



Federal Communications Commission
Washington, D.C. 20554

DA 05-2894
Adopted: 10-26-2005
Released: 11-01-2005

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Commonwealth Public Broadcasting Corp.
23 Sesame Street
Richmond, VA 23235

Re: WCVE-TV, Richmond, VA
Facility ID: 9987
NAL/Acct. No. 0441420002
FRN-0006692347

Dear Licensee:

This letter addresses a Petition for Reconsideration of a *Forfeiture Order* issued on April 30, 2004, against Commonwealth Public Broadcasting Corp. (“Commonwealth”), licensee of the above-captioned station. In the *Forfeiture Order*, the Media Bureau found Commonwealth liable for a monetary forfeiture in the amount of \$10,000 for unauthorized construction and operation of WCVE-TV in violation of Section 73.1745 of the Commission’s Rules. We now lower the monetary forfeiture imposed here to \$4,000 based on past precedent for violations more closely resembling Commonwealth’s action in this case.

In a *Notice of Apparent Liability (NAL)* issued on May 15, 2003, we found, as Commonwealth admitted, that it constructed and commenced operations with new facilities for WCVE-TV from at least November 2002 and continuing at least until April 15, 2003 without prior authority from the Commission and more than 90 days before an application for those facilities was even filed. The Bureau therefore found that Commonwealth had constructed and operated WCVE-TV without prior FCC authorization in violation of Section 73.1745 of the Commission’s Rules. It was determined that Commonwealth should be sanctioned for its violation of the Commission’s Rules, and that a \$10,000 forfeiture was consistent with the Commission’s forfeiture guidelines and appropriate under these circumstances. *See Letter to Commonwealth Public Broadcasting Corp. from W. Kenneth Ferree, May 15, 2003*

In its response to the NAL, Commonwealth did not challenge the finding that it violated the Commission’s Rules, but argued that the forfeiture imposed “is difficult to justify” inasmuch as the violation in question was “inadvertent, minor in nature, and harmless to the public and other stations.” It essentially maintained that the forfeiture is unduly harsh given its long history of good behavior and limited financial resources, and is inconsistent with other cases where smaller fines were imposed for more egregious conduct. It therefore argued that the forfeiture imposed is inappropriate and requested that it be cancelled.

Based on our review of Commonwealth's response to the *NAL*, we were not persuaded that the Commonwealth's explanation of how the subject violation occurred warranted reduction or cancellation of the forfeiture. We also rejected Commonwealth's arguments that cancellation of the forfeiture is warranted because, essentially, no harm resulted from its rule violation and because it took "corrective action." We also found that the forfeiture imposed in this case was not "excessive" and would not result in an economic hardship to Commonwealth based on the financial data it submitted.

In its Petition for Reconsideration, Commonwealth reargues that Bureau failed to properly apply the downward adjustment criteria in light of the relatively minor nature of the violation, its good faith disclosure and correction of the problem, its history as a compliant licensee, and the claimed financial impact of the forfeiture imposed. However, inasmuch as we have already considered and addressed Commonwealth's claims in this regard and because nothing presented here warrants revisiting our previous findings, we will not entertain this petition to reargue those matters.

However, Commonwealth also contends that the Bureau failed to account for other cases where a lesser forfeiture was assessed for actions more closely resembling the nature of its violation. Specifically, it argues that in a number of cases involving unauthorized relocation and construction of facilities, an offending licensee was found to have violated Section 73.1350(a) of the Rules relating to a licensee's responsibility to maintain the facilities in accordance with the station's authorization and were assessed maximum forfeitures of \$4,000.¹ It argues that the \$10,000 forfeiture assessed by the Bureau is customarily reserved for those not previously licensed to operate – essentially "pirate" operations.² It therefore concludes that its mistaken relocation of the WCVE-TV antenna under these circumstances cannot be comparably viewed and penalized as if it were a wholly unlicensed pirate operation.

We have reviewed Commonwealth's argument concerning the nature of its violation in relation to past forfeitures imposed for similar conduct in the past. We remain convinced that a monetary forfeiture is appropriate here and that outright cancellation is not warranted. Based on the facts of this case, and when considered with other cases involving similar conduct, we believe that a reduction of the assessed forfeiture is appropriate here, and we will reduce the amount of that forfeiture to \$4,000, the base amount for operation at an unauthorized location.³

Based on our review of the facts and circumstances as set forth above, IT IS HEREBY ORDERED, That pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.283, and 1.80 of the Commission's Rules, Commonwealth Public Broadcasting Corp.'s Petition For Reconsideration of the April 30, 2004 *Forfeiture Order* IS GRANTED to the extent that the \$10,000 monetary forfeiture is reduced to \$4,000.

¹ See, e.g., *Discussion Radio, Incorporated*, 19 FCC Rcd 7433 (2004); *Morradio, Inc.*, 14 FCC Rcd 5201 (1999).

² See, e.g., *Joseph Frank Ptak*, 14 FCC Rcd 9317 (1999); *Jerry Szoka*, 14 FCC Rcd 9857 (1999).

³ See Section 1.80 of the Commission's Rules.

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 letter. If the forfeiture is not made within the specified period, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act. Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, and addressed to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, and P.O. Box 73482, Chicago, Illinois, 60673-7482. The payment MUST INCLUDE the NAL/Account Number and the FCC Registration Number (FRN) referenced above. 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. 20554.⁴

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg
Acting Chief, Media Bureau

cc: Richard J. Bodorff, Esquire

⁴ See 47 C.F.R. § 1.1914.