

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

In the Matter of)	
)	
Power Radio Corporation)	File No. EB-04-SE-273
Licensee of Radio Station KXPW-LP)	NAL/Acct. No. 200532100006
Georgetown, Texas)	FRN: 0006560650
Facility Identification Number 133411)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 8, 2004**Released: December 10, 2004**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find Power Radio Corporation ("Power Radio"), licensee of Low Power ("LP") FM broadcast station KXPW-LP in Georgetown, Texas, apparently liable for a forfeiture in the amount of three thousand dollars (\$3,000) for willful violation of Section 73.875(c) of the Commission's Rules ("Rules").¹ The noted violation involves Power Radio's failure to file a modification of license application on FCC Form 319 within ten days of replacing its authorized antenna.

II. BACKGROUND

2. On June 4, 2004, the Media Bureau granted Power Radio a license to cover the construction permit for station KXPW-LP.² The license authorizes the use of a CW CP-1000 Model antenna with three bays, at a latitude and longitude of 30° 35' 30" N and 097° 40' 44" W, with a height of radiation center above ground of 55 meters, an overall height above ground level of 55 meters, and a height of radiation center above average terrain (HAAT) of 87 meters. On August 26, 2004, the Enforcement Bureau's Spectrum Enforcement Division ("Division") received a complaint alleging that on August 24, 2004, Power Radio removed KXPW-LP's authorized three-bay antenna and replaced it with a four-bay antenna without obtaining prior Commission authorization. On October 12, 2004, the Division sent Power Radio a Letter of Inquiry ("LOI") regarding its installation of a replacement antenna for station KXPW-LP.³

¹ 47 C.F.R. § 73.875(c).

² File No. BLL - 230031211AAT.

³ See Letter from Joseph P. Casey, Chief Spectrum Enforcement Division, Enforcement Bureau, to James Aultfather, President, Power Radio Corporation (October 12, 2004).

3. In an October 18, 2004 response to the LOI, Power Radio admitted that it installed a replacement antenna for KXPW-LP on August 24, 2004 due to major problems and failure of the existing antenna.⁴ Power Radio reported that the replacement antenna is an Armstrong FMA-707 Model with four bays and a full wave length spacing of 8.7 feet installed at a latitude and longitude of 30° 35' 30" N and 097° 40' 44" W with a height of radiation center above ground level of 55.5 meters (182 feet), an overall height above ground level of 59.7 meters (196 feet), and a height of radiation center above average terrain (HAAT) of around 87 meters (285.4 feet). Power Radio asserted that due to a misunderstanding with its engineering consultant, it did not know that it was required to file anything with the FCC for replacing an antenna with one that did not change the licensed HAAT by more than two meters above or four meters below the authorized value. On October 18, 2004, the same day that it submitted its LOI response, Power Radio filed an FCC Form 319 notifying the Commission of the replacement antenna installation for station KXPW-LP.⁵

III. DISCUSSION

4. Section 73.875 of the Rules prescribes the procedures and restrictions that apply to licensee modification of authorized LPFM transmission system facilities. Section 73.875(c)(1) of the Rules provides that LPFM facility modifications to replace an antenna with one of the same or different number of antenna bays may be made without prior authorization from the Commission provided the height of the antenna radiation center is not more than 2 meters above or 4 meters below the authorized values. However, a modification of license application on FCC Form 319 must be submitted to the Commission within 10 days of commencing program test operations.⁶

5. Power Radio admitted in its LOI response that it replaced its authorized three-bay antenna with a four-bay antenna on August 24, 2004. Power Radio did not file an FCC Form 319 notifying the Commission of this modification until October 18, 2004, almost two months later. Accordingly, based on the evidence before us, we find that Power Radio willfully violated Section 73.875(c) of the Rules by failing to submit the required form and information within 10 days of commencing program test operations after installing a replacement antenna for station KXPW-LP. Power Radio asserted that due to a misunderstanding with its engineering consultant, it was not aware that it was required to file anything with the FCC. However, licensees are expected to know and comply with the FCC's rules.⁷

6. Pursuant to *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) ("*Forfeiture Policy Statement*"), the base forfeiture amount for failing to file required forms is \$3,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934 ("Act"), as amended, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of

⁴ See Letter from James Aultfather, President, Power Radio Corporation, to Spectrum Enforcement Division, Enforcement Bureau (October 18, 2004).

⁵ File No. BMLL - 20041018AAW.

⁶ Program test operations at the full authorized ERP may commence immediately upon installation pursuant to Section 73.1620(a)(1) of the Rules, 47 C.F.R. § 73.1620(a)(1).

⁷ *Sitka Broadcasting Co., Inc.*, 70 FCC 3d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970).

culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁸ Applying the *Forfeiture Policy Statement* and statutory factors to the instant case, we believe that a \$3,000 proposed forfeiture is warranted.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act,⁹ and Sections 0.111, 0.311 and 1.80 of the Rules,¹⁰ Power Radio Corporation is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of three thousand dollars (\$3,000) for violating Section 73.875(c) of the Rules.

8. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Rules,¹¹ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Power Radio Corporation **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. Request for full payment under an installment plan should be sent to Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.

10. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

11. 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. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

⁸ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01 (discussion of upward and downward adjustment factors).

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹¹ 47 C.F.R. § 1.80.

12. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹²

13. **IT IS FURTHER ORDERED THAT** a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail, return receipt requested, to Power Radio Corporation, P.O. Box 73, Georgetown, Texas 78627-0073.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Spectrum Enforcement Division
Enforcement Bureau

¹² See 47 C.F.R. § 1.1914.