

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

In the Matter of	)	
	)	
Channel 51 of San Diego, Inc.	)	File No.: EB-04-TC-067
Licensee of KUSI-TV	)	Facility ID No.: 10238
San Diego, CA	)	NAL/Acct. No.: 200532170007
	)	FRN: 0002965655
Apparent Liability for Forfeiture	)	

**ORDER**

**Adopted: March 16, 2012**

**Released: March 16, 2012**

By the Chief, Enforcement Bureau:

1. On September 17, 2008, the Enforcement Bureau (Bureau) issued a forfeiture order against Channel 51 of San Diego, Inc., Licensee of KUSI-TV (KUSI).<sup>1</sup> In the *Forfeiture Order*, the Bureau found that KUSI had violated Section 713 of the Communications Act of 1934, as amended (Act),<sup>2</sup> and Section 79.2(b)(1)(i) of the Commission's rules,<sup>3</sup> and imposed a forfeiture of \$25,000 for these violations.

2. On October 17, 2008, KUSI filed an Application for Review of the *Forfeiture Order*.<sup>4</sup> On January 9, 2009, KUSI filed a Supplement to its Application for Review, arguing for the first time in the administrative proceeding that it was not liable for a forfeiture because the Bureau's action was inconsistent with Section 503(b)(6) of the Act.<sup>5</sup> In addition, after the Bureau issued the *Forfeiture Order*, the United States filed a complaint against KUSI to recover the forfeiture. KUSI filed a motion to dismiss, which the court granted on March 16, 2010.<sup>6</sup>

3. After careful review of the facts and circumstances, we conclude that it is appropriate to treat KUSI's Application for Review as a Petition for Reconsideration of the

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<sup>1</sup> *Channel 51 of San Diego, Inc.*, Forfeiture Order, 23 FCC Rcd 13488 (Enf. Bur. 2008) (*Forfeiture Order*).

<sup>2</sup> 47 U.S.C. § 613.

<sup>3</sup> 47 C.F.R. § 79.2(b)(1)(i).

<sup>4</sup> Application for Review filed by Channel 51 of San Diego, Inc., Licensee of KUSI-TV, San Diego, CA (Oct. 17, 2008).

<sup>5</sup> Supplement to Application for Review by Channel 51 of San Diego, Inc., Licensee of KUSI-TV, San Diego, CA (Jan. 9, 2009).

<sup>6</sup> *United States v. Channel 51 of San Diego, Inc., Licensee of KUSI-TV San Diego, CA*, No. 08-CV-01978 (S.D. Cal. Mar. 16, 2010).

*Forfeiture Order*.<sup>7</sup> Accordingly, we will grant that portion of KUSI's petition that is consistent with the court's dismissal order and will dismiss as moot all other portions of the petition.

4. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Sections 4(i) and 504(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 (i), 504(b); and Sections 0.111, 0.311, 1.80(f)(4), 1.80(i), and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 1.80(i), the *Forfeiture Order* **IS CANCELED**.

5. **IT IS FURTHER ORDERED** that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405; and Sections 0.111, 0.311, and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, 1.106, the Application for Review, filed on October 17, 2008, by Channel 51 of San Diego, Inc., Licensee of KUSI-TV, San Diego, California, with respect to File No. EB-04-TC-067, is **GRANTED IN PART AND DISMISSED AS MOOT IN PART**.

6. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class Mail and Certified Mail, Return Receipt Requested, to J. Brian DeBoice, Esq., Cohn and Marks LLP, 1920 N Street, N.W., Suite 300, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau

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<sup>7</sup> In its application for review pleadings, KUSI raised certain new legal issues that it had not advanced before the Enforcement Bureau. Section 1.115(c) of the Commission's rules, 47 C.F.R. § 1.115(c), states that an application for review of an action taken by one of the Commission's bureaus on delegated authority will be denied if the application relies on new questions of fact or law that the delegated authority did not have an opportunity to pass. The same section, however, notes that such new questions may be presented in a petition for reconsideration. Under the circumstances in this case, we believe it would conserve administrative resources to treat KUSI's Application for Review as a Petition for Reconsideration, and we do so on our own motion. *See, e.g.*, Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to Malcolm Steveson, Esq., 25 FCC Rcd 17042 (Media Bur. 2010) (treating an application for review that raised new arguments that had not been presented to the delegated authority as a petition for reconsideration).