

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

In the Matter of	)	
	)	
Christian Family Network, Inc.	)	File Number EB-06-DT-277
	)	
Former Licensee of AM Station WOLY	)	NAL/Acct. No. 200732360001
Battle Creek, Michigan	)	
Facility ID #11032	)	FRN: 0010140358

**MEMORANDUM OPINION AND ORDER**

**Adopted:** December 29, 2008

**Released:** December 31, 2008

By the Deputy Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order*, issued pursuant to Section 405 of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> and Section 1.106 of the Commission’s rules,<sup>2</sup> we grant in part and deny in part a Petition for Reconsideration (“*Petition*”) filed on July 22, 2008, by Christian Family Network, Inc. (“Christian Family Network”), former licensee of AM station WOLY, in Battle Creek, Michigan.<sup>3</sup> Christian Family Network seeks reconsideration of a *Forfeiture Order*<sup>4</sup> issued by the Northeast Region (“Region”) of the Enforcement Bureau, imposing a ten thousand dollar (\$10,000) monetary forfeiture for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”).<sup>5</sup> The noted violation concerned Christian Family Network’s continued operation of its station after expiration of its license. For the reasons discussed below, we deny the *Petition* with regard to the Region’s finding that Christian Family Network willfully and repeatedly violated Section 301 of the Act and we grant the *Petition* with regard to Christian Family Network’s inability to pay and reduce the forfeiture to five thousand dollars (\$5,000).

**II. BACKGROUND**

2. Christian Family Network’s license authorizing it to operate station WOLY on frequency 1500 kHz expired on October 1, 2004. Christian Family Network never filed a license renewal application, which was due June 1, 2004, nor did it file a request for Special Temporary Authority (“STA”) either to operate its station after October 1, 2004, or to remain silent. As a result, in a letter dated June 13, 2006, the Media Bureau notified Christian Family Network that “. . .all authority to operate station WOLY(AM), Battle Creek, MI IS TERMINATED and the call letters are deleted. Any operation

<sup>1</sup> 47 U.S.C. § 405.

<sup>2</sup> 47 C.F.R. § 1.106.

<sup>3</sup> Although Christian Family Network captioned its pleading as a “Response to Forfeiture Order,” we treat it as a petition for reconsideration (“*Petition*”) pursuant to Section 1.106 of the Commission’s Rules, 47.C.F.R. § 1.106.

<sup>4</sup> *Christian Family Network, Inc.*, Forfeiture Order, 23 FCC Rcd 10898 (EB 2008) (“*Forfeiture Order*”).

<sup>5</sup> 47 U.S.C. § 301.

of this facility is now unauthorized and must cease immediately....”

3. On July 14, 2006, based on information from an area resident that the station continued to operate, agents from the Commission’s Detroit Office monitored transmissions on 1500 kHz in Battle Creek, MI. Using direction finding techniques, the agents determined that the source of the transmissions on 1500 kHz was 15074 6 ½ Mile Road, Battle Creek, MI 49014, which was the previously authorized location for station WOLY’s transmitter.

4. On August 17, 2006, an agent spoke to the owner and President of Christian Family Network, Inc., James Elsmann. The agent advised Elsmann that the station’s license was cancelled for failure to file a license renewal application and that the station therefore is no longer authorized to operate. Elsmann stated that he tried to file his license renewal application electronically, but was unable to do so.

5. On March 2, 2007, and May 22, 2007, an agent from the Commission’s Detroit Office monitored 1500 kHz in Battle Creek, MI and, using direction finding techniques, verified that the station continued to operate at 15074 6 ½ Mile Road in Battle Creek.

6. On August 16, 2007, the Detroit Field Office issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of \$10,000 to Christian Family Network for apparently willfully and repeatedly violating Section 301 of the Act by engaging in unauthorized operations of its station after its license expired.<sup>6</sup> In its response, Christian Family Network claimed that it did not willfully violate Section 301 of the Act and that it could not file its license renewal application because it did not have a computer. It reported that it filed a request for a special temporary authorization (“STA”) on December 10, 2006, and that, since that time, it had assumed that the request would be answered by the FCC. Christian Family Network also claimed that it did not have the ability to pay the proposed forfeiture.

7. In the *Forfeiture Order*, issued July 17, 2008, the Region considered Christian Family Network’s response to the *NAL* and determined that cancellation or reduction of the forfeiture was not warranted. Specifically, the Region addressed Christian Family Network’s claims that its violation was not willful, that it could not file its license renewal application because it did not have a computer, that it filed a request for Special Temporary Authorization (“STA”) on which the FCC never acted, and that it cannot afford to pay the forfeiture. The Region found that Christian Family Network’s violation was willful because Christian Family Network continued to operate its station after the Media Bureau cancelled its license and after FCC agents warned that continued operation of the station was unauthorized. The Region also rejected Christian Family Network’s claim that it could not comply with the mandatory electronic filing requirement for its license renewal application because it did not have a computer. The Region explained that Christian Family Network could have used a computer at a public institution or it could have requested a waiver of the electronic filing requirement. With regard to the alleged request for an STA, the Region found that there was no record of Christian Family Network having filed such a request, but the Region concluded that, even if Christian Family Network had filed the request, an STA is available only to permittees and licensees and Christian Family Network’s alleged STA request was filed on December 10, 2006, more than two years after its license had expired. The Region also denied Christian Family Network’s request for reduction or cancellation of the forfeiture based on its inability to pay because Christian Family Network did not submit any supporting documentation.

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<sup>6</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732360001 (Enf. Bur., Detroit Office, released August 16, 2007).

### III. DISCUSSION

8. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.<sup>7</sup> A petition for reconsideration that reiterates arguments that were previously considered and rejected will be denied.<sup>8</sup> Christian Family Network has raised no new facts or arguments regarding the Region's finding in the *Forfeiture Order* that Christian Family Network willfully and repeatedly violated Section 301 of the Act and therefore we deny the *Petition* with regard to the violation of Section 301 of the Act. We take the opportunity below, however, to reiterate certain findings in the *Forfeiture Order* regarding the Section 301 violation. We also address below Christian Family Network's claim that it cannot pay the forfeiture amount.

9. At issue in this proceeding is the Region's finding that Christian Family Network willfully and repeatedly violated Section 301 of the Act by operating a broadcast station long after the Media Bureau had canceled the license and deleted the call sign for station WOLY. Contrary to Christian Family Network's claims, this proceeding is not about the alleged unconstitutionality of the Commission's mandatory electronic filing requirements established for license renewal applications, requirements with which Christian Family Network claims it was not able to comply and which resulted in the cancellation of its license. As the Region explained in the *Forfeiture Order*, to the extent Christian Family Network believed that cancellation of its license for failure to file a license renewal application was in error, Christian Family Network's legal recourse was to file a petition for reconsideration under Section 405(a) of the Act,<sup>9</sup> which the Region noted does not need to be filed electronically.<sup>10</sup> Christian Family Network has never addressed why it did not file such a petition.<sup>11</sup> Christian Family Network continued to operate its station after receiving warnings from FCC agents that such operation was illegal and could subject it to further enforcement action. The cancellation of Christian Family Network's authorization to operate station WOLY and the cancellation of its call sign has become a final Commission order that is no longer subject to review. Christian Family Network's continued operation of station WOLY therefore violated Section 301 of the Act.

10. Christian Family Network claims that it cannot afford to pay the \$10,000 forfeiture. With regard to an individual's or entity's inability to pay, the Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.<sup>12</sup> After examining the financial

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<sup>7</sup> See 47 C.F.R. § 1.106(c); *EZ Sacramento, Inc.*, 15 FCC Rcd 18257 (EB 2000), citing *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

<sup>8</sup> *EZ Sacramento, Inc.*, 15 FCC Rcd at 18257.

<sup>9</sup> 47 U.S.C. § 405(a).

<sup>10</sup> See *Forfeiture Order* at n.16.

<sup>11</sup> For the first time in this proceeding, Christian Family Network submits a letter, dated September 27, 2004, which it allegedly sent to the Commission and which Christian Family Network now claims was a petition to waive the mandatory electronic filing requirements. Even if Christian Family Network in fact filed the letter and even if it could be considered a waiver request, the proper forum for making such a claim would have been in a proceeding reconsidering the Media Bureau's cancellation of the license for station WOLY.

<sup>12</sup> See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues). We also note that, although we are not required under Section 1.106(c) to consider information not previously submitted to the Region, we find that it is in the public interest to consider the financial documentation submitted by Christian Family Network in support of its inability to pay claim. See 47 C.F.R. § 1.106(c)(2).

documentation submitted by Christian Family Network, we find that a reduction in the forfeiture to \$5,000 is warranted based on Christian Family Network's demonstrated inability to pay the full forfeiture amount assessed in the *Forfeiture Order*.

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,<sup>13</sup> and Section 1.106 of the Commission's Rules,<sup>14</sup> Christian Family Network's Petition for Reconsideration **IS DENIED IN PART** and **GRANTED IN PART** and the forfeiture is reduced to five thousand dollars (\$5,000).

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.<sup>15</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](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. Christian Family Network shall also send electronic notification on the date said payment is made to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

13. **IT IS FURTHER ORDERED** that this Order shall be sent by regular mail and by certified mail, return receipt requested, to Christian Family Network at its address of record.

#### FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon  
Deputy Bureau Chief  
Enforcement Bureau

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<sup>13</sup> 47 U.S.C. § 405.

<sup>14</sup> 47 C.F.R. § 1.106.

<sup>15</sup> 47 U.S.C. § 504(a).