

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

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

**FORFEITURE ORDER**

**Adopted: January 8, 2014**

**Released: January 9, 2014**

By the Regional Director, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of three thousand, two hundred dollars (\$3,200) to Catholic Radio Network of Loveland, Inc. (Catholic Radio), licensee of broadcast Station KPIO(AM), in Loveland, Colorado (Station), for willfully and repeatedly violating Section 73.1745(a) of the Commission's rules (Rules).<sup>1</sup> The noted violation involved the failure to operate the Station as authorized on the Station's license.

**II. BACKGROUND**

2. On October 31, 2011, the Enforcement Bureau's Denver Office (Denver Office) issued a Notice of Apparent Liability for Forfeiture (*NAL*) for four thousand dollars (\$4,000) to Catholic Radio Network, Inc. for failing to operate in accordance with the Station's authorized power as specified on the Station's license.<sup>2</sup> In response to the *NAL*, Catholic Radio does not deny the violations, but requests cancellation or reduction of the proposed forfeiture based on its good faith efforts to comply with the Rules and its history of compliance with the Rules.<sup>3</sup>

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<sup>1</sup> 47 C.F.R. § 73.1745(a).

<sup>2</sup> *Catholic Radio Network, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 15204 (Enf. Bur. 2011) (*NAL*). A comprehensive recitation of the facts and history of this case can be found in the *NAL* and is incorporated herein by reference.

<sup>3</sup> See Response of Catholic Radio Network of Loveland, Inc. to Denver Office, Western Region, Enforcement Bureau (Nov. 29, 2011) (on file in EB-10-DV-0407) (*NAL Response*). Catholic Radio also states that the name used in the *NAL*, Catholic Radio Network, Inc., is that of the prior licensee and that, therefore, the *NAL* should be rescinded. We have corrected the name of the licensee in the caption and in this Order, but we disagree that the *NAL* should be rescinded. The *NAL* was issued to the licensee of Station KPIO(AM). Catholic Radio Network of Loveland, Inc. was granted the Station KPIO(AM) license as a *pro forma* assignment from Catholic Radio Network, Inc., and the same three directors that comprise the board of Catholic Radio Network of Loveland, Inc. comprise the board of Catholic Radio Network, Inc. See File No. BAL-20081120AFA, granted Dec. 11, 2008. In addition, Catholic Radio Network of Loveland, Inc. received the required service of the *NAL* and was afforded an opportunity to respond. See 47 C.F.R. § 1.80(f)(2)–(3) (“The notice of apparent liability will be sent to the respondent, by certified mail, at his last known address . . . [and the] respondent will be afforded a reasonable period of time . . . to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture.”). See also *Marshall D. Martin*, Forfeiture Order, 19 FCC Rcd 20977 (Enf Bur. 2004) (correcting the name of a respondent in a forfeiture order, but not rescinding the underlying notice of apparent liability).

### III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and the *Forfeiture Policy Statement*.<sup>6</sup> In examining Catholic Radio's response, Section 503(b)(2)(E) of the Act requires that the Commission 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 such matters as justice may require.<sup>7</sup>

4. We affirm the *NAL*'s finding that Catholic Radio violated Section 73.1745(a) of the Rules.<sup>8</sup> Section 73.1745(a) 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>9</sup> As reflected in the *NAL*, on December 20 and 22, 2010, and January 5, 2011, an agent from the Denver Office determined that Station KPIO(AM) was operating at a nighttime power level which far exceeded its authorized power limit.<sup>10</sup> During an inspection of the Station on January 20, 2010, the agent confirmed his findings and subsequently Station KPIO(AM) personnel determined that faulty equipment at the Station was responsible for the excess power level.<sup>11</sup> Based on the undisputed evidence, we conclude that Catholic Radio willfully and repeatedly violated Section 73.1745(a) of the Rules by operating Station KPIO(AM) at a power level that was not in accordance with the Station's authorization.

5. In response to the *NAL*, Catholic Radio nonetheless requests cancellation or reduction of the \$4,000 forfeiture, asserting that the Commission has previously cancelled forfeitures against non-profit entities like Catholic Radio when the licensee has made significant good faith efforts to comply with the rules.<sup>12</sup> Catholic Radio cites to *Queen of Peace Radio, Inc.*,<sup>13</sup> and argues that because Station KPIO(AM) "promptly took steps to cure the problem found by the FCC agent" the proposed forfeiture should be cancelled.<sup>14</sup> We disagree. The Commission will generally reduce an assessed forfeiture based on the good faith corrective efforts of a violator when those corrective efforts were taken *prior* to

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<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</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), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

<sup>7</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>8</sup> See *NAL supra* note 2.

<sup>9</sup> 47 C.F.R. § 73.1745(a).

<sup>10</sup> *NAL*, 26 FCC Rcd at 15204-05, paras. 2-3. During the months of December and January, Station KPIO(AM) is licensed to operate between 11 and 32 watts during post-sunset, nighttime, and pre-sunrise hours. Field strength measurements made by the Denver Office agent revealed that the Station was operating at approximately 1531 watts during non-daytime hours. See *id* at 15204, para. 3.

<sup>11</sup> *Id.* See *NAL Response* at 4. As required by the *NAL*, Catholic Radio submitted a written statement, signed under penalty of perjury, stating that Station KPIO(AM) is now in compliance with Section 73.1745(a) of the Rules. See Letter from James E. O'Laughlin, President, Catholic Radio Network of Loveland, Inc. to Denver Office, Western Region, Enforcement Bureau (Nov. 29, 2011) (on file in EB-10-DV-0407).

<sup>12</sup> *NAL Response* at 3.

<sup>13</sup> *Queen of Peace Radio, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 20909 (2000) (cancelling a \$7,000 forfeiture for failing to adequately staff a main studio because of good faith efforts to comply with the main studio rule).

<sup>14</sup> *NAL Response* at 4.

Commission notification of the violation.<sup>15</sup> In this case, Station personnel were unaware that the Station was not reducing power to its authorized level at night due to faulty equipment, prior to the inspection by the Denver Office.<sup>16</sup> Accordingly, the record in the present case indicates no demonstrated good faith efforts by Catholic Radio to correct the Section 73.1745(a) violation prior to the notification by the Denver Office agent. The fact that Station personnel were unaware of the violation does not serve to excuse or mitigate the violation.<sup>17</sup> Although the record does show that Catholic Radio did take remedial measures to correct its violations, the Commission will not reduce forfeiture amounts for remedial efforts taken after Commission involvement.<sup>18</sup> Finally, Catholic Radio asserts that it has a history of compliance with the Rules. After reviewing the Commission's records, we find that reduction of the forfeiture based on Catholic Radio's history of compliance with the Rules is warranted and reduce the forfeiture by \$800. Therefore, after consideration of the entire record and the factors listed above, we find that a forfeiture in the amount of \$3,200 is warranted.

#### IV. ORDERING CLAUSES

6. 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(f)(4) of the Commission's rules, Catholic Radio Network of Loveland, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand, two hundred dollars (\$3,200) for violations of Section 73.1745(a) of the Rules.<sup>19</sup>

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's rules within thirty (30) calendar days after the release date of this Forfeiture Order.<sup>20</sup> If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Communications Act of 1934, as amended.<sup>21</sup> Catholic Radio Network of Loveland, Inc., shall send electronic notification of payment to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov) on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>22</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

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<sup>15</sup> See, e.g., *LawMate Technology Co.*, Forfeiture Order, 27 FCC Rcd 15159, 15161, para. 6 (Enf. Bur. 2012) (a stated intention to undertake certain remedial measures to ensure future compliance does not justify a reduction for good faith compliance); *Sutro Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 15274, 15277, para. 10 (2004) (stating that the Commission will generally reduce the assessed forfeiture "based on the good faith corrective efforts of a violator when those corrective efforts were taken prior to Commission notification of the violation").

<sup>16</sup> *NAL*, 26 FCC Rcd at 15205, para. 5.

<sup>17</sup> See, e.g., *Kenneth Paul Harris, Sr.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 12933, 12935, para. 7 (Enf. Bur. 2000) (subsequent history omitted; denying a mitigation claim of a broadcast licensee, stating that his 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, para. 2 (Mass Media Bur. 1993) (denying a mitigation claim of a noncommercial broadcast licensee, stating that the excuse of "inadverten[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).

<sup>18</sup> *LawMate Technology Co.*, 27 FCC Rcd at 15161, para. 6; *Behringer USA, Inc.*, Forfeiture Order, 22 FCC Rcd 10451, 10459, para. 19 (2007).

<sup>19</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 73.1745(a).

<sup>20</sup> 47 C.F.R. § 1.80.

<sup>21</sup> 47 U.S.C. § 504(a).

<sup>22</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

8. Any request for full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>23</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

9. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Catholic Radio Network of Loveland, Inc., 201 N. Industrial Park Road, Excelsior Springs, Missouri, 64024 and to its counsel, Dennis J. Kelly, P.O. Box 41177, Washington, D.C. 20018.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau

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<sup>23</sup> See 47 C.F.R. § 1.1914.