

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

In the Matter of)	
)	
Tri-County Broadcasting, Inc.)	File No. EB-02-NF-030
)	NAL/Acct. No. 200232640007
Licensee of Station WBRG(AM))	FRN 0006-0159-29
Madison Heights, Virginia)	

FORFEITURE ORDER

Adopted: May 9, 2003

Released: May 13, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to Tri-County Broadcasting, Inc. (“Tri-County”), licensee of Station WBRG(AM), Madison Heights, Virginia, for willful and repeated violation of Section 73.1745(a) of the Commission’s Rules (“Rules”).¹ The noted violations involve Tri-County’s failure to reduce power at WBRG(AM) at sunset and to limit WBRG(AM)’s pre-sunrise power.

2. On August 15, 2002, the Commission’s Norfolk, Virginia Resident Agent Office (“Norfolk Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Tri-County for a forfeiture in the amount of four thousand dollars (\$4,000).² Tri-County filed a response to the *NAL* on September 16, 2002.

II. BACKGROUND

3. On February 27 and February 28, 2002, in response to a complaint alleging that WBRG(AM) exceeded its authorized power during pre-sunrise hours, an agent from the Norfolk Office conducted field strength measurements of WBRG(AM)’s signal. WBRG(AM) is licensed to operate at 1,000 watts from sunrise until sunset, 98 watts from sunset until 6 a.m., and 475 watts during pre-sunrise hours (from 6:00 a.m. until sunrise). On February 27, 2002, the agent observed that WBRG(AM)’s field strength remained constant between 4:30 p.m. and 9:25 p.m., i.e., the station did not reduce power at local sunset. The agent observed that the station signed off the air sometime between 9:25 p.m. and 10:16 p.m. on February 27, 2002 and recommenced broadcasting before 6:30 a.m. on February 28, 2002. On February 28, 2002, between 6:30 a.m. and sunrise, the agent observed that WBRG(AM)’s field strength level was the same as it had been the previous day.

¹ 47 C.F.R. § 73.1745(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232640007 (Enf. Bur., Norfolk Office, released August 15, 2002).

4. On February 28, 2002, the agent inspected Tri-County's facilities at WBRG(AM). Station logs, meter readings and the agent's direct power measurements revealed that WBRG(AM) was operating with approximately 1,000 watts of power during daytime hours, post-sunset hours, and pre-sunrise hours between February 27 and February 28, 2002. The agent notified Tri-County's management that WBRG(AM) had been operating in excess of its authorized power, in addition to other violations.

5. On March 4, 2002, Tri-County sent the Norfolk Office a fax detailing remedial actions taken by Tri-County, including training its staff to reduce and increase the station's power at required times.

6. On August 15, 2002, the Norfolk Office issued an *NAL* finding Tri-County apparently liable for a \$4,000 forfeiture for failure to reduce power at WBRG(AM) at sunset and failure to limit WBRG(AM)'s pre-sunrise power in willful and repeated violation of Section 73.1745(a) of the Rules. In its response to the *NAL*, Tri-County does not dispute that these violations occurred. However, Tri-County seeks cancellation of the proposed forfeiture. Tri-County asserts that it fired the employee who overpowered the station on February 27, 2002 and that it has retrained its staff to operate WBRG(AM) in compliance with the Commission's rules. In addition, Tri-County maintains that payment of the proposed forfeiture will impose a hardship on it and provides its tax returns for 1999, 2000 and 2001 in support of this assertion.

III. DISCUSSION

7. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, ("Act"),³ Section 1.80 of the Rules,⁴ and *The Commission's 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 Tri-County'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.⁵

8. Section 73.1745(a) of the Rules provides that no broadcast station shall operate at times, or with modes or power, other than those specified in the station authorization. WBRG(AM) is licensed to operate at 1,000 watts from sunrise until sunset, 98 watts from sunset until 6 a.m., and 475 watts during pre-sunrise hours (from 6:00 a.m. until sunrise). On February 27, 2002, WBRG(AM) did not reduce its power at sunset and on February 28, 2002, WBRG(AM) operated at daytime power levels during pre-sunrise hours. Tri-County does not dispute that these violations occurred. Accordingly, we find that Tri-County willfully⁶ and repeatedly⁷ violated Section 73.1745(a) of the Rules.

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or

9. Tri-County asserts that it fired the employee who overpowered the station on February 27, 2002 and that it has retrained its staff to operate WBRG(AM) in compliance with the Commission's rules. However, the Commission has repeatedly stated that remedial actions taken to correct a violation are not mitigating factors warranting reduction of a forfeiture.⁸

10. Tri-County also asserts that payment of the proposed forfeiture will impose a financial hardship on it. In support of this assertion, Tri-County provides its tax returns for 1999, 2000 and 2001. The Commission has repeatedly held that a company's gross revenues are the best indicator of its ability to pay a forfeiture.⁹ After considering the financial information submitted by Tri-County, we conclude that Tri-County's gross revenues are sufficient to enable it to pay a \$4,000 forfeiture.

11. We have examined Tri-County's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Tri-County willfully and repeatedly violated Section 73.1745(a) of the Rules, and we find no basis for reduction of the \$4,000 forfeiture proposed for this violation.

IV. ORDERING CLAUSES

12. 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 Tri-County Broadcasting, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand dollars (\$4,000) for willful and repeated violation of Section 73.1745(a) of the Rules.

13. 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. 200232640007 and FRN

regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁷ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁸ See e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973).

⁹ See *Long Distance Direct, Inc.*, 15 FCC Rcd 3297, 3305 (2000); *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1991). The Commission has also stated that if gross revenues are sufficiently great, the existence of operating losses does not by itself mean that a company cannot afford to pay a forfeiture. *Id.*

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

¹¹ 47 U.S.C. § 504(a).

0006-0159-29. 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

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to Tri-County Broadcasting, Inc., P.O. Box 1079, Lynchburg, Virginia 24505.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹² See 47 C.F.R. § 1.1914.