

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

In the Matter of	)	
	)	
Catholic Radio Network, Inc.	)	File No.: EB-10-DV-0407
	)	NAL/Acct. No.: 201232800001
Licensee of Station KPIO	)	FRN: 0018470849
Loveland, Colorado	)	
Facility ID No.: 35517	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER**

**Adopted: October 28, 2011**

**Released: October 31, 2011**

By the District Director, Denver Office, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture and Order (“NAL”), we find that Catholic Radio Network, Inc. (“CRNI”), licensee of AM broadcast Station KPIO, in Loveland, Colorado (“Station”), apparently willfully and repeatedly violated section 73.1745(a) of the Commission’s Rules (“Rules”),<sup>1</sup> by failing to operate in accordance with the Station’s authorized power as specified on the Station’s license. We conclude that CRNI is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000). In addition, no later than 30 days from the date of this *NAL*, CRNI must submit a statement signed under penalty of perjury that it is operating its station at authorized power levels.

**II. BACKGROUND**

2. On December 20 and 22, 2010, and on January 5, 2011, an agent from the Enforcement Bureau’s Denver Office (“Denver Office”) monitored the field strength for Station KPIO in Loveland, Colorado. The agent observed that the Station’s field strength remained the same on December 20 and 22, 2010, before and after sunset.<sup>2</sup> In addition, the agent observed that the station’s field strength remained the same on January 5, 2011, before and after sunrise.<sup>3</sup>

3. On January 19, 2011, an agent from the Denver Office inspected Station KPIO while accompanied by the Station’s owner and contract engineer. Comparing field strength measurements taken during the inspection on January 19, 2011 against the field strength measurements taken on December 20 and 22, 2010 and January 5, 2011, it was determined that Station KPIO had been operating at approximately 1531 watts during nighttime hours on these three prior dates, well above its authorized nighttime operating power level. Station KPIO is licensed to operate only between 11 and 32 watts during post-sunset, nighttime, and pre-sunrise hours, during the months of December and January. The Station’s chief engineer subsequently investigated the status of the Station’s operating power and found, as the potential explanation

<sup>1</sup> 47 C.F.R. § 73.1745(a).

<sup>2</sup> According to the KPIO Station License, the relevant average hour of sunset for December is 4:30 p.m., MST. *See* File No: BL-20070214ACM, granted June 19, 2007.

<sup>3</sup> According to the KPIO Station License, the relevant average hour of sunrise for January is 7:30 a.m., MST. *See* File No: BL-20070214ACM, granted June 19, 2007.

for the excess power level, a faulty remote control system, a defective transmitter power reading meter, and a defective base current meter.

### III. DISCUSSION

4. Section 503(b) of the Communications Act of 1934, as amended (“Act”), provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.<sup>4</sup> Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>5</sup> The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,<sup>6</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>7</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>8</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>9</sup>

5. The record in this case demonstrates that CRNI violated section 73.1745(a) of the Rules, which states that no broadcast station shall operate at times, or with modes or power, other than those specified and made part of the license, unless otherwise provided.<sup>10</sup> Station KPIO is licensed to operate with 18 watts at nighttime, and with 11 to 32 watts post-sunset and pre-sunrise, during the months of December and January. As discussed above, on December 20 and 22, 2010, an agent observed that Station KPIO did not reduce its operating power after sunset to its authorized level; and on January 5, 2011, an agent observed that Station KPIO was not operating at its authorized reduced power before sunrise. The fact that Station personnel were unaware that Station KPIO was not reducing power to its authorized level at night prior to the January 5, 2011, inspection by the Denver Office does not serve to excuse or mitigate the violation.<sup>11</sup> Accordingly, we find that Station KPIO was operating over its authorized nighttime, post-sunset and pre-

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<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 U.S.C. § 312(f)(1).

<sup>6</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., section 503) . . . . As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission’s application of those terms . . . .”).

<sup>7</sup> See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>8</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>9</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

<sup>10</sup> 47 C.F.R. § 73.1745(a).

<sup>11</sup> See, e.g., *Kenneth Paul Harris, Sr.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 12933, 12935 (Enf. Bur. 2000) (subsequent history omitted; denying a mitigation claim of a broadcast licensee, stating that its ignorance of the law did not excuse the unauthorized transfer of the station); *Maxwell Broadcasting Group, Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 784, 784 (Mass Media Bur.) (denying a mitigation claim of a noncommercial broadcast licensee, stating that the excuse of “inadvert[ce], due to inexperience and ignorance of the rules . . . are not reasons to mitigate a forfeiture” for violation of the advertisement restrictions), *recon. denied*, Memorandum Opinion and Order, 8 FCC Rcd 4322 (Mass Media Bur. 1993).

sunrise power for more than one day; and conclude that CRNI apparently willfully and repeatedly violated section 73.1745(a) of the Rules by failing to operate Station KPIO in accordance with the Station's authorized power, as specified on the Station's license, on more than one day.

6. Pursuant to the Commission's Forfeiture Policy Statement and section 1.80 of the Rules, the base forfeiture amount for exceeding power limits is \$4,000.<sup>12</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, 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.<sup>13</sup> Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that CRNI is apparently liable for a \$4,000 forfeiture for failure to operate its station pursuant to the authorized power limits. We further order CRNI to submit a written statement pursuant to section 1.16 of the Rules<sup>14</sup> signed under penalty of perjury by an officer or director of CRNI within thirty (30) days of the release date of this NAL that Station KPIO is now in compliance with section 73.1745(a) of the Rules.

#### IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission's Rules, Catholic Radio Network, Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand dollars (\$4,000) for violation of section 73.1745(a) of the Rules.<sup>15</sup>

8. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's Rules, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Catholic Radio Network, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. **IT IS FURTHER ORDERED** that Catholic Radio Network, Inc., **SHALL SUBMIT** a written statement, as described in paragraph 6, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Denver Office, 215 S. Wadsworth Blvd., Suite 303, Lakewood, Colorado 80226.

10. Payment of the forfeiture must be made by credit card, check, or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account number and FRN number 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 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be

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<sup>12</sup> *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) ("*Forfeiture Policy Statement*"), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

<sup>13</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>14</sup> 47 C.F.R. § 1.16.

<sup>15</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 73.1745(a).

sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>16</sup> If you have questions regarding the payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov). If payment is made, Catholic Radio Network, Inc., shall send electronic notification on the date said payment is made to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

11. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(f)(3) of the Rules.<sup>17</sup> Mail the written statement to Federal Communications Commission, Enforcement Bureau, Western Region, Denver Office, 215 S. Wadsworth Blvd., Suite 303, Lakewood, Colorado 80226 and include the NAL/Acct. No. referenced in the caption. Catholic Radio Network, Inc., shall also email the written response to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

12. 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 ("GAAP"); 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.

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Catholic Radio Network, Inc., 201 N. Industrial Park Road, Excelsior Springs, Missouri 64024.

FEDERAL COMMUNICATIONS COMMISSION

Nikki P. Shears  
District Director  
Denver Office  
Western Region  
Enforcement Bureau

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<sup>16</sup> See 47 C.F.R. § 1.1914.

<sup>17</sup> 47 C.F.R. § 1.16, 1.80(f)(3).