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

In the Matter of	)	
	)	
American Family Association	)	File No. EB-02-KC-236
	)	NAL/Acct. No. 200232560005
Licensee of Station KBKC-FM	)	FRN 0005-0259-11
Moberly, Missouri	)	

FORFEITURE ORDER

Adopted: September 20, 2002 **Released: September 24, 2002**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("*Order*"), we issue a monetary forfeiture in the amount of five thousand dollars ($5,000) to American Family Association ("AFA"), licensee of Station KBKC, a noncommercial, educational FM station licensed to Moberly, Missouri, for willful violation of Section 73.1125 of the Commission's Rules ("Rules").[1] The noted violation involves AFA's operation of Station KBKC without a main studio.

2. On May 28, 2002, the Commission's Kansas City, Missouri, Field Office ("Kansas City Office") issued a *Notice of Apparent Liability for Forfeiture* ("*NAL*") to AFA for a forfeiture in the amount of seven thousand dollars ($7,000).[2] AFA filed a response to the *NAL* on June 18, 2002.

II. BACKGROUND

3. On April 8, 2002, an FCC agent from the Kansas City Office attempted an inspection of Station KBKC-FM, which is licensed to Moberly, Missouri. Investigation revealed no listing for the station in the local telephone directories. The agent went to the station's transmitter site and found a sign on the tower with the phone number 662-844-8888. The agent called this number and spoke with two AFA employees in Tupelo, Mississippi. These AFA employees stated that there was no main studio for KBKC and that the station's public inspection file was located at the Little Dixie Regional Library in Moberly. The agent inspected the public inspection file and did not find a grant of a waiver of the main studio rule for the station in the file. A subsequent search of Commission records revealed that AFA had not been granted a waiver of the main studio rule for KBKC.

[1] 47 C.F.R. § 73.1125.

[2] *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232560005 (Enf. Bur., Kansas City Office, released May 28, 2002).

4. On May 28, 2002, the Kansas City Office issued an *NAL* for a $7,000 forfeiture to AFA for apparently failing to maintain a main studio for KBKC in willful violation of Section 73.1125 of the Rules. In its response to the *NAL*, AFA acknowledges that it did not have either a main studio for KBKC or a waiver of the main studio rule at the time of the inspection. Nevertheless, it requests cancellation of the forfeiture or reduction of the forfeiture to a "token" amount. First, AFA claims that it made diligent efforts to comply with the rules by submitting a request to operate KBKC as a satellite before the station was built. AFA states that in January 2000 it filed a request for waiver of the main studio rule to operate new station KBKC as a satellite of an existing station which it owned, KAKU-FM, Springfield, Missouri, but it later sold KAKU and forgot to amend the main studio waiver request.[3] AFA further states that on November 9, 2001, it completed construction of KBKC, put the station on the air, and applied for a license to cover the construction permit, despite the fact that permission to locate the main studio outside the community of license had not been granted, because its construction permit for KBKC would have expired on November 16, 2001. AFA asserts that because KBKC fit squarely within the standards the Commission had generally applied in granting main studio waivers, it had built the station as a satellite operation without a studio and it began operating the station on November 9, 2001, counting on the waiver being granted during licensing.

5. In addition, AFA asserts that on February 22, 2002, it notified the FCC staff person processing its license application for KBKC that it was operating KBKC as a satellite pending receipt of the waiver. AFA maintains that the FCC staff person required it to withdraw its original main studio waiver request since it no longer owned KAKU and stated that it could not amend the waiver request until after the license was granted. AFA also asserts that on April 9, 2002, the day after the FCC agent attempted to inspect KBKC and observed that the station did not have either a main studio or a waiver of the main studio rule, it filed a request for a waiver of the main studio rule to operate KBKC as a satellite of WAFR-FM, Tupelo, Mississippi. The Media Bureau's Audio Division granted this waiver request on May 6, 2002.[4] Thus, AFA argues that no forfeiture should be imposed here because the Commission has determined that good cause exists to operate KBKC as a satellite station. Finally, AFA notes that in a conversation with the inspecting agent on April 16, 2002, and again in a meeting with the Audio Division on April 23, 2002, it offered to take KBKC off the air until the waiver request was processed, but was told that was not necessary.

III. DISCUSSION

6. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, ("Act"),[5] Section 1.80 of the Rules,[6] and *The Commission's*

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[3] AFA's application to assign the license for KAKU to Community Broadcasting, Inc. (File No. BALED-2001222AAQ) was granted on February 7, 2001, and the assignment was consummated on March 30, 2001.

[4] Letter from Peter H. Doyle, Chief, Audio Division, Office of Broadcast License Policy, Media Bureau, to Donald E. Wildmon, President, American Family Association (May 6, 2002). The Audio Division inadvertently granted AFA a waiver of the main studio rule to operate KBKC as a satellite of KAKU, rather than WAFR. By letter dated August 15, 2002, the Audio Division, on its own motion, issued a corrected letter granting AFA a waiver of the main studio rule to operate KBKC as a satellite of WAFR. Letter from Peter H. Doyle, Chief, Audio Division, Office of Broadcast License Policy, Media Bureau, to Donald E. Wildmon, President, American Family Association (August 15, 2002).

[5] 47 U.S.C. § 503(b).

Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). In examining AFA's response, Section 503(b) of the Act requires that the Commission take 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.[7]

7. Section 73.1125 of the Rules states that each broadcast station shall maintain a main studio at one of the following locations: (1) within the station's community of license; (2) at any location within the principal community contour of any AM, FM, or TV broadcast station licensed to the station's community of license; or (3) within 25 miles from the reference coordinates of the center of its community of license. AFA admits that it did not have either a main studio for KBKC or a waiver of the main studio rule at the time of the inspection. Accordingly, we conclude that AFA willfully violated Section 73.1125 of the Rules.

8. We disagree with AFA's assertion that the $7,000 forfeiture for this violation should be cancelled or reduced to a token amount. First, we are not persuaded that AFA made diligent efforts to comply with the rules prior to putting KBKC on the air in November 2001. We reject AFA's suggestion that it was justified in putting KBKC on the air without a waiver of the main studio rule because it was counting on the waiver being granted. In this regard, consistent with general principles regarding all FCC requirements, we note that the main studio rule explicitly warns licensees and permittees that the filing of a request for waiver of the main studio rule does not imply approval of the request, because each request is addressed on a case-by-case basis.[8] In any event, AFA's original waiver request proposed to operate KBKC as a satellite of KAKU, which it sold in March 2001. AFA did not amend its waiver request when it sold KAKU and therefore did not have a valid waiver request on file with the Commission when it began operating KBKC in November 2001. AFA's assertion that it forgot to amend its waiver request does not mitigate its violation. Further, if AFA was concerned with putting KBKC on the air before the November 16, 2001, construction deadline, it could have brought the matter to the Commission's attention or requested special temporary authority to operate without a main studio at that time.

9. Moreover, the FCC staff person who processed AFA's license application for KBKC told AFA that it could file a waiver request after the license was granted. The former Mass Media Bureau granted AFA's license application on February 27, 2002. AFA offers no explanation why it did not immediately file a waiver request at that time. Additionally, the fact that AFA filed a waiver request, and the Commission found good cause to grant this request, after the inspecting agent discovered the main studio violation does not justify cancellation of the forfeiture amount. Likewise, the fact that AFA offered to take KBKC off the air until the waiver request was processed does not mitigate the violation. The Commission has stated that remedial actions taken to correct a violation are not mitigating factors.[9]

10. Nevertheless, we conclude that some reduction of the forfeiture amount is appropriate because AFA disclosed to Commission staff in February 2002 that it was operating KBKC as a satellite

[6] 47 C.F.R. § 1.80.

[7] 47 U.S.C. § 503(b)(2)(D).

[8] 47 C.F.R. § 73.1125(d)(2).

[9] *See Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973).

station without a waiver of the main studio rule. Accordingly, we reduce the forfeiture from $7,000 to $5,000.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503 of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,[10] American Family Association **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five thousand dollars ($5,000) for willful violation of Section 73.1125 of the Rules.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. 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.[11] Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232560005 and FRN 0005-0259-11. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.[12]

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to Patrick J. Vaughn, Esq., American Family Association, P.O. Drawer 2440, Tupelo, Mississippi 38803.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

[10] 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

[11] 47 U.S.C. § 504(a).

[12] *See* 47 C.F.R. § 1.1914.