

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

In the Matter of)	EB Docket No. 06-163
)	
TERRY KEITH HAMMOND)	
)	
Application For Renewal of)	Facility ID No. 81640
License for Station KBKH(FM))	EB-03-IH-0130
Shamrock, Texas)	File No. BRH-20050401AAA

**ORDER TO SHOW CAUSE,
NOTICE OF OPPORTUNITY FOR HEARING,
and
HEARING DESIGNATION ORDER**

Adopted: August 17, 2006

Released: September 15, 2006

By the Commission:

I. INTRODUCTION

1. By this *Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order*, we commence a hearing proceeding to determine whether Terry Keith Hammond (“Hammond”), licensee of Station KBKH(FM), Shamrock, Texas, is qualified to be and remain a Commission licensee, whether Hammond’s license for Station KBKH(FM) should be revoked, and whether Hammond’s captioned application for renewal of the station’s license should be granted.¹ This proceeding will also determine whether a forfeiture should be imposed against Hammond for willfully or repeatedly failing to comply with the terms of his license for Station KBKH(FM) and for willfully or repeatedly failing to comply with Commission rules, as specified in greater detail herein.

2. The record before us indicates that Hammond has been convicted of a felony, raising a substantial and material question of fact concerning his qualifications to be and remain a licensee. In addition, Hammond failed to report the felony conviction in the renewal application, raising false certification, misrepresentation or lack of candor issues. It also appears that Hammond willfully or repeatedly violated the Commission’s rules with respect to his operation of the station, and also made false certifications, misrepresentations or lacked candor concerning construction of facilities to upgrade the station in an application to modify the station’s license. Moreover, Hammond failed to respond fully and provide information and documents to Commission staff investigating the matters at issue in this proceeding, raising issues as to whether he deliberately sought to avoid revealing the facts surrounding his operation of the station and matters relevant to his character qualifications.

¹ The station’s call sign changed on July 26, 2002, from KRMN(FM) to KBKH(FM). For the sake of clarity, we will refer to the station by its current call sign.

II. BACKGROUND

3. *Issues as to the Operation of Station KBKH(FM).* On June 24, 2002, the Commission received an application to assign the license for Station KBKH(FM) from Turbo Radio Limited Partnership (“Turbo”) to Terry Keith Hammond.² The Commission granted the application on August 23, 2002, and Hammond reported consummation of the assignment on August 26, 2002.³ At the time of consummation, Station KBKH(FM)’s license authorized operation at a site in Twitty, Texas at 35° 20’ 29” North Latitude and 100° 14’ 33” West Longitude with an effective radiated power (“ERP”) of 6 kilowatts (“kW”) at a height above average terrain (“HAAT”) of 78 meters.⁴ In acquiring the station’s license, Hammond also obtained a construction permit originally issued on January 24, 2000, to upgrade Station KBKH(FM) from a Class A to a Class C2 station.⁵

4. On August 2, 2002, the Commission’s Dallas Field Office received a letter, purportedly signed by James A. Turvaville on behalf of Turbo, which included a copy of a request for special temporary authorization (“STA”) to operate Station KBKH(FM) at a site north of the Shamrock city limits, at 6700 U.S. Highway 83 (“Highway 83 site”), approximately 5.1 miles from the station’s authorized site.⁶ The Commission’s records do not reflect that this STA request was ever filed formally with, or granted by, the Commission.⁷ On September 23, 2002, the Commission received a complaint alleging that the station was not operating in accordance with its authorization.⁸

5. On January 22, 2003, two days before his construction permit to upgrade the station to a Class C2 was to expire, Hammond filed an application for a license to cover the station’s upgrade.⁹ In a January 28, 2003, amendment, Hammond changed the answer to Question 7 of Section III from “No” to “Yes,” thus certifying that the facility had been constructed as authorized by the construction permit.¹⁰

² See Application for Consent to Assignment of Broadcast Station Construction Permit or License (FCC 314), File No. BALH-20020624AAP.

³ See Letter from Terry Keith Hammond to Federal Communications Commission, Audio Services Division, dated August 27, 2002.

⁴ See FCC Form 351B, License File No. BLH-19970925KC, granted February 20, 1998.

⁵ See FCC Form 351A, FM Broadcast Station Construction Permit, issued January 24, 2000, and referencing Application for Construction Permit for Commercial Broadcast Station (FCC 301), File No. BPH-19991015AAT (“FM Broadcast Station Construction Permit, File No. BPH-19991015AAT”).

⁶ See Modification of Request for Special Temporary Authority, dated August 2, 2002, which referenced the Highway 83 site, specifying coordinates at 35° 16’ 10” North Latitude, 100° 14’ 03”, West Longitude and an ERP of 1.0 kW.

⁷ STA requests require payment of a filing fee, which must be submitted with a Remittance Advice (FCC 159). Commission records do not reflect that any such form was ever filed in connection with an August 2002 STA request, and Hammond has not submitted such a form or any evidence of its filing with Mellon Bank, which at the time, collected applications that required a filing fee.

⁸ E-mail from David Rushing to fccinfo@fcc.gov, dated September 23, 2002. Rushing supplemented the complaint on May 27, 2004, alleging that Hammond had been convicted of felony theft. Letter from David Rushing, Director, Shamrock Economic Development Corporation, to William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, dated May 27, 2004.

⁹ See Application for FM Broadcast Station License (FCC 302-FM), File No. BLH-20030122AEG.

¹⁰ Initially, Hammond responded “No” to Question 7, Section III-Engineering, which asks whether the facility was constructed as authorized in the underlying construction permit, or complies with 47 C.F.R. § 73.1690, concerning procedures and restrictions that apply to licensee modifications of authorized broadcast system facilities. *Id.* In his January 28, 2003, amendment, Hammond changed the answer to Question 7 to “Yes,” specifically stating that he had inadvertently marked the “No” response initially, and that the correct answer was “Yes.” Moreover, Hammond,

(continued....)

The Commission granted Hammond's license application on April 24, 2003.¹¹

6. Commission personnel subsequently observed the station's operations on 92.9 MHz on two consecutive days, beginning on May 27, 2003. Using radio direction finding equipment, they determined that the station's transmissions were emanating from a tower at the Highway 83 site, behind a private residence, approximately 5.1 miles from the site authorized in the license issued for the upgraded facilities. Commission personnel inspected the station on May 28 and 29, 2003. That inspection revealed that the station was operating with an effective radiated power of less than 1 kW from a non-directional four-bay antenna with a height of radiation center 22.6 meters above ground level. According to the certifications that Hammond made in the license application, the station should have been operating with an effective radiated power of 50 kW with a radiation center above ground level of 99 meters at the authorized site.¹² Moreover, the Commission's inspection revealed that use of the four-bay antenna, in combination with a 500 Watt transmitter located on site, would not be capable of producing the authorized power of 50 kW.¹³ In addition, the inspection revealed that Hammond had failed to ensure that the station's Emergency Alert System ("EAS") equipment was properly installed and operational at the station. In this regard, Hammond was unable to produce any logs noting that EAS tests were sent or received since he had acquired the station. During the inspection, Hammond acknowledged to Commission personnel that he had not commenced construction at the authorized site, but that he had filed the license application in order to prevent the expiration of the construction permit for the upgraded facilities. Commission personnel advised Hammond during the inspection that he did not have authority to operate the station at its location, power level and antenna height.

7. On June 6, 2003, Hammond filed a request for an STA to permit him to operate from the Highway 83 site at reduced power.¹⁴ In support of the STA, Hammond stated that the station had been denied access to its authorized site as a result of a legal dispute with the creditor who owned the site.¹⁵ Hammond also claimed that the station's previous licensee had sought an STA to relocate the station to the Highway 83 site in August 2002.¹⁶ However, as noted above, no such request was properly filed with the Commission.¹⁷

8. The Commission's staff granted the STA on July 2, 2003,¹⁸ but noted that, because the station had been operated from the Highway 83 site for an extended period without authority from the

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in both the original application and subsequent amendment, answered "Yes" in response to Question 2, Section II, which asked whether "all terms, conditions, and obligations set forth in the underlying construction permit have been fully met."

¹¹ See File No. BLH-20030122AEG.

¹² See License Application for Modified Facilities, File No. BLH-20030122AEG, as amended ("License Upgrade Application"). See also, FM Broadcast Station Construction Permit, File No. BPH-19991015AAT.

¹³ Inspection revealed that the station was using a PTEK transmitter model FM 500, FCC ID ML9FM500.

¹⁴ See File No. BSTA-20030606ACP. Hammond requested that the station be permitted to maintain its transmitter at the Highway 83 site, at geographic coordinates 35° 16' 03.6" North Latitude, 100° 14' 08.1" West Longitude with an antenna height of 24.99 meters above ground level, a radiation center of 706.99 meters above mean sea level, and an effective radiated power level of 796 Watts.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See ¶ 4 *supra*.

¹⁸ Letter from Edward P. De La Hunt, Associate Chief, Audio Division, Office of Broadcast License Policy, Media Bureau, to Terry Keith Hammond, dated July 2, 2003. The STA authorized Hammond to operate with an antenna height of 25 meters and effective radiated power of .8 kW at the Highway 83 site.

Commission, the grant was without prejudice to any further Commission action in connection with any unauthorized and/or improper station operation prior to the date of the STA grant. This STA has now expired.¹⁹ Hammond claims to have filed a letter request for an extension of the STA, with slight modifications; however, the Commission's records contain no evidence of such a request.²⁰ The station continues to operate at the Highway 83 site at the power and antenna height authorized by the now-expired STA.

9. *Criminal Conviction.* As noted above, the Commission learned that Hammond had been convicted of various criminal charges and received documentation of Hammond's conviction of felony theft in a local court after a jury trial.²¹ Specifically, on June 4, 2004, judgment on a conviction was entered against Hammond for theft of more than \$1,500 but less than \$20,000 in the 31st Judicial District Court of Wheeler County, Texas.²² The theft occurred in 2002, prior to Hammond's acquisition of the license for Station KBKH(FM), and involved Hammond altering checks written to the station and depositing them into an account that he controlled.

10. *Letters of Inquiry/Failures to Respond Fully.* The staff of the Enforcement Bureau sent a letter of inquiry ("LOI") to Hammond on June 14, 2004.²³ The LOI required Hammond to provide, among other things, information and documents concerning the operation and control of Station KBKH(FM)²⁴ as well as information about any criminal proceedings that are related to his character qualifications to be or remain a Commission licensee.²⁵ Hammond filed a partial response to the Bureau's LOI on June 29, 2004.²⁶

¹⁹ According to the Commission's database, this STA was to expire on October 2, 2003. However, due to an apparent typographical error, the paper copy of the letter granting the STA bears an expiration date of October 2, 2004.

²⁰ See Letter from Terry Keith Hammond to Charles N. "Norm" Miller, Electronics Engineer, Audio Services Division, Media Bureau, dated November 1, 2003 (the letter itself bears no address to which it was being sent and there is no other indication that it was actually sent to the Commission). In this letter, Hammond states that "a representative of the Dallas, Texas, Enforcement Bureau," told him that the expiration date on the letter granting the STA was incorrect, and that, as a result, he had been operating the station at variance with its license. As discussed below, Hammond's statements in the record concerning his understanding of the controlling STA expiration date are conflicting because, in other documents, he also claims an STA expiration date of October 2, 2004. See ¶ 19, *infra*.

²¹ See note 8, *supra*.

²² *State of Texas v. Terry Keith Hammond*, Judgment of Conviction by Jury, Case No. 4010 (31st Jud. Dist. Wheeler County Ct., June 4, 2004). Hammond initially was sentenced to two years confinement in the State Jail Division, which was suspended with the requirement that Hammond be placed on community supervision for five years. On July 12, 2004, the trial court found that Hammond had violated the terms of the supervision and it was revoked.

²³ Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Terry Keith Hammond, dated June 14, 2004 ("LOI").

²⁴ LOI at 7, Inquiries 13-18.

²⁵ LOI at 8, Inquiries 19-25.

²⁶ Letter from Terry Keith Hammond, MonsterFM.com/KBKH 92.9-FM, to Investigations and Hearings Division, Enforcement Bureau, dated June 29, 2004 ("Response"). The Response did not answer, *inter alia*, LOI Inquiries 15 (directing Hammond to provide specific documentation of any Commission authorization permitting him to commence construction or continue operation of the station at a location other than its authorized site), 19-22 (directing Hammond to provide information concerning criminal proceedings against him), 23 (directing Hammond to provide information concerning whether he had been convicted of a felony), and 25 (requiring Hammond to provide documents that serve as the basis for, support, or relate to responses to other inquiries).

11. The staff reissued the LOI to Hammond on August 10, 2004.²⁷ The Reissued LOI noted that Hammond had failed to respond directly to numerous factual inquiries in the LOI.²⁸ The Reissued LOI warned Hammond that he faced the potential imposition of serious sanctions for continued refusal to respond fully to the inquiries.²⁹ Nevertheless, Hammond filed an incomplete response to the Reissued LOI dated September 13, 2004.³⁰ The Complainant filed a reply dated September 17, 2004,³¹ and by letter dated December 14, 2004, Hammond filed a further response, much of which is repetitive of his September 13 response.³²

12. *Application for the Renewal of the Station KBKH(FM) License.* On April 1, 2005, Hammond timely filed an application for renewal of the license for Station KBKH(FM).³³ The Renewal Application required Hammond to certify, among other things, that no adverse findings had been made against him in any criminal proceeding involving a felony.³⁴ In response to this question, Hammond answered “Yes,” thereby certifying that there had been no such adverse findings made against him and

²⁷ Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Terry Keith Hammond, dated August 10, 2004 (“Reissued LOI”).

²⁸ *Id.* at 2 and n. 7.

²⁹ *Id.* at 2 and n. 8.

³⁰ Letter from Terry Keith Hammond, MonsterFM.com/KBKH 92.9-FM, to Investigations and Hearings Division, Enforcement Bureau, dated September 13, 2004 (“Supplemental Response”). By way of example, Hammond’s answer to the Reissued LOI Inquiry 13, which asked whether the station had been operated at any location other than its licensed site, and if so, the relevant times of such operation, the locations of such operations, including site coordinates and technical parameters (class, power and antenna height) was that the station was being operated at the Highway 83 site, as specified in the STA granted July 2, 2003, except for a 24 hour period in which it had been operated “from a downtown rooftop antenna at 100 watts.” In addition, in the Supplemental Response, Hammond claims that the STA to operate at the Highway 83 site, at reduced power, would not expire until October 2, 2004.

³¹ Letter from David Rushing, Shamrock Economic Development Corporation, to Investigations and Hearings Division, Enforcement Bureau, dated September 17, 2004.

³² Letter from Terry Keith Hammond, MonsterFM.com/KBKH 92.9-FM, to Investigations and Hearings Division, Enforcement Bureau, dated December 14, 2004.

³³ *See* Application for Renewal of Broadcast Station License (FCC 303-S), BRH-20050401AAA (“Renewal Application”). Rushing filed an informal objection to the Renewal Application dated April 20, 2005. *See* Letter from David Rushing to the Secretary, Federal Communications Commission, dated April 20, 2005. Rushing argues that Station KBKH(FM) does not serve the needs and interests of its community of license, and that Hammond’s application for license renewal should not be granted. In support, Rushing reiterated certain allegations from his complaint, including the allegation that Hammond has been convicted of a felony, and pointed to Hammond’s failure to fully respond to the staff’s inquiries in the complaint proceeding. In addition, Rushing complains that programming on the station is inappropriately critical of the local community and its leaders. Rushing did not serve his informal objection on Hammond, but Hammond filed a response dated January 13, 2006. *See* Letter from Terry Keith Hammond to the Secretary, Federal Communications Commission, dated January 13, 2006. Hammond requests dismissal of the informal objection as repetitive and also alleges that Rushing’s failure to serve him with the objection violates the Commission’s *ex parte* rules, 47 C.F.R. § 1.1200 *et seq.* Hammond is incorrect that Rushing’s failure to serve him constitutes a violation of the *ex parte* rules. *See* 47 C.F.R. § 1.1204(a) (8) (presentations exempt from the prohibitions in restricted proceedings include those made by a listener of a broadcast station who is not a party under 47 C.F.R. § 1.1202(d)(1) relating to an application for renewal of a station’s license that is not designated for hearing at the time that the presentation is made). In addition, two individual listeners filed Petitions to Dismiss Rushing’s informal objection. *See* Letter from Mary Dion to the Secretary, Federal Communications Commission, dated December 14, 2005; and Letter from James R. Reneau to the Secretary, Federal Communications Commission, dated December 20, 2005.

³⁴ *See* Renewal Application, Question 3, Section II.

that no adverse final action had been taken against him in any criminal proceeding involving a felony.³⁵ However, as set forth above, at the time he filed the Renewal Application, Hammond had been convicted of felony theft. Although Hammond appealed this conviction, the trier of fact in his case, a jury, had found Hammond guilty of the offense.³⁶

III. DISCUSSION

13. For the reasons that follow, we find that a hearing is required to resolve serious issues raised by the record concerning Hammond's qualifications to be and to remain a Commission licensee. It appears that Hammond may have made false certifications, misrepresented facts to and lacked candor with the Commission regarding construction of upgraded facilities for Station KBKH(FM) and regarding his criminal felony conviction. Misrepresentation, lack of candor and false certifications constitute the types of serious violations of the Commission's rules that may be grounds for denying a grant of a license renewal application.³⁷ Moreover, even in the absence of such misconduct, Hammond's felony conviction itself raises a substantial and material question of fact as to his qualifications to be and to remain a Commission licensee and may warrant revocation of the license under section 312 of the Communications Act of 1934, as amended (the "Act").³⁸ In addition, Hammond's operation of Station KBKH(FM) substantially at variance with the terms of its authorizations for extended periods of time since he acquired the station, and other violations of the Commission's rules, demonstrate an apparent indifference to the Commission's regulatory authority that is patently inconsistent with his responsibilities as a licensee.³⁹ Finally, we note Hammond's failure to respond fully to Commission inquiries, contrary to

³⁵ *Id.*

³⁶ Moreover, the 7th Court of Appeals, which reviewed the trial court's judgment, ruled that it did not have jurisdiction to consider Hammond's appeal of the felony conviction because it was not timely filed. *Terry Keith Hammond v. State of Texas*, No. 07-04-0430-CR (7th Ct. App. Tex. Dec. 14, 2005). Hammond's appeal also challenged the trial court's judgment revoking his community supervision, and the 7th Court of Appeals affirmed that revocation. *Id.* Hammond's motion for rehearing with respect to revocation of his community supervision was denied on March 2, 2006. In addition, the Texas Court of Criminal Appeals has denied Hammond's Petition for Discretionary Review of the ruling of the 7th Court of Appeals. *Terry Keith Hammond v. State of Texas*, No. PD-0313-06 (Texas Ct. Crim. Appeals Mar. 1, 2006). On April 17, 2006, the 7th Court of Appeals issued its mandate ordering that Hammond's sentence be carried out, and Hammond is now incarcerated.

³⁷ See e.g., *FCC v. WOKO, Inc.*, 329 U.S. 223, 225-27 (1946); *Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 196 (D.C. Cir. 2000); *Schoenbohm v. FCC*, 204 F.3d 243, 247 (D.C. Cir. 2000); *Swan Creek Communications, Inc. v. FCC*, 39 F. 3d 1217, 1221-24 (D.C. Cir. 1994); *Garden State Broadcasting Ltd. v. FCC*, 996 F. 2d 386, 393-94 (D.C. Cir. 1993).

³⁸ 47 U.S.C. § 312; *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179, 1196-98 ¶ 37 (1986), *recon. denied*, 1 FCC Rcd 421 (1986), *appeal dismissed sub nom. National Association for Better Broadcasting v. FCC*, No. 86-1179 (D.C. Cir. Jun. 11, 1987) ("Character Policy Statement"). See also *Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Part 1, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentation to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications*, Policy Statement and Order, 5 FCC Rcd 3252, ¶ 5 (1990), *recon. on other grounds*, 6 FCC Rcd 3448 (1991), *modified on other grounds*, 7 FCC Rcd 6564 (1992) ("1990 Modifications of Character Policy Statement"). See, e.g., *Contemporary Media, Inc. v. FCC*, 214 F.3d at 193 (upheld as rational Commission policy to consider any felony conviction of broadcast licensee's of applicant's principal as a relevant factor in evaluating propensity to obey the law); *Fed. R. Evid.* 609(a)(2) (permits introduction of any criminal convictions, regardless of punishment, involving dishonesty such as perjury, criminal fraud and embezzlement).

³⁹ See, e.g., *William L. Zawila*, Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order, 18 FCC Rcd 14938, 14964-65, ¶101 (2004); *Family Broadcasting, Inc (WSTX(AM)/WSTX-FM)*, Order to Show Cause and Notice of Opportunity for Hearing, 16 FCC Rcd 4330, 4335 ¶ 13, 4337, ¶ 17 (2001) *recon denied*, 16 FCC Rcd 12810 (2001).

section 73.1015 of the Commission's rules.⁴⁰ Hammond's apparent serious violations raise a substantial and material question of fact as to whether the captioned license Renewal Application should be granted and whether his existing license should be revoked.⁴¹

14. *False Certification/Misrepresentation/Lack of Candor.* The trait of truthfulness is a key element of character qualifications necessary to operate a broadcast station in the public interest.⁴² Misrepresentation and lack of candor raise immediate concerns as to whether a licensee will be truthful in future dealings with the Commission.⁴³ Misrepresentation is a false statement of fact made with intent to deceive.⁴⁴ Lack of candor is concealment, evasion, or other failure to be fully informative, accompanied by intent to deceive.⁴⁵ Intent can be shown in many ways. If a licensee knowingly makes a false statement, that is sufficient proof of intent to deceive.⁴⁶ Intent to deceive can also be inferred when one has a clear motive to deceive.⁴⁷ Moreover, intent can be found when the surrounding circumstances clearly show the existence of intent to deceive, even if there is no direct evidence of a motive.⁴⁸ The Commission may revoke the license of a licensee who deliberately makes misrepresentations or lacks candor in dealing with the agency because he or she lacks the basic character qualifications to hold the license.⁴⁹

15. Here, it appears that Hammond made false certifications and misrepresentations and was less than completely candid with the Commission in his January 2003 License Upgrade Application.⁵⁰ In that application, Hammond certified that the facilities for the upgrade had been constructed in accordance with the terms of its construction permit, which specified that the station's antenna location would remain at the Twitty site authorized by the station's license, and that the station would operate as a Class C2 facility on 92.9 MHz with an effective radiated power of 50 kW at an antenna height of 99 meters above ground level.⁵¹ However, it appears that, contrary to such certifications, Hammond merely switched the station's frequency to 92.9 MHz, and continued to operate the station at the unauthorized Highway 83 site, at reduced power. The record further suggests that Hammond knew that the construction permit to

⁴⁰ 47 C.F.R. § 73.1015. See also 47 C.F.R. § 1.17.

⁴¹ 47 U.S.C. §§312, 309(k)(2); *Character Policy Statement*, 102 FCC 2d 1179 (1986).

⁴² See *Character Policy Statement*, 102 FCC 2d at 1210-11, ¶¶ 58-62.

⁴³ *Id.* A false certification may also constitute a misrepresentation. See, e.g., *San Francisco Unified School District (KALW(FM))*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13334, ¶ 19 nn. 40-41 (2004), Initial Decision, 21FCC Rcd 3837 (ALJ 2006).

⁴⁴ See *Fox River Broadcasting, Inc.*, Order, 93 FCC 2d 127, 129 (1983).

⁴⁵ *Id.*

⁴⁶ "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980).

⁴⁷ See, e.g., *RKO General, Inc.*, Decision, 4 FCC Rcd 4679, 4684, ¶ 29 (Rev. Bd. 1989).

⁴⁸ *American International Development, Inc.*, Memorandum Opinion and Order, 86 FCC 2d 808, 816 n. 39 (1981), *aff'd sub nom. KXIV, Inc. v. FCC*, 704 F.2d 1294 (D.C. Cir. 1983) (Commission stated that "the absence of direct evidence of motive is not significant where the record otherwise clearly establishes that deceptive conduct has occurred.").

⁴⁹ *Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 196 (D.C. Cir. 2000) citing *Schoenbohm v. FCC*, 204 F.3d 243, 247 (D.C. Cir. 2000) and other cases.

⁵⁰ License Upgrade Application, *supra* n. 12.

⁵¹ *Id.* at Section III, page 2, "Preparer's Certification" and Question 7, Section III. See Construction Permit for Upgraded Facilities, FCC Form 351A, issued January 24, 2000.

upgrade the station's facilities was about to expire, and thus had a motive to misrepresent and fail to be fully candid concerning whether the station's upgraded facilities had been constructed according to the terms of the construction permit.⁵² Indeed, Hammond told the Commission field inspectors that he filed the license application in order to prevent the expiration of his construction permit.⁵³

16. Hammond's failure to disclose his felony theft conviction in the Renewal Application also raises a substantial and material question of fact as to whether he made a false certification, misrepresented facts to the Commission or demonstrated a lack of candor.⁵⁴ The mere existence of an inaccuracy in an application, without any indication that there was intentional deception, is insufficient to justify consideration of a misrepresentation issue in an evidentiary hearing.⁵⁵ However, it appears that Hammond had a motive for the false certification, to conceal information that would potentially disqualify him as a licensee.⁵⁶ We recognize that the information concerning Hammond's felony conviction was made part of the record in the complaint proceeding, and the Commission previously has declined to find intent to deceive in cases in which the relevant information was disclosed in other proceedings or could be found elsewhere in the Commission's records.⁵⁷ Nevertheless, because there appears to be a pattern of repeated misrepresentations, the felony conviction was clearly relevant to Hammond's basic qualifications, and Hammond's answer to the question in the Renewal Application was manifestly false, we believe that Hammond's false certification and failure to disclose the felony conviction in his Renewal Application warrant consideration in a hearing.⁵⁸

17. *Effect of Hammond's Criminal Conviction on His Qualifications to Be and Remain a Commission Licensee.* Reliability is the other key element of character necessary to operate a broadcast station in the public interest.⁵⁹ The propensity to comply with the law generally is relevant to character qualifications, and an applicant or licensee's willingness to violate other laws, and, in particular, to commit felonies, is indicative of whether the applicant or licensee will conform to the Commission's rules or policies.⁶⁰ Evidence of any felony conviction is relevant to an applicant's or licensee's character.⁶¹ As set forth above, Hammond has been convicted of felony theft.⁶² Under the circumstances presented here,

⁵² See *William L. Zawila*, 18 FCC Rcd at 14964, ¶ 98 (imminent expiration of construction permit is motive to misrepresent that facilities had been constructed in accordance with terms of their construction permits).

⁵³ See ¶ 6, *supra*.

⁵⁴ See, e.g., *San Francisco Unified School District*, 19 FCC Rcd at 13334, ¶ 19; *Center for Study and Application of Black Economic Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991) (subsequent history omitted).

⁵⁵ See, e.g., *Greater Muskegon Broadcasters, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 15464, 15472-73, ¶¶ 22-23 (1996), citing *Garrett, Andrews and Letizia, Inc.*, Decision, 86 FCC 2d 1172, 1180 (Rev. Bd. 1981), *modified on other grounds*, Memorandum Opinion and Order, 88 FCC 2d 620 (1981).

⁵⁶ As discussed more fully, *infra*, a felony conviction is potentially disqualifying. See *1990 Modifications of Character Policy Statement*, *supra*, 5 FCC Rcd at 3252 (1990).

⁵⁷ See *Joseph W. Bollinger and Donna M. Bollinger*, Memorandum Opinion and Order, 16 FCC Rcd 18107, 18109, ¶ 5 (2001); *Greater Muskegon Broadcasters*, *supra*, 11 FCC Rcd at 15472, ¶ 22. We note, however, that neither *Bollinger* nor *Greater Muskegon Broadcasters* involved affirmatively false certifications, as is the case here.

⁵⁸ See, e.g., *Standard Broadcasting, Inc.*, Decision, 7 FCC Rcd 8571, 8577 ¶ 19 (Rev. Bd. 1992) (applicant for new FM station disqualified based on pattern of misrepresentations concerning other stations for which it was the licensee).

⁵⁹ *Character Policy Statement*, 102 FCC 2d at 1209-10, ¶¶ 55-57.

⁶⁰ See *1990 Modifications of Character Policy Statement*, 5 FCC Rcd at 3252, ¶ 3.

⁶¹ *Id.*, ¶ 4.

⁶² *State of Texas v. Terry Keith Hammond*, Judgment of Conviction by Jury, Case No. 4010 (31st Jud. Dist. Wheeler County Ct., Jun. 4, 2004). Hammond's appeals have been rejected. See n.36, *supra*. In any event, a jury verdict has

(continued...)

a hearing is warranted under section 312 of the Act to determine whether Hammond's license should be revoked because he lacks the basic character qualifications to be a Commission licensee.⁶³

18. *Technical and Other Rule Violations at Station KBKH(FM)*. As set forth in detail above, it appears that Hammond operated Station KBKH(FM) substantially at variance with the terms of its authorizations from the time that he acquired the station on August 26, 2002, until July 2, 2003, when the STA to operate at the Highway 83 site at reduced power was granted. Since the expiration of the STA, which occurred on October 2, 2004 at the latest, unauthorized station operations apparently have continued for more than twenty-two months and Hammond has not properly obtained, or even sought, an extension of the STA or filed an application to modify the station's facilities.⁶⁴ Hammond also has apparently committed other violations of the Commission's rules, as discussed below. The seriousness and duration of these violations, together with Hammond's failure to take corrective action, raise questions as to whether Hammond can be relied upon in the future to operate the station in accordance with the Act and the Commission's rules. The Commission has designated hearing issues for "willful and repeated" violations of our technical and legal requirements.⁶⁵ Moreover, it has specified issues where "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's rules."⁶⁶ These rule violations also constitute a pattern of abuse and thus may warrant a finding that Hammond's application for renewal of the license for Station KBKH(FM) does not meet the standard for renewal set forth in the Act.⁶⁷

19. Section 73.1350(a) of the Commission's rules⁶⁸ provides that a licensee is required to maintain and operate its broadcast station in accordance with the terms of the station authorization. It appears that, from August 26, 2002 until July 2, 2003, and from October 2004 to the present, Station KBKH(FM) operated at a site and with an antenna radiation center and power at levels that were other than those authorized by the station's license. Such operation would also result in violations of section

(...continued from previous page)

been entered, and under the Commission's Character Policy, this constitutes an "adjudication" that will be considered during the pendency of Hammond's appeal. *1990 Modifications of Character Policy Statement*, 5 FCC Rcd at n.6 (factual findings by tribunal, which are not subject to review *de novo*, constitute an adjudication by "ultimate trier of fact"). See also *Character Policy Statement*, 102 FCC 2d at 1204-05, ¶48 and n. 62.

⁶³ The facts of Hammond's felony conviction are *res judicata* and will not be retried in this hearing.

⁶⁴ As set forth above, the Commission's records are inconsistent as to the date of expiration of the STA. See n.19, ¶ 8. Hammond's statements in the record concerning the STA expiration date also are inconsistent. See ¶ 19, *infra*. We note that pursuant to section 309(f) of the Act, 47 U.S.C. § 309(f), and 73.1635(a)(4) of the Commission's rules, 47 C.F.R. § 73.1635(a)(4), an STA may be granted for an initial period not to exceed 180 days. The October 2, 2004, expiration date noted on the face of the letter granting the initial STA is inconsistent with these time limitations. However, even giving Hammond the benefit of the latest expiration date, October 2, 2004, an additional period of more than twenty-two months has lapsed in which Hammond has operated the station at variance with its license and without properly filing a request for an extension of the STA or an authorization modifying the licensed facilities of the station to allow for such operation.

⁶⁵ See *Zawila*, 18 FCC Rcd at 14964-65, ¶ 101, citing *Lewel Broadcasting, Inc.*, Decision, 86 FCC 2d 896 (1981); *Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 200 (1971); and *Fred Kaysbier*, Decision, 34 FCC 2d 788 (Rev. Bd. 1970).

⁶⁶ *Zawila*, 18 FCC Rcd at 14964-65, ¶101 citing *Heart of the Black Hills Stations*, 32 FCC Rcd at 200 (1971). See also *Center for Study and Application of Black Economic Development*, 6 FCC Rcd 4622 (1991).

⁶⁷ 47 C.F.R. § 309(k)(1) (renewal based upon finding that the station has served the public interest, there have been no serious violations of the Act or the Commission's rules and there have been no other violations of the Act or the rules which, taken together, constitute a pattern of abuse).

⁶⁸ 47 C.F.R. § 73.1350(a).

73.1560(b) and (d)⁶⁹ of the Commission's rules by operating at reduced power for more than 30 days without timely notifying the Commission and without requesting an STA to do so, and section 73.1745(a) of the Commission's rules,⁷⁰ which provides that "[n]o broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license, unless otherwise provided..." In this regard, Hammond did not request an STA until May 29, 2003, following Commission inspection of the station, even though he apparently had been operating Station KBKH(FM) from an unauthorized site and at variance from its authorization since he acquired the station on August 26, 2002. Then, after the STA was granted on July 2, 2003, and had expired, Hammond failed to timely and properly request an extension of that STA even though he continued to operate at the unauthorized Highway 83 site and with facilities well below the parameters specified by his license. In this regard, although the record contains an unaddressed letter dated November 1, 2003, that Hammond purportedly sent to the Commission staff seeking extension of the STA, the Commission's records contain no indication that the request was properly filed. Moreover, Hammond has variously claimed elsewhere in the record that no extension was required until October 3, 2004, thereby contradicting his assertion that he requested an extension via the November 1, 2003, letter. Thus, following expiration of the STA, Hammond continued to operate Station KBKH(FM) in apparent violation of sections 73.1350(a), 73.1560(b) and (d) and 73.1745(a) of the Commission's rules.

20. In addition, section 11.35(a) of the Commission's rules⁷¹ requires all broadcast stations to ensure that EAS encoders, decoders and attention signal generating and receiving equipment used as part of the EAS are installed and operational so that the monitoring and transmitting functions are available during the times the station is in operation.⁷² Broadcast stations must also determine the cause of any failure to receive required weekly and monthly EAS tests, and must indicate in the station's log why any required tests were not received and when defective equipment is removed and restored to service.⁷³ Station KBKH(FM)'s EAS equipment was not operational during the Commission inspection that commenced May 28, 2003. Moreover, there are no station records to indicate that the EAS system was ever functional since August 26, 2002, when Hammond acquired the station, nor are there entries in the station's logs setting forth the reasons why EAS tests were not received. Thus, it appears that Hammond also has willfully or repeatedly violated the provisions of section 11.35 of the Commission's rules.

21. Also, as discussed above, Hammond may have made misrepresentations and lacked candor in the license application for the modified facilities of Station KBKH(FM) and in the captioned application for the station's license renewal. *See* ¶¶ 14-16, *supra*. A determination as to whether Hammond intended to deceive the Commission by making false statements and certifications in connection with these applications is an essential element to resolution of the misrepresentation and lack of candor issues designated for hearing. In the case of the License Upgrade Application, intent to deceive is also critical in determining whether Hammond violated section 73.1015 of the Commission's rules.⁷⁴ However, effective March 28, 2003, the Commission may sanction written statements submitted to the Commission if the applicant had no reasonable basis for believing its submission was correct and not

⁶⁹ 47 C.F.R. § 73.1560(b) and (d).

⁷⁰ 47 C.F.R. § 73.1745(a).

⁷¹ 47 C.F.R. § 11.35(a).

⁷² *See, e.g., O'Hana Radio Partners (KAWV(FM))*, Forfeiture Order, 20 FCC Rcd 4058 (2005).

⁷³ 47 C.F.R. § 11.35(a) and (b).

⁷⁴ *See Revision of Radio Rules and Policies*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd 6387, 6399 n. 74 (1992) (A false certification, like other false statements of fact made in FCC applications and pleadings, may constitute misrepresentation under our rules and policies. *See* 47 C.F.R. § 73.1015.).

misleading.⁷⁵ Consequently, a false statement in a broadcast application, even in the absence of evidence of intent to deceive, may constitute a violation of section 73.1015.⁷⁶ Accordingly, we will also designate a separate issue to determine whether Hammond violated section 73.1015 in connection with his Renewal Application.

22. Section 403 of the Act provides that the Commission may institute on its own motion any inquiry into, *inter alia*, any matter relating to the enforcement of the Act or the Commission's rules.⁷⁷ Section 308(b) of the Act provides that the Commission "may require from an applicant or licensee further written statements of fact" during the license term.⁷⁸ Licensees are, of course, required to comply with Commission orders including those requiring the provision of information.⁷⁹ In this regard, section 73.1015 of the Commission's rules specifically provides that the Commission, "may, in writing, require from any applicant, permittee, or licensee written statements of fact relevant to whether an application should be granted or denied, or to a determination whether a license should be revoked, or to any other matter within the jurisdiction of the Commission."⁸⁰ Without such licensee cooperation, the Commission's ability to regulate effectively would be seriously undermined.

23. Pursuant to the provisions of sections 403 and 308, as well as other authority,⁸¹ the staff of the Enforcement Bureau directed Hammond to provide, among other things, information and documentation concerning the operation of Station KBKH(FM) and his criminal record. Specifically, the staff's letter of inquiry directed Hammond to provide information and documents concerning operation of the station at any location other than its licensed site, to provide the technical parameters of such operation, and whether such operation had been continuous.⁸² Hammond was also directed to provide information and documents concerning whether he had commenced construction activity at any location other than the station's authorized site, his authority to commence construction or continue operation of the station at a location other than the licensed site, and the station's main studio.⁸³ Finally, the letter directed Hammond to provide information and documents concerning criminal proceedings against him and warned him that failure to respond fully might result in sanctions, including designation for hearing.⁸⁴ Nonetheless, Hammond failed to respond fully and provided incomplete information and less than all the documents called for by these inquiries.⁸⁵

⁷⁵ See *Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4021, ¶ 12 (2003) (subsequent history omitted) ("*Amendment of Section 1.17*"). Section 73.1015 of the Commission's rules, 47 C.F.R. § 73.1015, is the counterpart of section 1.17 applicable specifically to the broadcast service, and provides that written statements relevant to a determination of whether an application should be granted or denied or to whether a license should be revoked are subject to the provisions of section 1.17. *Id.* at 4021-22, ¶ 13, n. 7.

⁷⁶ See, e.g., *San Francisco United School District*, *supra*, 19 FCC Rcd at 13337, ¶ 23 (2004).

⁷⁷ See 47 U.S.C. § 403.

⁷⁸ 47 U.S.C. § 308(b). See also 47 C.F.R. § 73.1015.

⁷⁹ See *Radio Moultrie, Inc. (WMGA(AM))*, Order to Show Cause and Notice of Opportunity for Hearing, 17 FCC Rcd 24304, 24307-08, ¶ 12 (2002); see also *SBC Communications, Inc.*, Notice of Apparent Liability, 17 FCC Rcd 7589, 7595 (2002).

⁸⁰ 47 C.F.R. § 73.1015.

⁸¹ See 47 U.S.C. § 154(i), (j).

⁸² LOI at 7-8, Inquiries 13 and 25.

⁸³ *Id.*, Inquiries 14, 15, 17 and 25.

⁸⁴ *Id.* at 8, Inquiries 19, 20, 22, 23, and 25.

⁸⁵ Response and Supplemental Response. See ¶ 10, *supra*.

24. Hammond's repeated failures to fully respond to the staff directives raise the question whether he did so deliberately to avoid the Commission's ascertainment of the facts surrounding his operation of the station and matters relevant to his character qualifications. These failures to fully respond to Commission inquiries, coupled with Hammond's pattern of apparent disregard for compliance with requirements of the Act and the Commission's rules, warrant designation in a hearing.⁸⁶

25. *Other Alleged Rule Violations That Do Not Warrant Sanction or Consideration in a Hearing.* The complainant also alleged that portions of a telephone conversation between him and a third party, which he did not know were being recorded for later broadcast, were repeatedly aired over Station KBKH(FM), in violation of section 73.1206 of the Commission's rules.⁸⁷ The prior notice requirements set forth in section 73.1206, which govern the broadcast of telephone conversations, do not apply however to a recording made by a third party and not the licensee.⁸⁸ Thus, we deny this aspect of the complaint.

26. *Acquisition or Transfer of Licenses.* In accordance with the *Character Policy Statement*, the Commission makes a determination as to the transferability of a licensee's commonly-held stations and as to whether to permit the licensee to acquire additional stations at the time of designation of a licensee's station for hearing.⁸⁹ The applicable test is whether "the allegations under consideration involve conduct likely to impact future operations of other stations," which is a question of fact to be resolved on a case-by-case basis.⁹⁰ Although Hammond does not own or control any other broadcast station licenses, there is a substantial likelihood that the allegations warranting designation of the license of Station KBKH(FM) for hearing bear upon the potential operation of any other station that Hammond may seek to acquire, either through assignment or transfer or through an application for a new facility. The allegations at issue here involve Hammond's truthfulness and reliability. Under these circumstances, we find it appropriate to prohibit Hammond's acquisition of additional licenses pending the outcome of the hearing.⁹¹

III. ORDERING CLAUSES

27. Accordingly, IT IS ORDERED, pursuant to sections 312(a) and 312(c) of the Act,⁹² and section 1.91 of the Commission's rules,⁹³ that Terry Keith Hammond SHOW CAUSE why the license for

⁸⁶ See *Radio Moultrie, Inc.*, 17 FCC Rcd at 24307-08, ¶¶ 12-14, citing *William E. Blizzard, Jr., t/a Macon County Broadcasting Co.*, Order and Notice of Apparent Liability, 25 FCC 2d 926 (1970) (Commission found the licensee's repeated failure to respond to staff inquiries dilatory and warranting designation); *Revocation of the License of Shedd-Agard Broadcasting, Inc. (KLSU)*, Initial Decision of Administrative Law Judge Forest L. McClenning, 41 FCC 2d 93 (I.D. 1973); *Family Broadcasting, Inc.*, 16 FCC Rcd at 4336 ¶ 16. See also 47 U.S.C. §§ 309(k)(1), 312(a).

⁸⁷ See 47 C.F.R. § 73.1206.

⁸⁸ See 50 Fed. Reg. 7931 (1985) (Commission specifically rejected a petition for rule making that sought to broaden the scope of section 73.1206 to apply to circumstances in which a third-party, rather than the licensee, records the phone conversation, and the licensee later broadcasts portions of the conversation without consent).

⁸⁹ *Character Policy Statement*, 102 FCC 2d at 1123-25, ¶¶ 92-95.

⁹⁰ *Id.* at ¶¶ 92, 94.

⁹¹ See, e.g., *Hicks Broadcasting Of Indiana, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, 13 FCC Rcd 10662, 10678 ¶¶ 52-52 (1998) (allegations concerning truthfulness and reliability of a multiple owner, including designation of misrepresentation and lack of candor issues, made it appropriate to prohibit assignment and transfer of existing licenses and acquisition of additional licenses pending outcome of the hearing).

⁹² 47 U.S.C. § 312(a), (c).

⁹³ 47 C.F.R. § 1.91.

Station KBKH(FM), Shamrock, Texas, SHOULD NOT BE REVOKED. He shall appear before an administrative law judge at a time and place to be specified in a subsequent Order and provide evidence upon the following issues:

1. To determine the effect of Terry Keith Hammond's felony conviction on his qualifications to be and remain a Commission licensee;
2. To determine, in light of the evidence adduced pursuant to the foregoing issue, whether Terry Keith Hammond is qualified to be and to remain a Commission licensee and whether the license for Station KBKH(FM), Shamrock, Texas, should be revoked.

28. IT IS FURTHER ORDERED, pursuant to sections 309(e) and 309(k) of the Act,⁹⁴ that, the captioned application of Terry Keith Hammond for renewal of the license of Station KBKH(FM), Shamrock, Texas, IS DESIGNATED FOR A HEARING, before an administrative law judge at a time and place to be specified in a subsequent Order, upon the following issues:

3. To determine whether Terry Keith Hammond made false certifications, misrepresentations and/or lacked candor in his License Upgrade Application (File No. BLH-20030122AEG, as amended), in violation of section 73.1015 of the Commission's rules;⁹⁵
4. To determine whether Terry Keith Hammond made false certifications, misrepresentations and/or lacked candor in his Renewal Application, in violation of section 73.1015 of the Commission's rules (File No. BRH-20050401AAA);⁹⁶
5. To determine whether Terry Keith Hammond willfully and/or repeatedly violated sections 73.1350(a), 73.1560(b) and (d) and/or 73.1745(a) of the Commission's rules,⁹⁷ by operating Station KBKH(FM) at a location, power and antenna height that were not authorized by the station's license;
6. To determine whether Terry Keith Hammond willfully and/or repeatedly violated section 11.35 of the Commission's rules,⁹⁸ by failing to maintain operational EAS equipment and station logs concerning EAS equipment and tests for Station KBKH(FM);
7. To determine whether Terry Keith Hammond willfully and/or repeatedly violated section 73.1015 of the Commission's rules⁹⁹ by failing to provide full and complete responses and documents as directed by letters of inquiry issued by the staff of the Enforcement Bureau on June 14, 2004, and August 10, 2004; and
8. To determine, in light of the evidence adduced pursuant to the foregoing designated issues, whether the captioned application for renewal of the license for Station KBKH(FM) should be granted, or denied.

⁹⁴ 47 U.S.C. § 309(e), (k).

⁹⁵ 47 C.F.R. § 73.1015.

⁹⁶ 47 C.F.R. § 73.1015.

⁹⁷ 47 C.F.R. §§ 73.1350(a), 73.1560(b) and (d), and 73.1745(a).

⁹⁸ 47 C.F.R. § 11.35.

⁹⁹ 47 C.F.R. § 73.1015.

29. IT IS FURTHER ORDERED, that, in accordance with section 312(d) of the Act,¹⁰⁰ and section 1.91(d) of the Commission's rules,¹⁰¹ the burden of proceeding with the introduction of evidence and the burden of proof with respect to issues 1 and 2 shall be on the Commission's Enforcement Bureau.

30. IT IS FURTHER ORDERED that, in accordance with section 309(e) of the Act,¹⁰² the burden of proceeding with the introduction of evidence and the burden of proof with respect to issues 3 through 8 shall be on Terry Keith Hammond.

31. IT IS FURTHER ORDERED, that, irrespective of the resolution of the foregoing issues, it shall be determined, pursuant to section 503(b)(1) of the Act,¹⁰³ whether an ORDER OF FORFEITURE in the amounts specified herein shall be issued against Terry Keith Hammond with respect to the following apparent willful and/or repeated violations of section 73.1015 of the Commission's rules,¹⁰⁴ in an amount not to exceed \$325,000; sections 73.1350(a), 73.1560(b) and (d), and 73.1745(a) of the Commission's rules,¹⁰⁵ in an amount not to exceed \$325,000; and section 11.35(a) of the Commission's rules,¹⁰⁶ in an amount not to exceed \$325,000; for any such violations that occurred or continued within the applicable statute of limitations.¹⁰⁷ The forfeiture, if any, shall be adjusted based upon consideration of the factors enumerated in section 503(b)(2)(D), such as "the nature, circumstances, extent and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay and such other matters as justice may require."¹⁰⁸

32. IT IS FURTHER ORDERED, that, in connection with the possible forfeiture liability noted above, this document constitutes notice pursuant to section 503(b)(3) of the Act.¹⁰⁹

33. IT IS FURTHER ORDERED, that the Chief, Enforcement Bureau IS MADE A PARTY to this proceeding.

34. IT IS FURTHER ORDERED, that a copy of each document filed in this proceeding by Terry Keith Hammond SHALL BE SERVED on Judy Lancaster and Anjali K. Singh, counsel of record appearing on behalf of the Chief, Enforcement Bureau. Such service SHALL BE ADDRESSED to Judy Lancaster and Anjali K. Singh, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554.

35. IT IS FURTHER ORDERED, that, to avail himself of the opportunity to be heard and the right to present evidence at a hearing in these proceedings, pursuant to sections 1.91(c) and 1.221 of the

¹⁰⁰ 47 U.S.C. § 312(d).

¹⁰¹ 47 C.F.R. § 1.91(d).

¹⁰² 47 U.S.C. § 309(e).

¹⁰³ 47 U.S.C. § 503(b)(1).

¹⁰⁴ 47 C.F.R. § 73.1015.

¹⁰⁵ 47 C.F.R. §§ 73.1350(a), 73.1560(b) and (d), 73.1745(a).

¹⁰⁶ 47 C.F.R. § 11.35(a).

¹⁰⁷ See 47 U.S.C. § 503(b)(6).

¹⁰⁸ See *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17100-01, ¶ 27, 17112 Appendix A (1997), *recon. denied*, 15 FCC Rcd 303 (1999); see also 47 C.F.R. § 1.80(b).

¹⁰⁹ 47 U.S.C. § 503(b)(3).

Commission's rules,¹¹⁰ Terry Keith Hammond, but not the Chief, Enforcement Bureau,¹¹¹ in person or by attorney, shall file within thirty (30) days of the release of this Order, a written appearance in triplicate stating that he will appear at the hearing and present evidence on matters specified in this Order. If Terry Keith Hammond fails to file a written notice of appearance within the time specified, or a petition to accept, for good cause shown, such written appearance beyond the expiration of the thirty (30) day time period, Terry Keith Hammond's application for renewal of the license for Station KBKH(FM) will be dismissed with prejudice for failure to prosecute.¹¹² Furthermore, if Terry Keith Hammond fails to file a timely written notice of appearance, the right to a hearing on issues 1 and 2 shall be deemed to be waived.¹¹³ Where a hearing on issues 1 and 2 is waived, Terry Keith Hammond may submit a written, signed statement of mitigation or justification with respect to issues 1 and 2 only, within thirty (30) days of the release of this Order.¹¹⁴ In the event that a hearing on issues 1 and 2 is waived, the Chief Administrative Law Judge (or presiding officer if one has been designated) shall, at the earliest practicable date, issue an order terminating the hearing proceeding and certifying the case to the Commission.¹¹⁵

36. IT IS FURTHER ORDERED, that Terry Keith Hammond shall, pursuant to section 311(a)(2) of the Act,¹¹⁶ and section 73.3594 of the Commission's rules,¹¹⁷ give notice of the hearing with respect to the application for renewal of the license for Station KBKH(FM), Shamrock, Texas, within the time and in the manner prescribed and shall advise the Commission of the publication of such notice as required by section 73.3594(g) of the Commission's rules.¹¹⁸

37. IT IS FURTHER ORDERED, that a copy of this Order shall be sent by Certified Mail, Return Receipt Requested, and by regular first class mail to Terry Keith Hammond, P.O. Box 688 Shamrock, Texas 79079, 6700 U.S. Highway 83, Shamrock, Texas 79079 and TDCJ Number 01361320, J.B. Wheeler Unit, 986 County Road AA, Plainview, Texas, 79072, and a courtesy copy will be sent, by regular first class mail to the Complainant, David Rushing.

38. IT IS FURTHER ORDERED, that the Secretary of the Commission shall cause to have this Order or a summary thereof published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹¹⁰ 47 C.F.R. §§ 1.91, § 1.221.

¹¹¹ See 47 C.F.R. § 1.21(b).

¹¹² See 47 C.F.R. § 1.221(c).

¹¹³ See 47 C.F.R. § 1.92(a).

¹¹⁴ See 47 C.F.R. § 1.92(b).

¹¹⁵ See 47 C.F.R. § 1.92(c).

¹¹⁶ 47 U.S.C. § 311(a)(2).

¹¹⁷ 47 C.F.R. § 73.3594.

¹¹⁸ 47 C.F.R. § 73.3594(g).