

**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)	

MEMORANDUM OPINION AND ORDER

Adopted: February 14, 2003

Released: February 18, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we deny a petition for reconsideration filed by American Family Association (“AFA”), licensee of Station KBKC-FM, Moberly, Missouri, of a *Forfeiture Order*¹ issued in this proceeding. The *Forfeiture Order* issued a \$5,000 forfeiture to AFA for operating Station KBKC without a main studio in willful violation of Section 73.1125 of the Commission’s Rules (“Rules”).²

II. BACKGROUND

2. On April 8, 2002, an FCC agent from the Kansas City Office attempted an inspection of Station KBKC-FM, which is licensed to AFA in 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.

3. On May 28, 2002, the Kansas City Office issued a *Notice of Apparent Liability for Forfeiture* (“*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.³ In its response to the *NAL*, AFA

¹ *American Family Association*, 17 FCC Rcd 18135 (Enf. Bur. 2002).

² 47 C.F.R. § 73.1125.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232560005 (Enf. Bur., Kansas City Office, released May 28, 2002).

acknowledged 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, but requested cancellation of the forfeiture or reduction of the forfeiture to a lesser amount. In the *Forfeiture Order*, we reduced the forfeiture to \$5,000 because AFA disclosed to Commission staff in February 2002 that it was operating KBKC as a satellite station without a waiver of the main studio rule; however, we rejected the other arguments advanced by AFA in support of its request for cancellation or reduction of the forfeiture.⁴

4. In its petition for reconsideration, AFA argues that its violation of the main studio rule should be considered minor because it was in fact fulfilling its local service obligation. Specifically, AFA asserts that in the 59 instances where it has previously been granted a waiver of the main studio rule, Commission staff has required implementation of certain measures to ensure that the station will meet its local service obligation, including (1) adding to AFA's advisory board at least one resident from the station's city of license to provide recommendations on community needs and programming; (2) soliciting listeners' opinions every six months regarding community issues that should be addressed; (3) providing periodic local programming for the community; and (4) maintaining a toll-free number and a public inspection file for the station within the community of license. According to AFA, all of these measures were in place in Moberly at the time of the inspection. AFA also asserts that imposition of a \$5,000 forfeiture will have a devastating financial effect on KBKC, which is a small noncommercial educational station located in a rural community. Furthermore, AFA asserts that it has a history of overall compliance with the Commission's rules. Based on these factors, AFA argues that the forfeiture should be reduced to \$500.

III. DISCUSSION

5. We reject AFA's argument that its violation of the main studio rule should be considered a minor violation. We do not believe that AFA's implementation of measures required by Commission staff in other prior waiver cases renders its failure in this case either to maintain a main studio for KBKC in Moberly or to seek a main studio waiver for KBKC a minor violation. In any event, contrary to AFA's assertion, not all of these measures were in place in Moberly at the time of the inspection. In particular, we note that the phone number posted at KBKC's transmitter site, 662-844-8888, was not in fact a toll-free number for Moberly residents.⁵

6. AFA also asserts that imposition of a \$5,000 forfeiture will have a devastating financial effect on KBKC. However, as stated in the *NAL*, the Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. AFA provided no financial documentation in support of its assertion that the \$5,000 will impose a financial hardship on it and therefore we have no basis upon which to analyze its request for reduction of the forfeiture. We also note that the Commission has concluded that it is appropriate to take into account "*income derived from other affiliated operations*, as well as the financial status of the station(s) in question" in determining an entity's ability to pay a forfeiture.⁶ Thus, in

⁴ 17 FCC Rcd at 18137.

⁵ This telephone number reaches AFA offices in Tupelo, Mississippi, which is approximately 523 miles away from Moberly. Thus, it is clearly not a local telephone number either.

⁶ See *KASA Radio Hogar, Inc.*, 17 FCC Rcd 6256 (2002) (quoting *Emery Telephone*, 13 FCC Rcd 23854, 23859-

assessing AFA's financial hardship claim, we would evaluate the ability of AFA to pay the forfeiture, rather than that of KBKC alone.

7. Finally, AFA asserts that it has a history of overall compliance with the Commission's rules. However, we note that in March 2000, the Commission's Columbia, Maryland Field Office issued a Notice of Violation to AFA for several rule violations at WARN-FM, Culpeper, Virginia, including violations of the Emergency Alert System ("EAS") rules and operation of WARN with transmitter output power in excess of its authorized power.⁷ In addition, in October 2002, AFA admitted that it violated the public inspection file rule at KAUF-FM, Kennett, Missouri.⁸ In light of these other recent rule violations, we are not persuaded that a reduction of the forfeiture in this case based on AFA's history of compliance is warranted.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 1.106 of the Rules,⁹ the petition for reconsideration filed by American Family Association **IS DENIED**.

9. 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 Communications Act of 1934, as amended.¹⁰ 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. 20554.¹¹

60 (1998), *recon. denied*, 15 FCC Rcd 7181 (1999)).

⁷ On March 21, 2000, the Columbia Office issued an NOV to AFA for the following violations at WARN-FM: Sections 11.52(d) (failure to monitor two EAS sources), 11.61(b) (failure to log EAS tests received), 73.1560(b) (failure to maintain the transmitter output power between 90% and 105% of the authorized power), and 73.1870(c)(3) (failure to have the chief operator review the station logs at least once each week to determine if the required entries are made correctly). File No. EB-99-CF-035. In its response to this NOV, submitted on April 3, 2002, AFA acknowledged that it violated these rules.

⁸ On September 23, 2002, the Kansas City Office issued an *NAL* for a \$9,000 forfeiture to AFA for violations of Sections 11.35(a) (failure to maintain operational EAS equipment) and 73.3527(e) (failure to maintain all required items in the station's public file) at KAUF-FM. *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232560027 (Enf. Bur., released September 23, 2002). In its response to the *NAL*, AFA disputes that it violated the EAS rule, but admits that it violated the public inspection file rule. We do not rely on the *NAL* here, but only the underlying facts.

⁹ 47 C.F.R. § 1.106.

¹⁰ 47 U.S.C. § 504(a).

¹¹ See 47 C.F.R. § 1.1914.

10. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and 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