

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
POWER RADIO CORPORATION)	EB-03-IH-0687
)	Facility ID No. 133411
Licensee of Noncommercial Educational Station)	NAL/Account No. 200932080020
KXPW-LP, Georgetown, Texas)	FRN 0006560650
)	

FORFEITURE ORDER

Adopted: July 21, 2009

Released: July 21, 2009

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we impose a monetary forfeiture of \$6,000 against Power Radio Corporation (“PRC” or “Licensee”), licensee of noncommercial educational Station KXPW-LP, Georgetown, Texas (“Station”), for violating Section 399B of the Communications Act of 1934, as amended (the “Act”),¹ and Section 73.503(d) of the Commission’s rules² by broadcasting advertisements over the Station.

II. BACKGROUND

2. This case arises from a complaint made to the Commission in November 2003, alleging that noncommercial educational Station KXPW-LP broadcast prohibited underwriting announcements on July 16, 2003.³ Thereafter, the Enforcement Bureau (“Bureau”) inquired of the Licensee concerning the allegations contained in the complaint.⁴ PRC responded to the *August 9th LOI* on September 13, 2004.⁵ Prior to that response, however, the Complainant alleged that the Station had aired further prohibited underwriting announcements on August 23 and 24, 2004, about which the Bureau inquired on October 20, 2004.⁶ Further responsive pleadings followed.⁷

¹ See 47 U.S.C. § 399b.

² See 47 C.F.R. § 73.503(d).

³ See Letter from Barry A. Friedman, Esq., to William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, dated November 5, 2003 (“*November 5th Complaint*”), filed on behalf of Ixoye Productions, Inc., licensee of noncommercial educational Station KNLE-FM, Round Rock, Texas (“Complainant”).

⁴ See Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to PRC, dated August 9, 2004 (“*August 9th LOI*”).

⁵ See Letter from Lauren Lynch Flick, Esq., to Kenneth M. Scheibel, Jr., Attorney, Investigations and Hearings Division, Enforcement Bureau, dated September 13, 2004, and filed on behalf of PRC (“*September 13th Response*”).

⁶ See Letter from Barry A. Friedman, Esq., to William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, dated August 24, 2004 (“*August 24th Complaint*”); Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to PRC, dated October 20, 2004 (“*October 20th LOI*”).

3. On March 18, 2009, the Bureau issued a *Notice of Apparent Liability for Forfeiture* (“NAL”),⁸ finding that the Licensee had apparently violated the pertinent statute and Commission rules, and proposing a monetary forfeiture of \$20,000. On March 14, 2009, PRC responded to the NAL, claiming inability to pay and requesting that the proposed forfeiture be cancelled.⁹

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act,¹⁰ Section 1.80 of the Commission’s Rules,¹¹ and the Commission’s forfeiture guidelines set forth in its *Forfeiture Policy Statement*.¹² In assessing forfeitures, Section 503(b) of the Act requires that we 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 matters as justice may require.¹³ As discussed further below, we have examined PRC’s response to the NAL pursuant to the aforementioned statutory factors, our rules, and the *Forfeiture Policy Statement*, and find that while cancellation is not appropriate, a reduction on the basis of inability to pay is warranted.

5. In its *NAL Response*, PRC does not dispute the Bureau’s NAL finding that the eight announcements violated the Commission’s underwriting rules and so we adopt the NAL’s apparent conclusion concerning those announcements. Instead, PRC claims that, due to its straitened financial condition, it cannot satisfy the forfeiture amount and argues that cancellation is warranted due to such hardship.¹⁴ PRC also claims that none of the employees who were involved with broadcasting the problem underwriting announcements currently work at the Station.¹⁵

⁷ See Letter from Lauren Lynch Flick, Esq., to Kenneth M. Scheibel, Jr., Attorney, Investigations and Hearings Division, Enforcement Bureau, dated November 9, 2004 (“November 9th Response”); Letter from Barry A. Friedman, Esq., to William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, dated November 17, 2004 (“November 17th Reply”); Letter from Lauren Lynch Flick, Esq., to Kenneth M. Scheibel, Jr., Attorney, Investigations and Hearings Division, Enforcement Bureau, dated January 24, 2005 (“January 24th Response”).

⁸ See *Power Radio Corporation*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 2572 (Enf. Bur. 2009) (“NAL”).

⁹ See *Power Radio Corporation*, Response to the Notice of Apparent Liability for Forfeiture, filed April 20, 2009 (“NAL Response”).

¹⁰ See 47 U.S.C. § 503(b).

¹¹ See 47 C.F.R. § 1.80.

¹² See *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

¹³ See 47 U.S.C. § 503(b)(2)(E).

¹⁴ See *NAL Response* at 1.

¹⁵ See *id.* at 1.

6. Although any post-facto station staffing actions taken by PRC are not mitigating,¹⁶ the establishment of an inability to pay claim is a relevant factor in deciding whether to reduce or cancel the forfeiture amount. In its *NAL Response*, PRC provided its bank statement for March 2009 and its tax returns for 2006 and 2007.¹⁷ PRC states that it has filed for an extension for its 2008 tax return due to the death of the president and owner of PRC.¹⁸ PRC also contends that its 2009 income has declined precipitously.¹⁹ Because of its recently reduced financial condition, PRC requests that the Commission rescind the forfeiture.²⁰

7. The Commission has determined that a licensee's gross revenues are the best yardsticks for determining its ability to pay,²¹ and that the net-loss experience does not, in the absence of other mitigating factors, demonstrate a licensee's inability to pay.²² After reviewing PRC's financial documentation and in light of its gross revenues, we do not agree with PRC that cancellation is appropriate in this case. We find, however, that a reduction on the basis of inability to pay is warranted. Accordingly, as a result of our review of PRC's response to the *NAL*, and in view of the statutory factors and the *Forfeiture Policy Statement*, we affirm the *NAL* and issue a monetary forfeiture in the amount of \$6,000.²³

IV. ORDERING CLAUSES

8. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of the Commission's rules,²⁴ Power Radio Corporation, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$6,000 for willfully and repeatedly violating Section 399B of the Act, as amended, and Section 73.503(d) of the Commission's Rules.²⁵

¹⁶ Although PRC is unclear on this point, to the extent that it claims that it has taken post-misconduct remedial action by removing those responsible, we note that post-facto remedial actions, even if taken, neither excuse nor mitigate a prior Commission rule violation. See *AT&T Wireless Services, Inc.*, Notice of Apparent Liability, 17 FCC Rcd 21866, 21871 (2002); *KVGL, Inc.*, Memorandum Opinion and Order, 42 FCC Rcd 258, 259 (1973); *Capstar TX Limited Partnership (WKSS(FM))*, Notice of Apparent Liability, 20 FCC Rcd 10636 (Enf. Bur. 2005) (forfeiture paid).

¹⁷ See *NAL Response* at Attachments.

¹⁸ See *NAL Response* at 1.

¹⁹ See *id.*

²⁰ See *id.*

²¹ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992) ("*PJB Communications*").

²² See *Independent Communications Inc.*, Memorandum Opinion and Order and Forfeiture Order, 14 FCC Rcd 9605, 9610 (1999); *PJB Communications*, 7 FCC Rcd at 2089.

²³ 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 24385, 24389 (2000), *recons. denied*, 16 FCC Rcd 10023, 10025 (2001) (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 violator's gross revenues). In this case, the forfeiture represents a percentage within the range of *PJB Communications of Virginia, Inc.*, *Local Long Distance, Inc.*, and *Hoosier Broadcasting Corp.*

²⁴ See 47 U.S.C. § 503(b), 47 C.F.R. § 1.80.

²⁵ See 47 U.S.C. § 399b; 47 C.F.R. § 73.503(d).

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules²⁶ within thirty (30) days of the release of this *Forfeiture 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.²⁷ 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 No. and FRN No. 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 24A (payment type code). PRC will also send electronic notification on the date said payment is made to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Kenneth.Scheibel@fcc.gov, and Anita.Patankar-Stoll@fcc.gov. 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 with any questions regarding payment procedures.

10. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent, by Certified Mail/Return Receipt Requested, to Power Radio Corporation, P.O. Box 73, Georgetown, Texas 78627.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

²⁶ See 47 C.F.R. § 1.80.

²⁷ See 47 U.S.C. § 504(a).