

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

In the Matter of	)	
	)	
Lazer Licenses, LLC	)	File Nos. EB-07-LA-111
Licensee of:	)	EB-07-LA-112
	)	EB-07-LA-113
	)	
Station KSBQ(AM)	)	
Santa Maria, California	)	NAL/Acct. No. 200732900007
Facility ID # 38442	)	
	)	FRN: 0015079908
	)	
Station KLMM-FM	)	
Morro Bay, California	)	
Facility ID # 46401	)	
	)	
	)	
Station KLUN-FM	)	
Paso Robles, California	)	
Facility ID # 2243	)	

**ORDER ON REVIEW**

**Adopted: January 4, 2012**

**Released: January 5, 2012**

By the Commission:

**I. INTRODUCTION**

1. In this Order on Review (“*Order on Review*”), we deny the Application for Review<sup>1</sup> filed by Lazer Licenses, LLC, (“Lazer”) the licensee of Stations KSBQ(AM), Santa Maria, California, KLMM-FM, Morro Bay, California and KLUN-FM, Paso Robles, California, pursuant to section 1.115 of the Commission’s Rules (“Rules”).<sup>2</sup> Lazer seeks review of the Enforcement Bureau’s (“Bureau’s”) *Reconsideration Order*<sup>3</sup> affirming an \$8,000 forfeiture against the licensee for its willful and repeated violation of section 73.3526 of the Rules.<sup>4</sup> The noted violation concerned Lazer’s failure to maintain complete public inspection files for Stations KSBQ(AM), KLMM-FM, and KLUN-FM. For the reasons discussed below, we deny Lazer’s Application for Review.

<sup>1</sup> Application for Review, *Lazer Licenses, Inc.*, EB-07-LA-111 *et al.*, filed January 14, 2009 (“Application for Review”).

<sup>2</sup> 47 C.F.R. § 1.115.

<sup>3</sup> *Lazer Licenses, LLC*, Memorandum Opinion and Order, 23 FCC Red 18022 (Enf. Bur. 2008) (“*Reconsideration Order*”) (subsequent history omitted).

<sup>4</sup> 47 C.F.R. § 73.3526.

## II. BACKGROUND

2. On March 6, 2007, an agent of the Enforcement Bureau's Los Angeles Office conducted inspections of the public inspection files for Stations KSBQ(AM), KLMM-FM, and KLUN-FM at their main studio location in Santa Maria, California. The agent discovered that, while the public inspection files were partially complete, none of the stations' public inspection files contained any issues/programs lists for dates subsequent to their license renewals on July 28, 2005. The general manager for the three stations could not explain why these records had not been maintained in the public inspection files. The general manager stated that he was fairly new in his position but was very familiar with issues/programs list filing requirements; he advised the agent that he would place his Office Manager in charge of maintaining and filing these records in the public inspection files going forward.

3. On May 17, 2007, the Los Angeles Office issued a Notice of Apparent Liability for Forfeiture<sup>5</sup> in the amount of \$12,000 to Lazer, finding that Lazer apparently willfully and repeatedly failed to maintain complete public inspection files for Stations KSBQ(AM), KLMM-FM and KLUN-FM. On June 22, 2007, Lazer filed a response<sup>6</sup> attaching sworn declarations from station employees who asserted that the missing issues/programs lists had been timely prepared and maintained on a different floor of the main studio location, but could not be located at the time of inspection because the employee who knew the files' location was offsite at the time. Lazer also asserted that – following its receipt of the *NAL* – the licensee had modified its procedures concerning public inspection files for all of its stations.<sup>7</sup> Lazer sought cancellation of the proposed forfeiture.

4. In the *Forfeiture Order*, the Enforcement Bureau's Western Region ("Region") rejected these arguments, finding that the specified issues/programs lists were not available for inspection by either the Los Angeles agent or the public on the day of the inspection.<sup>8</sup> The Region accepted Lazer's explanation concerning its good faith compliance efforts regarding the issues/programs lists,<sup>9</sup> however, and reduced the total proposed forfeiture from \$12,000 to \$8,000. The Region found that the subsequent remedial procedures implemented by Lazer did not entitle the licensee to further reduction in the forfeiture amount.<sup>10</sup>

5. Lazer sought reconsideration of the *Forfeiture Order* and once again argued that the forfeiture should be cancelled because the issues/programs lists had been properly maintained for the three stations, but could not be found on the day of inspection because they happened to be located in a different area of the main studio.<sup>11</sup> Lazer cited three Media Bureau decisions as support for its argument that the forfeiture amount should be reduced or eliminated.<sup>12</sup> Lazer also argued that the Commission's

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<sup>5</sup> *Lazer Licenses, Inc.*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200732900007 (Enf. Bur., Western Region, Los Angeles Office, rel. May 17, 2007) ("*NAL*") (subsequent history omitted).

<sup>6</sup> See Letter from Harry C. Martin, Esq., Counsel for Lazer Licenses, Inc., Fletcher, Heald and Hildreth, P.L.C., dated June 22, 2007 ("*NAL Response*"). Lazer requested, and received, an extension of time to file its *NAL Response*.

<sup>7</sup> *Id.* at Declaration of Administrative Assistant, Lazer Licenses, Inc., dated June 22, 2007 at 2.

<sup>8</sup> *Lazer Licenses, Inc.*, Forfeiture Order, 23 FCC Rcd 2589, 2591 (Enf. Bur., Western Region 2008) ("*Forfeiture Order*") (subsequent history omitted).

<sup>9</sup> *Id.* at 2590-91.

<sup>10</sup> *Id.* at 2591.

<sup>11</sup> Petition for Reconsideration, *Lazer Licenses, Inc.*, EB-07-LA-111 *et al.*, filed March 24, 2008 ("Petition for Reconsideration").

<sup>12</sup> Petition for Reconsideration at 3-4 (citing *Creek Broadcasting Corporation*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 18669 (Audio Div., Media Bur. 2007) ("*Creek Broadcasting*") (proposing a \$1,000 forfeiture for failure to maintain a public inspection file where a former employee of the licensee (continued . . . )

decision in *Citadel Broadcasting Company, Inc.*<sup>13</sup> established a \$1,000 forfeiture amount for issues/programs list violations, because the Commission there issued a forfeiture for \$1,000 against *Citadel* for the violation of two missing issues/programs lists that could not be recreated.

6. The Bureau reviewed the Media Bureau cases cited by Lazer and distinguished each of them based on their facts.<sup>14</sup> Similarly, the Bureau distinguished the lower forfeiture amount in *Citadel*. While the Commission in *Citadel* imposed a \$1,000 forfeiture against a single station for missing two issues/programs lists, Lazer, at the time of the inspection, was missing a total of eighteen issues/programs lists across the three stations.<sup>15</sup> The Bureau further noted that the amount of the forfeiture issued against Lazer was actually supported by *Citadel*, because the Commission also determined in that case that another *Citadel*-owned station was apparently liable for a \$10,000 forfeiture where the station admitted on its renewal application that its public inspection file was missing a total of fifteen issues/programs lists.<sup>16</sup> Lazer subsequently sought Commission review of the Bureau's *Reconsideration Order*.<sup>17</sup>

### III. DISCUSSION

7. In this *Order on Review*, we deny Lazer's Application for Review and affirm the Bureau's *Reconsideration Order*. The forfeiture amount in this case was assessed in accordance with Section 503(b)(2)(E) of the Communications Act of 1934, as amended ("Act"),<sup>18</sup> Section 1.80(b)(4) of the Rules,<sup>19</sup> and the Commission's *Forfeiture Policy Statement*.<sup>20</sup> Pursuant to Section 503(b)(5)(E) of the

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filed a complaint stating, among other things, that numerous items were missing from the station's public inspection file, and the licensee alleged that the required items had been prepared and placed in the file, but were subsequently removed from the file by the former employee when his employment was terminated); *Trustees of Davidson College*, Forfeiture Order, 20 FCC Rcd 17190 (Audio Div., Media Bur. 2005) ("*Trustees of Davidson College*") (assessing a \$1,000 forfeiture after the licensee reported that several five-year-old issues/programs lists that had been prepared and placed in its public inspection file were missing from the file following relocation to a new building); *Citicasters Licenses, L.P.*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 19324 (Media Bur. 2007) ("*Citicasters*") (finding that one-hour delay to access the station's public inspection file was not unreasonable where the delay was caused by "legitimate security procedures").

<sup>13</sup> *Citadel Broadcasting Co. et al.*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 7083 (2007) ("*Citadel*").

<sup>14</sup> *Reconsideration Order*, 23 FCC Rcd at 18023-25. As explained in the *Reconsideration Order*, *Creek Broadcasting* allegedly involved third parties misplacing or removing the public inspection file. This case involved the actions of station employees. *Id.* at 18024. *Trustees of Davidson College* concerned a segment of missing older files, while the Lazer stations were missing the entire body of issues/programs lists since renewal. Moreover, the licensee in *Trustees of Davidson College* disclosed the violations in its renewal application, while Lazer's violations were discovered by an Enforcement Bureau Field agent. *Id.* at 18024-25. Finally, the licensee in *Citicasters* took an hour to produce the missing public file to the Field agent due to "legitimate security procedures." *Id.* at 18025. The *Reconsideration Order* observed, however, that Lazer never produced the file to the agent, and only completed the file after receipt of the *NAL*, nearly three months after learning of the problem. *Id.*

<sup>15</sup> The Bureau concluded that Lazer did not have any issues/programs lists available for periods subsequent to its most recent renewal grants for the stations on July 28, 2005. Lazer was missing six quarters of issues/programs lists for each station, resulting in a total of eighteen missing issues/programs lists. *Reconsideration Order*, 23 FCC Rcd at 18024.

<sup>16</sup> *Reconsideration Order*, 23 FCC Rcd at 18024.

<sup>17</sup> See *supra* note 1.

<sup>18</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>19</sup> 47 C.F.R. § 1.80 (b)(4).

<sup>20</sup> The 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 (1997) ("*Forfeiture Policy Statement*"), recon. denied, 15 (continued . . . )

Act, the Bureau took into account 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 other such matters as justice may require.<sup>21</sup> Lazer has failed to demonstrate any inconsistency between the Bureau's action here and prior Commission cases. In its Application for Review, Lazer effectively repeats the argument it made before the Bureau: that an \$8,000 forfeiture departs from Commission precedent, as expressed in *Citadel*. We agree with the Bureau's reasoning in the *Reconsideration Order* and reject Lazer's arguments for the reasons stated therein. We note that the Commission has previously affirmed an Enforcement Bureau decision that an incomplete public inspection file, missing only three items, could subject a licensee to monetary forfeitures "regardless of why or for how long the items were missing."<sup>22</sup> The Commission found no error in the Bureau's statement of the requirement that the licensee must maintain a public inspection file and ensure that it is complete.<sup>23</sup>

8. Section 73.3526 of the Rules requires that broadcast licensees maintain certain material in a file to be made available for public inspection during business hours.<sup>24</sup> One of the categories of documents that must be maintained as part of the public inspection file is the issues/programs list. These lists enable citizens to determine whether local broadcast facilities are assessing and addressing the uniquely local concerns and issues affecting the station's community of license. The issues/programs lists document the station's efforts to this end, and must be accessible and available to the public. We have previously determined that "reasonable access to the public inspection file serves the important purpose of facilitating citizen monitoring of a station's operations and public interest performance, and fostering community involvement with local stations, thus helping to ensure that stations are responsive to the needs and interests of their local communities."<sup>25</sup> In this regard, access to the most recent issues/programs lists allows interested citizens to review what issues the station chose to give significant treatment, and the programming that provided that treatment.<sup>26</sup>

9. Lazer argues that a licensee is more culpable where it fails to create the issues/programs lists, which was the basis of the forfeiture in the *Citadel* case, than where, as here, it creates such lists as part of a public inspection file, but fails to make the file available on the day of an FCC inspection, or on the day of a request to inspect the file by a member of the public.<sup>27</sup> For an individual seeking to review the issues/program lists, however, the harm is the same: the licensee denies the public access to vital information regarding whether the station is adequately addressing the local community's concerns.

10. In the present case, Lazer failed to provide on the day of the inspection the six most recent issues/programs lists for each of three stations listed above. During this proceeding, the Los Angeles Office initially proposed a forfeiture of \$4,000 for each of the three stations, for a total proposed

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FCC Rcd 303 (1999).

<sup>21</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>22</sup> *Twenty-One Sound Communications, Inc.*, Order on Review, 23 FCC Rcd 2436, 2439 (2008) ("*Twenty-One Sound*").

<sup>23</sup> *Twenty-One Sound*, 23 FCC Rcd at 2439. See also *Paulino Bernal Evangelism*, Order on Review, 46 Comm. Reg. (P&F) 346, 2008 WL 4722115 at \*2 (2008) ("*Paulino Bernal Evangelism*") (finding that a station is "obligated to ensure that the public, including an FCC agent, is able to access the public file during regular business hours").

<sup>24</sup> 47 C.F.R. § 73.3526.

<sup>25</sup> *Citadel*, 22 FCC Rcd at 7098 (citing Review of the Commission's Rules Regarding the Main Studio Rule and Local Public Inspection Files of Broadcast Television and Radio Stations, Report and Order, 13 FCC Rcd 15691, 15700 (1998)).

<sup>26</sup> 47 C.F.R. § 73.3526(e)(12).

<sup>27</sup> Application for Review at 5-6.

forfeiture of \$12,000. In Lazer's NAL Response, however, the Licensee asserted under penalty of perjury that it had the missing files on site on the day of inspection, but had not placed them in the public inspection file.<sup>28</sup> In light of Lazer's good faith efforts to comply with the public inspection file rule, the Western Region reduced the total forfeiture to \$8,000, which was affirmed by the Bureau. Given the importance and number of the items missing from the public inspection files on the date of the inspection, we find that this amount was appropriate.

11. Lazer also argues that the Bureau made an "erroneous finding as to a material question of fact" when it noted, in the *Reconsideration Order*, that "almost three months passed after the Los Angeles Office inspection before Lazer located the missing issues and programs lists."<sup>29</sup> Lazer claims that at all times the issues/programs lists were maintained in the main studio and that "[o]n any other day after [the responsible Lazer employee] became aware of the March 2007 inspection, the lists would be made available to the public; they were simply stored in another room of the main studio."<sup>30</sup>

12. We find no merit to this argument. In the *Reconsideration Order*, the Bureau simply recounted what Lazer stated in its NAL Response, in which the employee identified as responsible for compliance with public inspection file rules states, "[o]n May 30, 2007 I personally visited the Stations' common main studio located at 200 East Feeler Street in Santa Maria, California. At the studio I *located all of the issues and programs lists for all three stations* covering the time periods cited in the Notice."<sup>31</sup> Thus, although Lazer knew that the missing issues/programs lists were not available as of March 5, 2007, the date of the inspection, the licensee has conceded that the issues/programs lists were only "located" on May 30, 2007.

13. Lazer provides no support for its claim that the missing issues/programs lists would have been available for inspection during the period between the inspection and its employee's visit to the main studio nearly three months later. Indeed, the evidence points to the contrary. Notwithstanding its knowledge that an FCC Field agent had determined that its public inspection file was incomplete, Lazer did not search its records for the missing information until it received the *NAL*, nearly three months after the inspection. We find no error in the Bureau noting this information in the *Reconsideration Order*.<sup>32</sup> Therefore, upon review of the Application for Review and the entire record herein, we deny Lazer's application and affirm the Bureau's *Reconsideration Order*.

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<sup>28</sup> NAL Response at 1.

<sup>29</sup> Application for Review at 3.

<sup>30</sup> *Id.* at 4.

<sup>31</sup> NAL Response at 1 (emphasis added).

<sup>32</sup> In any event, Lazer was unable to produce the issues/programs lists during the Field agent's inspection. *Forfeiture Order*, 23 FCC Rcd at 2591; *Reconsideration Order*, 23 FCC Rcd at 18023. Thus, regardless of when it "located" those lists, Lazer remains liable for failing to maintain and make available on the date of the inspection a complete public inspection file for each of the three stations identified above, in violation of section 73.3526 of our Rules. See *Paulino Bernal Evangelism*, 2008 WL 4722115 at \*2 (affirming Bureau forfeiture against licensee for public file violations despite the licensee's claim that the file was onsite during the Field agent inspection, but that the station employee merely failed to produce the file because he had difficulty with English and panicked at the arrival of the Field agent; the Commission found that "the public file was effectively unavailable to the general public at all times.").



**IV. ORDERING CLAUSES**

14. Accordingly, **IT IS ORDERED** that, pursuant to section 1.115(g) of the Commission's Rules,<sup>33</sup> Lazer Licenses, LLC's Application for Review of the Enforcement Bureau's December 18, 2008, *Reconsideration Order* **IS DENIED** and the Bureau's *Reconsideration Order* **IS AFFIRMED**.

15. Payment of the forfeiture ordered by the Region and affirmed by this *Order on Review* shall be made in the manner provided for in section 1.80 of the Rules within 30 days of the release of this *Order on Review*. 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.<sup>34</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, 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, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When 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). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

16. **IT IS FURTHER ORDERED** that this *Order on Review* shall be sent by regular mail and by certified mail, return receipt requested, to Lazer Licenses, LLC, at 200 South A Street, Suite 400, Oxnard, CA, 93030, and to Harry C. Martin, its counsel of record, at Fletcher, Heald & Hildreth, P.L.C., 11th Floor, 1300 North 17th St., Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>33</sup> 47 C.F.R. § 1.115(g).

<sup>34</sup> 47 U.S.C. § 504(a).