

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

In the Matter of	)	
	)	Facility ID No. 35729
<b>KUOA, INCORPORATED</b>	)	NAL/Acct. No. MB20041810066
	)	FRN: 0003754934
Licensee of Station KUOA(AM)	)	File No. BR-20040128ADF
Siloam Springs, Arkansas	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: April 13, 2011**

**Released: April 14, 2011**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. KUOA, Inc. (“KUOA”), former licensee of Station KUOA(AM), Siloam Springs, Arkansas (“Station”), filed a Petition for Reconsideration (“Petition”) of the Forfeiture Order<sup>1</sup> issued to KUOA for its willful and repeated violation of Section 73.3526 of the Commission’s Rules (“Rules”)<sup>2</sup> by failing to properly maintain a public inspection file for KUOA(AM). In this Memorandum Opinion and Order, we deny reconsideration and affirm the forfeiture issued by the Media Bureau (“Bureau”) in the total amount of seven thousand two hundred dollars (\$7,200) to KUOA.

**II. BACKGROUND**

2. On January 28, 2004, KUOA filed an application to renew the license of the Station. Section III, Item 3, of the license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3526 or 73.3527 of the Rules has been placed in the station’s public inspection file at the appropriate times. KUOA indicated “No” to that certification, explaining in an amended Exhibit that while some required information related to programming had been placed in the Station’s public file, it was not possible to determine whether that information was placed in the file at the appropriate times. It is further asserted that the information in the public file, in most cases, did not include sufficient information to comply with the Commission’s rules for the period between October 10, 1996, through January 10, 2003.

3. On June 21, 2004, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) to KUOA in the amount of nine thousand dollars (\$9,000) for the violations.<sup>3</sup> KUOA filed a response to the NAL on July 28, 2004, requesting reduction of the proposed forfeiture (“Request”). The Commission

<sup>1</sup> *KUOA, Inc.*, Forfeiture Order, 24 FCC Rcd 3007 (MB 2009).

<sup>2</sup> 47 C.F.R. § 73.3526.

<sup>3</sup> *Letter to James P. Riley, Esq.*, 19 FCC Rcd 11242 (MB 2004). In the NAL, the staff reduced the \$10,000 base forfeiture amount by \$1,000 because KUOA voluntarily disclosed the public file violations in its Application. This is inconsistent with our case law, which holds that disclosures prompted by license renewal form questions are not voluntary disclosures. *See, e.g., WPW Broadcasting, Inc.*, Forfeiture Order, 25 FCC Rcd 13250, 13252 (MB 2010).

reduced the forfeiture amount in the Forfeiture Order to \$7,200 based on KUOA's history of compliance with the Rules. KUOA then filed the subject Petition.

4. In its Petition, KUOA argues that the Forfeiture Order failed to explain how it distinguished its case from those cited in the Request involving \$3,000 forfeiture amounts. Further, KUOA argues that its actions in failing to keep a complete public inspection file were not egregious.

### III. DISCUSSION

5. The Commission will consider a Petition for Reconsideration only when petitioner shows either a material error in the Commission's original order or raises changed circumstances or unknown additional facts not known or existing at the time of petitioner's last opportunity to present such matters.<sup>4</sup> KUOA has failed to meet this burden.

6. KUOA argues that the Forfeiture Order "provides no rational basis for the amount of the forfeiture proposed,"<sup>5</sup> and demands an explanation for why its case is distinguishable from several Media Bureau decisions cited in its Request involving public file violations in which each licensee was assessed a \$3,000 forfeiture.<sup>6</sup> As an initial matter, *Towson University*, *Mid-Virginia*, and *Liberty University* are all distinguishable from the instant case. The Bureau has explicitly acknowledged that the \$3,000 amount assessed in *Towson University* was inconsistent with prevailing precedent.<sup>7</sup> *Mid-Virginia* involved an unspecified number of *incomplete* issues and programs lists and a missing issue of "The Public and Broadcasting."<sup>8</sup> *Liberty University* involved "some" missing issues/programs lists "from the early years"

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<sup>4</sup> See 47 C.F.R. § 1.106(c); *WWJZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sum nom.*, *Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966); *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

<sup>5</sup> Petition at 2.

<sup>6</sup> *Id.* at 5. Specifically, KUOA cited in its Request to *Towson University*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20223 (MB 2003) ("*Towson University*"); *Mid-Virginia Broadcasting Corp.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20183 (MB 2003) ("*Mid-Virginia*"); *Liberty University, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20115 (MB 2003) ("*Liberty University*"); *National Cable Satellite Corp.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20159 (MB 2003) ("*National Cable*"); *Starcast Systems, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20163 (MB 2003) ("*Starcast*"); *Oakland Media Group, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20167 (MB 2003) ("*Oakland-WMSG*"); *Bonneville Holding Co.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20175 (MB 2003) ("*Bonneville*"); *Bay Broadcasting Corp.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20207 (MB 2003) ("*Bay*"); *Oakland Media Group*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20219 (MB 2003) ("*Oakland-WWHC*"). KUOA also cited in its request one Enforcement Bureau decision in which a licensee was issued a \$3,500 forfeiture for, among other things, public file violations. See *Petracom of Joplin, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 6248 (EB 2004) ("*Petracom*"). With respect to *Petracom*, we note that the Bureau retains discretion to determine forfeiture amounts on a case-by-case basis. See 47 C.F.R. § 1.80(b)(4); see, e.g., *Gaston College*, Forfeiture Order, 25 FCC Rcd 982, 986 (EB 2010) (Enforcement Bureau declines to follow Bureau precedent involving denial of access to station's public file); *John Jason Bennett*, Letter, 20 FCC Rcd 17193, 17195, n.14 (MB 2005) (noting that Wireless Bureau precedent is not binding on the Bureau).

<sup>7</sup> *Towson University*, Forfeiture Order, 23 FCC Rcd 8747 (MB 2008) (noting that the \$3,000 forfeiture issued in the NAL for ten missing issues/programs lists was inconsistent with precedent).

<sup>8</sup> *Mid-Virginia*, 18 FCC Rcd at 20183.

of the license term, which remained missing for the license term. Similarly, *National Cable, Starcast, Oakland-WMSG, Bonneville, Bay* and *Oakland-WWHC* are also all distinguishable from the instant case. In each of these cited cases, the petitioners were issued forfeitures of \$3,000 for public file violations which occurred over an indiscernible amount of time during the license period.<sup>9</sup> An unspecified number of missing or incomplete lists over the course of the license term, or violations which occurred during an unspecified period of time are not the same as the instant case, which involves twenty-six missing issues/programs lists over a period of nearly seven years, encompassing almost the whole license term. Accordingly, we find that the forfeiture amount in the instant case is appropriate and consistent with recent precedent involving violations of Section 73.3526 of the Rules.<sup>10</sup>

8. KUOA further claims that its failure to comply with the public file rule was not an egregious action that merited a \$9,000 forfeiture amount. We disagree. As noted above, the forfeiture amount in this case is consistent with precedent for similar violations. Moreover, we note that we have already reduced the forfeiture amount based on KUOA's history of compliance with the Rules. We believe the amount here is appropriate and that no further reduction is warranted.

#### IV. CONCLUSION

9. Accordingly, for the reasons discussed above, IT IS ORDERED, that the Petition for Reconsideration filed by KUOA, Inc., on April 10, 2009, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>9</sup> KUOA also refers to a Video Division case to support its argument that a \$7,200 forfeiture amount is excessive. See *S&E Network, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 20 FCC Rcd 20282 (MB 2005) (issuing a \$3,000 forfeiture for Section 73.3526(e)(11)(iii) violations). However, *S&E Network* is inapposite because the violation at issue there was the licensee's failure to "publicize the existence and location of the Children's Television Programming Reports" as required by Section 73.3526(e)(11)(iii) of the Rules. *Id.*, 20 FCC Rcd at 20283.

<sup>10</sup> *Capstar TX Limited Partnership (Station WHJY(FM))*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 12715 (MB 2007) (\$10,000 forfeiture issued for 14 missing issues/programs lists); *South Atlanta Broadcasting, Inc.* Memorandum Opinion and Order and Notice of Apparent Liability, 21 FCC Rcd 8471 (MB 2006) (\$10,000 forfeiture assessed for nine missing issues/programs lists); *Emerson College*, Memorandum Opinion and Order and Notice of Apparent Liability, 21 FCC Rcd 8488 (MB 2006)(\$10,000 forfeiture assessed for fifteen missing issues/programs lists).