

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

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

MEMORANDUM OPINION AND ORDER

Adopted: May 21, 2004

Released: May 25, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order (Order), we deny a June 12, 2003 petition for reconsideration filed by Tri-County Broadcasting, Inc. (Tri-County), licensee of Station WBRG(AM), Madison Heights, Virginia. Tri-County seeks reconsideration of a May 13, 2003 Forfeiture Order, in which the Enforcement Bureau imposed a monetary forfeiture in the amount of four thousand dollars (\$4,000) for willful and repeated violation of Section 73.1745(a) of the Commission's Rules (Rules). The noted violation involves Tri-County's failure to reduce power at WBRG(AM) at sunset and to limit WBRG(AM)'s pre-sunrise power. Tri-County does not deny violating the subject rule, but rather challenges the finding that there was no basis for reduction of the forfeiture amount.

II. DISCUSSION

2. Tri-County again submits tax returns for 1999, 2000 and 2001. Tri-County also submits a 2002 tax return which is not substantially different than those we previously determined were insufficient to warrant a cancellation or reduction of the forfeiture amount. Tri-County argues that this marginal operation belies our reliance upon Long Distance Direct and PJB Communications of Virginia for the proposition that gross revenues are the best indicator of a company's financial ability to pay a forfeiture amount. We disagree. We do not find that a \$4,000 forfeiture amount is excessive when compared to an average of the combined gross revenues for the years 1999, 2000 and 2001, or for the years 2000, 2001 and 2002. Accordingly, no reduction of the monetary forfeiture is warranted.

1 Tri-County Broadcasting, 18 FCC Rcd 9582 (Enf. Bur. 2003).

2 47 C.F.R. § 73.1745(a).

3 Petition at 2.

4 Long Distance Direct, 15 FCC Rcd 3297, 3305 (2000).

5 PJB Communications, 7 FCC Rcd 2088, 2089 (1992).

6 See PJB Communications, 7 FCC Rcd at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); Local Long Distance, Inc., 16 FCC Rcd at 10025 (continued...)

III. ORDERING CLAUSES

3. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended⁷ and Section 1.106 of the Rules,⁸ Tri-County's Petition for Reconsideration, filed June 12, 2003, **IS DENIED**.

4. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules⁹ 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.¹⁰ Payment shall 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 note NAL/Acct. No. 200232640007, and FRN 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. 20554.¹¹

5. **IT IS FURTHER ORDERED THAT** 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, VA 24505, and to its counsel Lewis H. Goldman, 45 Dudley Court, Bethesda, MD 20814.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

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(forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violators gross revenues). In this case, the forfeiture of 2.7 percent represents a smaller percentage than those issued in the *Local Long Distance, Inc.*, and *Hoosier Broadcasting Corp.*, cases, and only a nominally higher percentage compared to the forfeiture issued in *PJB Communications of Virginia, Inc.*

⁷ 47 U.S.C. § 405.

⁸ 47 C.F.R. § 1.106.

⁹ 47 C.F.R. § 1.80

¹⁰ 47 U.S.C. § 504(a).

¹¹ 47 U.S.C. § 1.1914.