

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

In the Matter of	)	
	)	
Broadcast Entertainment Corporation	)	
	)	
Former Licensee of:	)	File Numbers: EB-07-DV-056
KICA(AM)	)	EB-07-DV-057
Clovis, New Mexico	)	
Facility ID # 61577	)	NAL/Acct. No.: 200732800005
	)	FRN: 0000012898
KKYC(FM)	)	
Clovis, New Mexico	)	
Facility ID # 33402	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted:** March 27, 2008

**Released:** March 31, 2008

By the Associate Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order*, issued pursuant to Section 405 of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> and Section 1.106 of the Commission’s rules,<sup>2</sup> we grant, to the extent indicated herein, a Petition for Reconsideration (“*Petition*”) filed on October 10, 2007, by Broadcast Entertainment Corporation (“BEC”), former licensee former licensee of stations KICA(AM) and KKYC(FM) serving Clovis, New Mexico,<sup>3</sup> of a *Forfeiture Order*<sup>4</sup> issued by the Western Region (“Region”) of the Enforcement Bureau, imposing an eight thousand dollar (\$8,000) monetary forfeiture penalty against BEC for willful and repeated violation of Section 73.3526 of the Commission’s Rules (“Rules”).<sup>5</sup> The noted violation involves BEC’s failure to maintain a complete public inspection file at each station. For the reasons discussed below, we cancel the forfeiture. We also admonish BEC for its willful and repeated violation of Section 73.3526 of the Rules.

**II. BACKGROUND**

2. On January 10, 2007, an agent from the Enforcement Bureau's Denver Office conducted an inspection of KICA(AM) and KKYC(FM) at the station's main studio location in Clovis, New Mexico, during normal business hours. The inspection revealed that the stations’ public inspection files did not

<sup>1</sup> 47 U.S.C. § 405.

<sup>2</sup> 47 C.F.R. § 1.106.

<sup>3</sup> On March 21, 2007, the Commission granted an application (File No. BAL-20070201BFW) to assign the KICA(AM) and KKYC(FM) licenses from Broadcast Entertainment Corporation to Tallgrass Broadcasting, LLC. The transaction was consummated on April 2, 2007.

<sup>4</sup> *Broadcast Entertainment Corporation*, 22 FCC Rcd 16745 (EB 2007) (“*Forfeiture Order*”).

<sup>5</sup> 47 C.F.R. § 73.3526.

contain all of the required quarterly radio issues/programs lists for the entire license term. The current license term for each of the stations started on October 1, 2005.

3. On June 18, 2007, the Denver Office issued a *NAL* in the amount of \$8,000 to BEC, finding that BEC apparently willfully and repeatedly failed to maintain complete public inspection files for KICA(AM) and KKYC(FM). BEC filed a response (“*Response*”) on July 16, 2007, arguing that the proposed forfeiture amount should be cancelled because BEC is no longer the licensee of KICA(AM) and KKYC(FM), that the violation a mistake due to a change in management of the stations, and that BEC rectified the violation after the inspection by the Denver Office.

4. In the *Forfeiture Order*, issued September 11, 2007, the Region considered all the issues raised by BEC and found that although BEC was no longer the licensee of KICA(AM) and KKYC(FM), it was still an ongoing concern and, therefore, there were no extenuating circumstances or any other grounds to support canceling the forfeiture.<sup>6</sup> The Region also found no merit to BEC’s arguments that its failure to place the missing quarterly issues/programs lists in the public inspection file was a mistake due to a change in management and was rectified shortly after the inspection. The Region reiterated the Commission’s determination that a licensee is expected to correct errors when they are brought to the licensee’s attention and that such correction is not grounds for a downward adjustment in the forfeiture,<sup>7</sup> and that where lapses occur in maintaining the public inspection file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee’s rule violation<sup>8</sup>

### III. DISCUSSION

5. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner’s last opportunity to present such matters.<sup>9</sup> A petition for reconsideration that reiterates arguments that were previously considered and rejected will be denied.<sup>10</sup> In its *Petition*, BEC raises facts that it had not made known to the Region at the time that the *Forfeiture Order* was released.<sup>11</sup> BEC, in its *Petition*, states, for the first time, that it has no ability to pay, no assets, no money, no bank accounts, no shareholders, no officers, and no address. BEC also states that it requested dissolution from Texas State Comptroller on August 17, 2007. As part of its *Petition*, BEC includes its filings with the Texas State Comptroller.

6. After reviewing the particular circumstances in this case, and per the discretion authorized by Section 504(b) of the Act,<sup>12</sup> and implemented by Section 1.80(i) of the Rules,<sup>13</sup> we conclude that

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<sup>6</sup> *Forfeiture Order*, 22 FCC Rcd at 16747.

<sup>7</sup> *Forfeiture Order*, 22 FCC Rcd at 16747 (citing *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871-76 (2002)).

<sup>8</sup> *Forfeiture Order*, 22 FCC Rcd at 16747 – 16748 (citing *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999)).

<sup>9</sup> See 47 C.F.R. § 1.106(c); *EZ Sacramento, Inc.*, 15 FCC Rcd 18257, (EB 2000), citing *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff’d sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

<sup>10</sup> *EZ Sacramento, Inc.*, 15 FCC Rcd at 18257.

<sup>11</sup> BEC also raises, for the first time, its history of compliance with the Commission’s Rules. Because we are cancelling the forfeiture on other grounds, we do not reach this argument.

<sup>12</sup> 47 U.S.C. § 504(b).

<sup>13</sup> 47 C.F.R. § 1.80(i).

cancellation of the \$8,000 forfeiture is warranted.<sup>14</sup> Nevertheless, we find that it is appropriate to admonish BEC for its willful and repeated violation of Section 73.3526 of the Rules.

#### IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,<sup>15</sup> and Section 1.106 of the Commission's Rules,<sup>16</sup> Broadcast Entertainment Corporation's Petition for Reconsideration, filed October 10, 2007, **IS GRANTED TO THE EXTENT INDICATED HEREIN AND DENIED IN ALL OTHER RESPECTS.**

8. **IT IS FURTHER ORDERED**, pursuant to Section 504(b) of the Communications Act of 1934, as amended ("Act"), and Section 1.81(i) of the Commission's Rules, that the forfeiture in the amount of eight thousand dollars (\$8,000) issued to Broadcast Entertainment Corporation, in the September 11, 2007, Forfeiture Order for willful and repeated violations of Section 73.3526 of the Rules **IS CANCELLED.**

9. **IT IS FURTHER ORDERED** that Broadcast Entertainment Corporation, **IS ADMONISHED** for its willful and repeated violations of Section 73.3526 of the Rules.

10. **IT IS FURTHER ORDERED** that this Order shall be sent by regular mail and by certified mail, return receipt requested, to Broadcast Entertainment Corporation, at its address of record.

#### FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon  
Associate Chief, Enforcement Bureau

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<sup>14</sup> See *Grass Roots Broadcasting, LLC*, 19 FCC Rcd 4018 (EB 2004).

<sup>15</sup> 47 U.S.C. § 405.

<sup>16</sup> 47 C.F.R. § 1.106.