any station records. The contract engineer stated he is called by the station only as needed. He stated he had no knowledge of radio station staff locally and stated no chief operator was designated for the station. A check of the telephone for the station located at the Econo Lodge front desk found the telephone unplugged but operating correctly when plugged in.

5. On March 3, 2006, the Kansas City Office issued to 127, Inc. a *Notice of Apparent Liability for Forfeiture* ("NAL") proposing a forfeiture in the amount of \$21,000 that found 127, Inc. had willfully and repeatedly violated Sections 73.1125(a) and 73.1745 of the Rules, and had willfully violated Section 73.3526(a) of the Rules.<sup>3</sup> In response to the NAL, 127, Inc. did not deny the violations, stated that it had made efforts to correct the violations, and requested cancellation or reduction of the proposed forfeiture due to its "spotless track record" and "many years of untarnished service."<sup>4</sup> On September 6, 2006, the Enforcement Bureau released the *Forfeiture Order*. The Enforcement Bureau reduced the forfeiture amount from \$21,000 to \$16,800, based on 127, Inc.'s history of compliance with the Rules. 127, Inc. filed a petition for reconsideration of the *Forfeiture Order* requesting further reduction or cancellation of the forfeiture.

### III. DISCUSSION

6. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>7</sup> In examining 127, Inc.'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 any other such matters as justice may require.<sup>8</sup>

<sup>3</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200632560002 (Enf. Bur., South Central Region, Kansas City Office, released March 3, 2006).

<sup>4</sup> 127, Inc. states that it let its contractor respond on its behalf, because he stated the station was in compliance and that he would handle it. 127, Inc. raises the issues it claims it would have raised in response to the NAL in its petition for reconsideration.

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> 12 FCC Rcd. 17087 (1997), *recon. denied*, 15 FCC Rcd. 303 (1999).

<sup>8</sup> 47 U.S.C. § 503(b)(2)(D).

7. In its petition for reconsideration, 127, Inc. alleges that it did not violate Section 73.3526 of the Rules, because the station's public file was located at the Econo Lodge. In a sworn affidavit, the station owner states that the new owner of the Econo Lodge was aware that the file was located in the hotel and agreed to make it available to the public.<sup>9</sup> 127, Inc. claims that its violation of the public file rules was not willful, because, unbeknownst to it, the new owner of the Econo Lodge failed to inform his employees about the public file. These facts, however, provide no basis to cancel or reduce the forfeiture associated with this violation. It is undisputed that on December 15, 2005 in response to a request during normal business hours, station KLFJ, represented by the owner and employees of the Econo Lodge, was unable to produce a public file. Although 127, Inc. may not have been aware of the break down in training for the Econo Lodge employees, 127, Inc. consciously and deliberately placed the Econo Lodge owner in charge of the station's public file and Econo Lodge employees were unable to make the file available upon request. The "Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors,"<sup>10</sup> and the Commission has "consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations."<sup>11</sup>

8. Similarly, 127, Inc. alleges its violations of Sections 73.1125(a) and 73.1745 of the Rules were not willful, because the station owner relied on contractors and employees to set up the main studio and operate the station consistent with the Rules. Specifically, the station owner hired a contractor to assist in the station purchase and set up. That contractor later hired a contract engineer and station manager.<sup>12</sup> In an affidavit, the contractor stated the station's main studio was complete and working when it first moved to the Econo Lodge. At some point before the inspection, however, he alleges much of the station's equipment was removed from the Econo Lodge, unbeknownst to himself and the station owner. The contractor also states that the contract engineer was instructed to reduce the station's transmitter power at night and failed to do so, unbeknownst to himself and the station owner. These facts, however, provide no basis to cancel or reduce the forfeitures associated with these violations. 127, Inc., as the licensee, is responsible for ensuring compliance with the Rules, and consciously hired others to set up and operate its radio station.<sup>13</sup> As discussed above, 127, Inc. cannot absolve itself of liability by claiming it was unaware of the actions and inactions of those employees and contractors.

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<sup>9</sup> We note that the new owner of the Econo Lodge was present during the inspection and stated he had no knowledge of the public file.

<sup>10</sup> *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863,-64, para. 7 (2002); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34 (1991) (holding that a company's reliance on an independent contractor to construct a tower in compliance of FCC rules does not excuse that company from a forfeiture); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972) (holding a licensee responsible for violations of FCC rules despite its reliance on a consulting engineer); *Petracom of Joplin, L.L.C.*, 19 FCC Rcd 6248 (Enf. Bur. 2004) (holding a licensee liable for its employee's failure to conduct weekly EAS tests and to maintain the "issues/programs" list).

<sup>11</sup> *American Paging, Inc. of Virginia*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 10417, 10420, para. 11 (Enf. & Cons. Inf. Div., Wireless Tel. Bur. 1997) (quoting *Triad Broadcasting Company*, 96 FCC 2d 1235, 1244 (1984)).

<sup>12</sup> It is unclear from the contractor's affidavit whether he hired the station manager before or after the inspection. During the inspection, neither the contract engineer nor the Econo Lodge owner were aware of any employees, such as a station manager, employed by the station.

<sup>13</sup> Although we conclude that 127, Inc.'s violation was willful, we do not conclude that it intended to violate the Rules. Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... 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).

9. 127, Inc. agrees that its violations of Sections 73.1125(a) and 73.1745 of the Rules were repeated, but seeks a reduction of the forfeitures, citing *U.S. v. Daniels*,<sup>14</sup> because it claims its violations were not willful, it was acting in good faith, and there were no complaints received about the station. As discussed above, we agree with the determination in the *Forfeiture Order* that these violations were willful.<sup>15</sup> We also find no reason to reduce the forfeiture simply because no complaints against the station have been filed. We note, however, that the agent from Kansas City first monitored the station in response to a report of a violation by the station, which was essentially a complaint. Finally, we find that 127, Inc.'s actions – hiring a contractor to set up the main studio and a station engineer to reduce power at night and purchasing main studio equipment – do not constitute good faith efforts worthy of a forfeiture reduction. While these actions were taken prior to the inspection, they were not specifically taken to remedy a violation. Rather, they were prerequisites to operating the station consistent with the Rules and were taken prior to the occurrence of any violations.

10. Finally, 127, Inc. notes that following the release of the *Forfeiture Order* it moved the main studio to another location and hired a station manager. 127, Inc. also terminated its relationship with the contract engineer. However, corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.<sup>16</sup>

11. We conclude there is no basis for reversal of the ultimate finding in the *Forfeiture Order* that 127, Inc. willfully and repeatedly failed to maintain a main studio and operated overpower at night in violation of Sections 73.1125(a) and 73.1745 of the Rules and willfully failed to make available a public inspection file in violation of Section 73.3526(a) of the Rules.

#### IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,<sup>17</sup> and Section 1.106 of the Commission's Rules,<sup>18</sup> 127, Inc.'s petition for reconsideration of the September 6, 2006 *Forfeiture Order* **IS** hereby **DENIED**.

13. **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 Rules,<sup>19</sup> 127, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of sixteen thousand eight hundred dollars (\$16,800) for violation of Sections 73.1125(a), 73.1745, and 73.3526(a) of the Rules.

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<sup>14</sup>*United States v. Daniels*, 418 F. Supp 1074 (1976).

<sup>15</sup> We note that in the *Daniels* case, the Commission did not allege a willful violation. The Court found that the Defendant lacked actual knowledge of the violated Rule, which had recently been amended. While actual knowledge was irrelevant to the question of whether there was a repeated violation, the Court found a reduction in the forfeiture appropriate, because: the Defendant was unaware of the amended Rule; the violations ceased immediately upon being informed of the violation; the violations were inadvertent; the Defendant was merely following in good faith the broadcasting hours set out in his license; and there was no record of any complaints of interference filed. In this case, 127, Inc. willfully and repeatedly violated well established Rules that were in fact known to the contractor hired to set up the main studio.

<sup>16</sup> See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

<sup>17</sup> 47 U.S.C. § 405.

<sup>18</sup> 47 C.F.R. § 1.106.

<sup>19</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.1125(a), 73.1745, 73.3526(a).

14. Payment of the \$16,800 forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>20</sup> 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. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.<sup>21</sup>

15. **IT IS FURTHER ORDERED** that this Order shall be sent by regular mail and by certified mail, return receipt requested, to 127, Inc. at its address of record and its counsel, David S. Akers, 430C State Highway 165 South Branson, MO 65616.

**FEDERAL COMMUNICATIONS COMMISSION**

George R. Dillon  
Assistant Chief, Enforcement Bureau

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<sup>20</sup> 47 U.S.C. § 504(a).

<sup>21</sup> See 47 C.F.R. § 1.1914.