

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

In re Application of)	
)	
South Seas Broadcasting, Inc.)	Facility ID No. 54768
)	NAL/Acct. No. MB200741410375
For Renewal of License for)	FRN: 0006947618
Station DWVUV(AM), Leone,)	File No. BR-20050928ADD
American Samoa)	

MEMORANDUM OPINION AND ORDER

Adopted: December 3, 2012

Released: December 4, 2012

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Order, we address a petition for reconsideration (“Petition”), filed by South Seas Broadcasting, Inc. (“Licensee”), former licensee of DWVUV(AM), Leone, American Samoa (“Station”). Licensee seeks reconsideration of an eighteen thousand dollar (\$18,000) forfeiture issued by the Media Bureau¹ (“Bureau”) for: (1) Licensee’s willful and repeated violation of Section 73.1350 of the Commission’s Rules (“Rules”), by operating the Station at variance from the terms of its authorization;² (2) Licensee’s willful and repeated violation of Section 73.1740 of the Rules, by leaving the Station silent without proper authority;³ and (3) Licensee’s willful and repeated violation of Section 73.1015 of the Rules, by failing to respond to Commission communications.⁴ For the reasons set forth below, we deny reconsideration.

II. BACKGROUND

2. On April 16, 2008, the Bureau issued a *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (“NAL”)⁵ proposing a monetary forfeiture of \$18,000 for the above violations. Licensee responded to the NAL,⁶ and claimed that reduction or cancellation of the forfeiture was warranted because: (1) Licensee did not violate Section 73.1740 because it did not know it needed to request Special Temporary Authority (“STA”) to remain silent;⁷ (2) Licensee’s violation of Section 73.1350 was mitigated by the fact “that there was not sufficient time” to request STA before operating the

¹ *South Seas Broadcasting, Inc.*, Forfeiture Order, 27 FCC Rcd 4151 (MB 2012) (“*Forfeiture Order*”).

² 47 C.F.R. § 73.1350.

³ 47 C.F.R. § 73.1740.

⁴ 47 C.F.R. § 73.1015.

⁵ *South Seas Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 23 FCC Rcd 6474, 6474 (MB 2008) (“*NAL*”).

⁶ “Petition for Reconsideration of Notice of Apparent Liability for Forfeiture and Opposition to Application for Review,” filed May 27, 2008 (“*Response*”).

⁷ *Id.* at 2.

Station at variance from its license;⁸ (3) Licensee's failure to request STA was "mere oversight" and therefore its violation of 73.1740 was not "willful" or "repeated;"⁹ (4) Licensee should have been commended for operating at variance from its license, instead of fined;¹⁰ (5) Licensee did not violate 73.1350 because it did not knowingly interfere with any other licensed facility's broadcasting operations;¹¹ (6) Licensee did not violate Section 73.1015 because it never failed to respond to the Commission's correspondence;¹² (7) Licensee had a history of compliance with the Rules and a history of public service to American Samoa;¹³ (8) payment of the forfeiture would be a financial burden;¹⁴ and (9) the Commission had unfairly discriminated against Licensee in the enforcement of its Rules.¹⁵

3. In the *Forfeiture Order*, the Bureau rejected all of these arguments and declined to reduce the forfeiture.¹⁶ Licensee's Petition now repeats these arguments, sometimes verbatim, and, argues for the first time that reduction is warranted based on the financial burden the forfeiture would place on Licensee's ability to service American Samoa through its other broadcast stations,¹⁷ and on the difficult circumstances of operating the Station in American Samoa.

III. DISCUSSION

4. A petition for reconsideration that simply reiterates previously rejected arguments will be denied.¹⁸ To the extent that the Petition repeats arguments which were rejected in the *Forfeiture Order*, it is summarily denied.

5. Arguments in a petition for reconsideration being raised for the first time will be considered only if they are based on changed circumstances or additional facts not known or existing at the time of petitioner's last opportunity to present such matters, or if consideration of such arguments is required to serve the public interest.¹⁹ The Petition raises two such "first time" arguments: it first argues that imposing the forfeiture "would be contrary to the public interest" because it would take financial

⁸ *Id.* at 3.

⁹ *Id.* at 4.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 5.

¹³ *Id.* at 6-8.

¹⁴ *Id.* at 8.

¹⁵ *Id.* at 8-9. In support of this last argument, Licensee enumerated several alleged Rule violations occurring at Station KJAL(AM), Tafuna, American Samoa, contending that the Commission has never acted on this "hotbed of rule violations." *Id.* at 9. In the instant Petition, Licensee argues that the *NAL* failed to acknowledge these enumerated violations, again arguing that the Commission has inconsistently enforced its Rules. However, Licensee's claims against KJAL were unsupported by any factual showing and were thus properly rejected.

¹⁶ *Forfeiture Order*, 27 FCC Rcd at 4156.

¹⁷ Petition at 7. Licensee is the licensee of KKHJ(FM), Pago Pago, American Samoa; KKHJ(LP), Pago Pago, American Samoa; and WVUV(FM), Fagaitua, American Samoa.

¹⁸ See, e.g., *Saga Communications of Illinois, LLC*, Memorandum Opinion and Order, 26 FCC Rcd 5958, 5959 (MB 2011) (rejecting an argument from a petition for reconsideration because it did not raise any new information reflecting changed circumstances, did not present additional facts not known at the time of the last filing, and did not attempt to show anything more than a disagreement with the Commission's finding).

¹⁹ See 47 C.F.R. § 1.106(c).

resources away from Licensee's other broadcasting operations in American Samoa,²⁰ second, it argues that the difficulty of operating a radio station in the "far-flung South Pacific Territory of American Samoa" warrants a reduction of the forfeiture.²¹ Because both of these arguments are based on circumstances that existed when Licensee filed its Response and were not raised therein, and because the public interest does not require their consideration, we will deny reconsideration.

IV. ORDERING CLAUSES

6. Accordingly, for the reasons discussed above, IT IS ORDERED, that the Petition for Reconsideration filed by South Seas Broadcasting, Inc., on May 23, 2012, IS DENIED.

7. IT IS ALSO ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,²² that South Seas Broadcasting, Inc. IS LIABLE FOR A MONETARY FORFEITURE in the amount of eighteen thousand dollars (\$18,000) for willfully and repeatedly violating Sections 73.1350, 73.1740, and 73.1015 of the Commission's Rules.

8. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Memorandum Opinion and 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.²³ Payment of the proposed 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 in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).²⁴ Licensee will also send electronic notification on the date said payment is made to alex.polley@fcc.gov and kelly.donohue@fcc.gov. Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, DC 20554.²⁵

²⁰ This argument is essentially asking for a reduction based on financial hardship. Licensee's operation of other stations is within its discretion and does not present the Bureau with a special circumstance justifying a reduction in the forfeiture amount. *See, e.g., Board of Trustees, Davis & Elkins College*, Memorandum Opinion and Order, 26 FCC Rcd 15555, n. 15 (MB 2011) (rejecting college's argument that paying forfeiture would delay planned projects, which would harm the public interest). Furthermore, without any evidence of Licensee's financial status, the Bureau cannot reduce the forfeiture in response to Licensee's claim of inability to pay. *See NAL*, 23 FCC Rcd at 6481, ¶ 24. While Licensee claims that it has submitted tax returns with its Petition, no such documents have ever been received by the Bureau.

²¹ Petition at 3, 4. Licensee cites as mitigating circumstances for its violations the difficulties of travelling to American Samoa from the continental United States, the tropical weather, and the lack of repair parts and qualified personnel "on-island." These claims are unsupported by any factual showing. Even if they were properly supported, such claims would involve matters that the Licensee knew or should have known when it assumed the responsibilities of serving as a Commission licensee for the Station.

²² 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

²³ 47 U.S.C. § 504(a).

²⁴ *See* 47 C.F.R. § 1.1914.

²⁵ *Id.*

9. IT IS FURTHER ORDERED, that a copy of this Memorandum Opinion and Order shall be sent by Certified Mail Return Receipt Requested, to South Seas Broadcasting, Inc., c/o Larry Fuss, 9408 Grand Gate Street, Las Vegas, NV 89143.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau