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Washington, D.C. 20554

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In re: **Robert J. and Katherine M. Bohn**
FRN: 0006123392

Station KCNQ(FM)
Kernville, CA
Facility ID 36324
File No. BRH-20061027ACI
NAL/Act. No. MB200741410381

Station KRVQ-FM
Lake Isabella, CA
Facility ID 35856
File No. BRH-20061027ACT
NAL/Act. No. MB200741410380

Station KVLI(AM)
Lake Isabella, CA
Facility ID 35857
File No. BR-20061027ACQ
NAL/Act. No. MB200741410382

Petition for Reconsideration

Dear Counsel:

We have before us a Petition for Reconsideration ("Petition") filed on March 9, 2011, by Robert and Katherine Bohn (collectively, the "Licensees"), licensees of Stations KCNQ(FM), Kernville, California, KRVQ-FM (formerly KVLI-FM), Lake Isabella, California, and KVLI(AM) (formerly KQAB(AM)), Lake Isabella, California (collectively, the "Stations"). The Petition requests reconsideration of two forfeiture orders[1] issued to the Licensees for willfully violating Section 73.3539 of the Commission's Rules ("Rules")[2] and willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended ("Act"),[3] by failing to file a timely license renewal application for, and engaging in unauthorized operation of, each of the Stations. For the reasons stated below, we deny the Petition.

[1] *Robert J. and Katherine M. Bohn,* Forfeiture Order, 26 FCC Rcd 1188 (MB 2011) *("KCNQ Forfeiture Order")*; *Robert J. and Katherine M. Bohn*, Forfeiture Order, 26 FCC Rcd 1192 (MB 2011) ("*KVLI and KQAB Forfeiture Order*").

[2] 47 C.F.R. § 73.3539.

[3] 47 U.S.C. § 301.

Background. On September 25, 2007, the Media Bureau ("Bureau") issued three separate Notices of Apparent Liability for Forfeiture ("*NALs*") to the Licensees, each proposing a forfeiture in the amount of seven thousand dollars ($7,000) for the violations of Section 73.3539 of the Rules and Section 301 of the Act.[4] As noted in the *NALs*, the Licensees' renewal applications were due on August 1, 2005, four months prior to the December 1, 2005, expiration date for the Stations' licenses.[5] The Licensees, however, did not file the applications until October 27, 2006, more than 10 months after the Stations' licenses had expired, and did not seek Special Temporary Authority ("STA") to continue Station operations pending consideration of the renewal applications.

The Licensees submitted three separate responses ("Responses") to the *NAL*s on October 22, 2007, asserting that the proposed forfeitures should be cancelled because: (1) the proposed forfeitures were excessive compared to forfeiture amounts issued to other licensees for similar violations; (2) the violations did not adversely affect the public interest; and (3) the Licensees' failure to timely file the renewal applications was partially due to difficulties with the Commission's electronic filing system. On February 8, 2011, the Bureau rejected the Licensees' arguments and issued two separate forfeiture orders for a total forfeiture amount of twenty one thousand dollars ($21,000).[6]

On March 9, 2011, the Licensees filed the instant Petition.[7] They repeat their argument from the Responses that the forfeitures should be rescinded because the forfeiture amount is inconsistent with *Melody Music, Inc. v. FCC,*[8] asserting that "in numerous similar cases of the failure of a Broadcast licensee to file a timely license renewal application, the Commission has found appropriate a forfeiture of from five hundred to seven hundred fifty dollars."[9] They also argue that: (1) assessing the Licensees a larger forfeiture than is issued to certain licensees who file their untimely renewal applications closer in time to the license expiration date was "arbitrary and capricious" because the Bureau "did not reference any standard for determining the rate at which a forfeiture should be increased based on the period of time elapsing between license expiration and the filing of a renewal application";[10] and (2) the Bureau must

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[4] *Robert J. and Katherine M. Bohn*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 17291 (MB 2007) ("*KCNQ(FM) NAL*"); *Robert J. and Katherine M. Bohn*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 17295 (MB 2007) ("*KVLI-FM NAL*"); *Robert J. and Katherine M. Bohn*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 17298 (MB 2007)("*KQAB(AM) NAL*"). Each *NAL* proposed the full $3,000 base forfeiture amount for the failure to file a timely renewal application violation, but reduced the proposed forfeiture for the unauthorized operation violation from the $10,000 base amount to $4,000.

[5] See 47 C.F.R. §§ 73.1020, 73.3539(a).

[6] *KCNQ Forfeiture Order*, 26 FCC Rcd at 1191 (issuing $7,000 forfeiture); *KVLI and KQAB Forfeiture Order*, 26 FCC Rcd at 1195 (issuing $14,000 forfeiture).

[7] Petition at 1.

[8] *Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965) (finding that the Commission must treat similar violations in a similar manner).

[9] Petition at 1; Response at 2, citing *American River Folk Society*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 17639 (MB 2007) (issuing a proposed forfeiture of $500 where LPFM licensee failed to timely file a license renewal application for the station and engaged in unauthorized operation of the station after its license had expired); *Roswell Interarts Organization*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 11931 (MB 2007) (issuing a proposed forfeiture of $500 where FM translator licensee failed to timely file a license renewal application for the station and engaged in unauthorized operation of the station after its license had expired); *Educational Radio Foundation of East Texas, Inc*., Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 11449 (MB 2007) (same).

[10] Petition at 3-4.

consider the justice of its action, which impairs the Licensees' ability to continue to serve their communities with entertainment and information programming that is not otherwise available.[11]

Discussion. Reconsideration is warranted only if the petitioner sets forth a material error of fact or law, or presents new facts not known or existing until after the petitioner's last opportunity to present such matters.[12] Moreover, a petition for reconsideration that merely reiterates arguments previously considered and rejected will be denied.[13]

With respect to the Licensees' first claim that we should rescind the forfeitures under *Melody Music*, the Bureau previously rejected this argument in the two *Forfeiture Orders*, holding that a seven thousand dollar ($7,000) forfeiture is standard for a licensee who fails to timely file a license renewal application and engages in unauthorized operation of a full-service station,[14] and the cases the Licensees cited in which the Bureau reduced the forfeiture of licensees committing similar violations contained mitigating circumstances not present in the current cases.[15] Because Licensees raise an argument already considered and rejected, it will not be reexamined.[16]

Next, the Licensees argue that levying a larger forfeiture against the Licensees than against certain licensees who file their untimely renewal applications closer in time to the violation was "arbitrary and capricious."[17] We reject this argument. Under Section 503(b)(2)(E) of the Act and Section 1.80(b)(4) of the Rules,[18] the Bureau has the discretion to adjust the proposed forfeiture based on the "nature, circumstances, extent, and gravity of the violation." In keeping with this discretion, however, the

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[11] *Id.* at 4.

[12] *See WWIZ, Inc*., Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

[13] *Id.*

[14] *KCNQ Forfeiture Order*, 26 FCC Rcd at 1189, and *KVLI and KQAB Forfeiture Order*, 26 FCC Rcd at 1193, citing *Hawkins Broadcasting Company*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4497 (MB 2007) (issuing a proposed forfeiture of $7,000 where licensee failed to timely file a license renewal application for the station and engaged in unauthorized operation of the station after its license had expired); *Detroit Lakes Broadcasting Company, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 16820 (MB 2007) (same); *WBLB, Inc*., Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 7522 (MB 2007) (same).

[15] Specifically, the Bureau noted that cases in which the Bureau issued a forfeiture below the base amount for a late filing violation were inapposite because they involved either: (1) licensees who were providers of secondary FM service; or (2) licensees that filed their renewal applications within two days after the expiration of their station license. *See KCNQ Forfeiture Order*, 26 FCC Rcd at 1188-89, citing *Christian Radio Translator Association/Salmon, Inc*., Forfeiture Order, 24 FCC Rcd 11288 (MB 2009); *Soul's Harbor Assembly of God Church*, Forfeiture Order, 24 FCC Rcd 8406 (MB 2009); *University of Southern Mississippi*, Memorandum Opinion & Order, 22 FCC Rcd 5609 (MB 2007); *see also KVLI and KQAB Forfeiture Order*, 26 FCC Rcd at 1193-94, citing *Christian Radio Translator Association/Salmon, Inc.*, Forfeiture Order, 24 FCC Rcd 11288 (MB 2009); *Soul's Harbor Assembly of God Church*, Forfeiture Order, 24 FCC Rcd 8406 (MB 2009); *University of Southern Mississippi*, Memorandum Opinion & Order, 22 FCC Rcd 5609 (MB 2007).

[16] *See WWIZ, Inc.*, 37 FCC at 686 (Commission has no duty to debate for a second time matters on which it has already deliberated and spoken).

[17] Petition at 3-4.

[18] 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(b)(4).

Bureau consistently has assessed the full three thousand dollar ($3,000) base forfeiture amount for licensees who, as here, file their renewal applications more than thirty days after the expiration of their licenses.[19]

Finally, the Licensees maintain that the Bureau should cancel the forfeitures because the "family-owned, locally-operated" Stations "serve their communities of license with entertainment and informational programming which is not otherwise available as a first service to the community" and the Orders "are devoid of any indication that the Bureau considered the justice of impairing the [Licensees'] ability to continue providing service to these remote communities located in mountains."[20] We interpret this argument to mean the Bureau should cancel the forfeitures because paying them would represent a financial hardship to the Licensees and the Licensees serve their communities of license. Again, we disagree. Licensees do not claim and provide no documentation to support an argument that they are unable to pay the forfeitures. While we recognize that the Stations have served their communities, such service does not excuse Rule violations.[21] Rather, serving a station's community of license in the public interest is a fundamental requirement under the Act for all broadcast licensees.[22]

Conclusion/Actions. Accordingly, IT IS ORDERED THAT the Petition for Reconsideration filed on June 16, 2009, by Robert J. and Katherine M. Bohn, IS DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division

cc: Robert J. and Katherine M. Bohn

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[19] *See, e.g., Cornell College*, Forfeiture Order, 25 FCC Rcd 14322, 14322 (MB 2010) (issuing full $3,000 base forfeiture amount to licensee for failing to timely file license renewal application when licensee submitted license renewal application on March 9, 2005, more than 30 days after the February 1, 2005, expiration date); *MM&K of Alva, Inc.*, Forfeiture Order, 26 FCC Rcd 1141 (MB 2010) (issuing full $3,000 base forfeiture amount to licensee for failing to timely file license renewal application when licensee submitted license renewal application on July 19, 2006, more than 30 days after the June 1, 2005, expiration date); *Meade County Communications, Inc*., Forfeiture Order, 24 FCC Rcd 7546, 7546 (MB 2009) (issuing full 3,000 base forfeiture amount to licensee for failing to timely file license renewal application when licensee submitted license renewal application on April 12, 2005, more than 30 days after the August 1, 2004 expiration date).

[20] Petition at 4.

[21] *See, e.g., Thousand Islands Corp.*, Memorandum Opinion & Order, 47 FCC 2d 264, 266 (1974) ("licensees are expected to make continued efforts to serve the community to which they are licenses and will not be relieved of liability for violations by the fact that they fulfill their responsibility to serve their communities"). Indeed, every Station must serve the public interest to warrant renewal of its license. *See* 47 U.S.C. § 309(k). The Bureau already made the finding that the Stations served the public interest in granting the Stations' license renewal applications and, therefore, whether the Stations serve their respective communities is not at issue here.

[22] *See KCNQ(FM) NAL*, 26 FCC Rcd at 17293 (granting renewal where station had served the public interest, convenience, and necessity during it subject license term); *KVLI-FM NAL*, 22 FCC Rcd at 17297 (same); *KQAB(AM) NAL*, 22 FCC Rcd at 17300 (same).