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

In the Matter of	)	
	)	
KASA Radio Hogar, Inc.	)	File No. EB-00-SD-295
	)	
Licensee of Station KDAP(AM)	)	NAL/Acct. No. 200132940002
	)	
Douglas, Arizona	)	FRN 0004-3246-87

MEMORANDUM OPINION AND ORDER

Adopted: March 22, 2002 **Released: March 27, 2002**

By the Commission:

INTRODUCTION

1. In this *Memorandum Opinion and Order* ("*Order*"), we deny an application for review filed by KASA Radio Hogar, Inc. ("KASA Radio"), licensee of Radio Station KDAP(AM), of the *Memorandum Opinion and Order* ("*MO&O*")[1] issued by the Enforcement Bureau in this proceeding. Pursuant to Section 503(b) of the Communications Act of 1934, as amended ("the Act"),[2] and Section 1.80 of the Commission's Rules ("the Rules"), the Enforcement Bureau found KASA Radio liable for a monetary forfeiture in the amount of $15,000 for willful violation of the following sections of the Rules: 73.54(d) (failure to provide a copy of the station's antenna resistance and reactance measurements during an inspection); 73.1350(c)(1) (failure to have the proper monitoring equipment installed at the duty operator position); 73.1590(a)(6) (failure to conduct annual equipment performance measurements); and 73.3526(a)(2) (failure to maintain a public inspection file).[3] For the reasons stated below, we deny KASA Radio's application for review.

BACKGROUND

2. On November 17, 2000, the FCC's San Diego, California Field Office ("San Diego Office") conducted an inspection of Radio Station KDAP(AM) in Douglas, Arizona, after it received information from the Enforcement Bureau's High Frequency Direction Finding Center that KDAP(AM)'s carrier frequency measurement exceeded the frequency tolerance in violation of Section 73.44(b) of the Rules. The inspection revealed 10 different rule violations, including the violation of Section 73.44(b). On December 19, 2000, the District Director of the San Diego Office issued a Notice of Violation ("NOV") for the violations. On January 26, 2001, KASA Radio submitted a response to the NOV. On February 15, 2001, the District Director of the San Diego Office issued a *Notice of Apparent Liability for*

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[1] *KASA Radio Hogar, Inc.*, 16 FCC Rcd 16160 (Enf. Bur. 2001).

[2] 47 U.S.C. э 503(b).

[3] 47 C.F.R. §§ 73.54(d), 73.1350(c)(1), 73.1590(a)(6), 73.3526(a)(2).

Forfeiture ("*NAL*")[4] to KASA Radio for the rule violations referenced in paragraph one above. On February 16, 2001, KASA Radio submitted a supplement to its January 26, 2001 response to the NOV.

3. After being granted an extension of time to respond to the *NAL*, KASA Radio submitted its response to the *NAL* on April 19, 2001. In its response, KASA Radio did not dispute the violations. Rather, it sought rescission or reduction of the forfeiture amount because of KDAP(AM)'s financial condition. On June 7, 2001, the Enforcement Bureau issued a *Forfeiture Order*[5] in which it denied KASA Radio's request and imposed the full forfeiture amount of $15,000. On July 6, 2001, KASA Radio filed a Petition for Reconsideration ("Petition") of the *Forfeiture Order*. In its Petition, KASA Radio again argued that the forfeiture amount was beyond KDAP(AM)'s ability to pay and requested the Enforcement Bureau to reconsider its action taken in the *Forfeiture Order.* On September 4, 2001, the Enforcement Bureau issued a *MO&O* in which it denied KASA Radio's Petition and rejected its request for rescission or reduction of the forfeiture based on KASA Radio's purported inability to pay. In response to the *MO&O*, KASA Radio filed an application for review on October 4, 2001. In its application for review, KASA Radio still does not dispute the violations, but it argues that it had either remedied or taken steps to remedy the violations as soon as possible. Again, as it asserted in its Petition, KASA Radio contends that the Commission is not required by any law or regulation to weigh the financial information for all of a licensee's operations in determining whether a proposed forfeiture should be reduced because of a licensee's inability to pay. Also, as it argued in its Petition, KASA Radio contends that revenues at KDAP(AM), which KASA Radio characterizes as a "non-profit organization," are insufficient to permit payment of the forfeiture. KASA Radio further argues that even if the Commission concludes that the Bureau properly insisted on considering KASA Radio's financial information, the forfeiture would still prove to be excessive given KASA Radio's financial condition. Finally, KASA Radio also asserts that imposition of the forfeiture could threaten a critical service to listeners in the Douglas, Arizona area.

DISCUSSION

4. KASA Radio contends that the Commission is not required by any law or regulation to weigh the financial information for all of a licensee's operations in determining whether a proposed forfeiture should be reduced because of a licensee's inability to pay. Regardless of whether the Commission is required to look at consolidated operations for this purpose, its policy is to do so. In determining an appropriate forfeiture amount, Section 503(b)(2)(D) of the Act[6] requires the Commission to consider a violator's ability to pay. In this case, the violator is the licensee. We are also guided by our established precedent in making such determinations. The Commission has stated that Section 503(b)(2)(D) requires us to consider a licensee's ability to pay in determining an appropriate forfeiture amount.[7] Further, the Commission has determined that, in general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.[8] The Commission has also concluded that it is appropriate to

[4] *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200132940002 (Enf. Bur., San Diego Office, released February 15, 2001).

[5] *KASA Radio Hogar, Inc.,* 16 FCC Rcd 11934 (Enf. Bur. 2001).

[6] 47 U.S.C. § 503(b)(2)(D).

[7] *See Emery Telephone*, 15 FCC Rcd 7181, 7185 (1999).

[8] *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992).

take into account "*income derived from other affiliated operations*, as well as the financial status of the station(s) in question."[9] As the Common Carrier Bureau stated in *Hinton Telephone Company of Hinton, Oklahoma*:

> reviewing the data for consolidated operations rather than financial data limited to just [one station] accurately portrays whether a licensee can pay a proposed forfeiture. Our determination of a licensee's ability to pay should reflect whether the licensee in general is financially capable of paying a forfeiture, not whether financial data from a limited portion of its operations can sustain a forfeiture.

7 FCC Rcd 6643, 6644 (CCB 1992), *review denied*, 8 FCC Rcd 5176 (1993). Thus, as the Enforcement Bureau correctly pointed out, it is the Commission's general policy to consider the financial condition of a licensee's consolidated operations, not just the financial condition of an individual station or a limited portion of its operations. For the reasons quoted above, this policy makes good sense, and we follow it here.

5. KASA Radio also contends that *Hinton* is inapposite precedent because it involved a telephone company, not a broadcast station, and because the public interest aspects of the cases are different. We reject KASA Radio's argument. We think that *Emery Telephone* and *Hinton* supply applicable precedent. The Commission has stated that the guidelines for base forfeiture amounts will not reflect distinctions based on the traditional classification of broadcast, common carrier, and other services.[10] We see no basis for subjecting inability to pay claims filed by broadcast licensees to a different standard than that applied to common carriers. Thus, consistent with *Emery Telephone and Hinton*, we will analyze the financial condition of KASA Radio, not that of KDAP(AM), to determine whether KASA Radio can pay the forfeiture imposed.

6. KASA Radio next points to the case of *Hill Country Radio, Inc.*[11] to support its contention. Relying on this case, it argues that the financial information of an entire enterprise is generally evaluated only where violations are common to multiple sections of the enterprise or to the enterprise as a whole. We agree with the Enforcement Bureau that KASA Radio's reliance on *Hill Country Radio, Inc.* is misplaced. In *Hill Country Radio, Inc.*, the Mass Media Bureau issued four separate NALs to Hill Country Radio for engaging in unauthorized transfers of control of the four radio stations licensed to it. As was the case here, in assessing the inability to pay claim, the Mass Media Bureau evaluated the *licensee's* financial condition and not that of each individual station. Indeed, that case does not even address the issue KASA Radio raises here – whether an inability to pay claim should be evaluated based on the condition of an individual station or the company when only one station is involved in the violation.

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[9] *Emery Telephone*, 13 FCC Rcd 23854, 23859-60 (1998) (emphasis added), *recon. denied*, 15 FCC Rcd 7181 (1999).

[10] *See The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, at 17097-17098 (1997), *recon. denied*, 13 FCC Rcd 303 (1999).

[11] 14 FCC Rcd 17708 (MMB 1999).

7. Alternatively, KASA Radio argues that even if the Commission concludes that the Bureau properly insisted on considering the licensee's financial information, rather than that of the station, the forfeiture would still prove to be excessive because of the financial condition of KASA Radio. KASA Radio, however, has never provided any information concerning its revenues or income as a whole.[12] Therefore, we have no justification for reducing the forfeiture based upon KASA Radio's claim of inability to pay. Further, even though KASA Radio states that imposition of this forfeiture may threaten its ability to serve the Douglas, Arizona area, we have held that, consistent with our holding in *PJB Communications*, we will not find that a forfeiture will threaten a licensee's ability to serve the public unless a comparison of the forfeiture amount with the licensee's gross receipts shows that such a threat exists.[13] Again, in this case, we can not make such a comparison because KASA Radio has not provided us with its financial documentation.

8. Finally, KASA Radio asserts that because it expeditiously remedied or took steps to remedy the violations at KDAP(AM), the forfeiture should have been rescinded or reduced. Corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations.[14]

9. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 1.115(g) of the Rules,[15] KASA Radio Hogar's application for review of the Enforcement Bureau's *Memorandum Opinion and Order* for NAL No. 200132940002 **IS** hereby **DENIED.**

10. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Act[16] and Section 1.80 of the Rules,[17] KASA Radio Hogar, Inc. shall pay the amount of fifteen thousand dollars ($15,000) for the above-stated violations within 30 days of the release date of this Order. Payment may be made by check or money order, drawn on a U.S. financial institution, payable to the Federal Communications Commission. The remittance should be marked "NAL/Acct. No. 200132940002, FRN 0004-3246-87" and mailed to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. 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.[18] Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 Twelfth Street, S.W., Washington, D.C. 20554.[19]

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[12] KASA Radio stated in its application for review that it would provide supplemental information concerning the income of KASA Radio as a whole. However, it has never provided this information.

[13] *Id.* at 7185.

[14] *See Seawest Yacht Brokers DBA San Juan Marina Friday Harbor, Washington*, 9 FCC Rcd 6099 (1994).

[15] 47 C.F.R. э 1.115(g).

[16] 47 U.S.C. § 503(b).

[17] 47 C.F.R. § 1.80.

[18] 47 U.S.C. э 504(a).

[19] 47 C.F.R. э 1.1914.

11. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to Paul Brown, Esq., counsel for KASA Radio Hogar, Inc., at Wood, Maines & Brown, 1827 Jefferson Place, NW, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary