



Federal Communications Commission
Washington, D.C. 20554

July 28, 2011

Barry A. Friedman, Esq.
Thompson Hine LLP
1920 N Street, N.W.
Washington, D.C. 20036-1600

Re: Alleged ex parte violation

Dear Mr. Friedman:

This responds to your letter of February 15, 2008,¹ on behalf of Appaloosa Broadcasting Company (Appaloosa), Inc., in which you alleged that Brad Staman, the General Director of Christian Media, Inc. (CMI) violated the Commission's ex parte rules by soliciting impermissible ex parte letters from members of Congress in violation of 47 C.F.R. §§ 1.1208 and 1.1210.² The letters, which were not served on Appaloosa, were written by Senator E. Benjamin Nelson, Representative Adrian Smith, and former Senator Chuck Hagel, and concerned Appaloosa's application to modify the license of Station KIMX(FM), Laramie, Wyoming (File No. BPH-20070822AAL).³ Because approval of Appaloosa's application would necessitate modification of CMI's license for Station KCFM(FM), Terrytown, Nebraska, CMI opposed Appaloosa's application.⁴ The three congressional letters each forwarded a letter from Mr. Staman supporting CMI's position and asking for the member's assistance.

Appaloosa's complaint asserts that Mr. Staman clearly solicited the three congressional ex parte presentations in violation of 47 C.F.R. §§ 1.1208 and 1.1210, inasmuch as his letters urged the members to help secure the denial of Appaloosa's application.⁵ Appaloosa asked the Commission to levy sanctions against CMI, including disqualification from further participation in the proceeding.⁶

¹ See Letter from Barry A. Friedman to Joel Kaufman, Esq., Associate General Counsel (Feb. 15, 2008) (Complaint).

² Section 1.1208 prohibits ex parte presentations in restricted proceedings. Section 1.1210 provides that "[n]o person shall solicit or encourage others to make any improper presentation under the provisions of this section."

³ See Letters from Joel Kaufman, Associate General Counsel to the listed members of Congress (Jan. 25, Jan 31, Feb. 7, 2008). The Office of General Counsel determined that the KIMX(FM) proceeding is restricted for purposes of the ex parte rules.

⁴ See Letter from Rodolfo F. Bonacci, Assistant Chief, Audio Division to Christian Media Incorporated (Oct. 23, 2009) (notifying CMI that its license was being modified).

⁵ See Complaint at 1.

⁶ See *id.* at 2; see also 47 C.F.R. § 1.1216 (potential sanctions for violation of the ex parte rules).

CMI initially responded by asking the Commission to stay consideration of Appaloosa's complaint, because Appaloosa and CMI were engaged in negotiations to settle the underlying proceeding.⁷ However, on June 6, 2011, Appaloosa's counsel informed the Commission that the matters under negotiation had not been resolved and asked the Commission to resume consideration of the ex parte complaint.⁸ The Office of General Counsel then solicited CMI's comments on the merits of the ex parte complaint.⁹

In its response, CMI does not dispute that Mr. Staman's action violated the Commission's rules.¹⁰ Instead, CMI cites two purportedly mitigating circumstances. First, CMI indicates that, although CMI's governing board discussed the possibility of contacting members of Congress, they did not authorize Mr. Staman to do so.¹¹ According to the response, CMI terminated Mr. Staman's employment in February 2008, in part because of "his actions in the instant proceeding." CMI states that its remaining staff was instructed not to take any further actions to contact Congress and that none have taken place.¹² Second, CMI contends that no prejudice resulted from the congressional letters. CMI points out that the Commission's Office of General Counsel informed the parties [in early 2008] that the congressional letters would not be made part of the record.¹³ CMI also points out that the Media Bureau granted Appaloosa's application in October 2009, and that there is no indication that the Media Bureau staff was even aware of the congressional contacts when it did so.¹⁴ In view of the foregoing, CMI asserts that there is no justification for imposing the sanctions that Appaloosa seeks.¹⁵

The intentional solicitation of prohibited ex parte contacts by Mr. Staman, which CMI does not deny, constitutes a serious violation of the Commission's rules for which CMI is responsible as his employer.¹⁶ Accordingly, we are referring this matter to the Commission's Enforcement Bureau (EB) to determine whether a forfeiture is warranted.¹⁷ We are not,

⁷ See Letter from Lee G. Petro to Joel Kaufman, Associate General Counsel (Mar. 7, 2008).

⁸ See Letter from Barry A. Friedman to Joel Kaufman, Esq. (Jun. 6, 2011).

⁹ See Letter from Joel Kaufman to Lee G. Petro, Esq. (Jun. 14, 2011).

¹⁰ See Letter from Lee G. Petro to Joel Kaufman, Esq. (Jun. 28, 2011) (Petro Letter).

¹¹ CMI states that Mr. Staman was an employee rather than a principal of CMI. *See id.* at 1. Appaloosa responds that Mr. Staman was "General Director" of CMI not a "mere employee." *See* Letter from Barry A. Friedman to Joel Kaufman, Esq. (June 29, 2011).

¹² *See* Petro Letter at 1.

¹³ *See id.* at 2.

¹⁴ *See id.* CMI's petition for reconsideration of the grant is currently pending. *See id.* at 1.

¹⁵ *See id.* at 2-3.

¹⁶ *See Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863-64 (2002) (holding that licensees are responsible for the acts and omissions of their employees and independent contractors and that the Commission does not excuse licensees from forfeitures where the actions of employees or independent contractors result in violations).

¹⁷ *See* 47 C.F.R. §§ 0.111(a), 0.251(g).

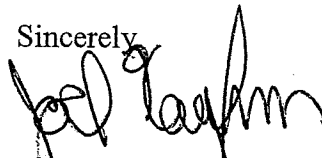
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however, prepared at this time to adopt Appaloosa's suggestion that Mr. Staman's violation of 47 C.F.R § 1.1210 warrants the extremely serious sanction of barring CMI from further participation in the proceeding. We will not bar CMI from further participation in the proceeding at this time given the apparent fact that no prejudice resulted from the congressional contacts because OGC instructed that the contacts not be placed in the record and because Appaloosa's application was in fact granted.

We will defer any further consideration of this question until EB has examined the circumstances of this case.

Sincerely,



Joel Kaufman
Associate General Counsel and Chief,
Administrative Law Division
Office of General Counsel

cc:

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