

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

In the Matter of)	
)	
The L.R. Radio Group, Inc.)	File No.: EB-11-DL-0014
)	NAL/Acct. No.: 201232500004
Licensee of Station KPIR)	FRN: 0018390310
Granbury, Texas)	Facility ID No.: 30195
)	

MEMORANDUM OPINION AND ORDER

Adopted: January 23, 2014**Released: January 23, 2014**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, issued pursuant to Section 405 of the Communications Act of 1934, as amended (Act),¹ and Section 1.106 of the Commission's rules (Rules),² we grant, in part, and deny, in part, the petition for reconsideration (*Petition*) filed by The L.R. Radio Group, Inc. (L&R).³ L&R seeks reconsideration of the *Forfeiture Order* issued by the Enforcement Bureau's South Central Region in this proceeding.⁴ The *Forfeiture Order* imposed a monetary forfeiture in the amount of eight thousand dollars (\$8,000) against L&R for willfully and repeatedly violating Section 73.3526 of the Rules, by failing to make available a complete public inspection file.⁵ Based on L&R's established inability to pay the forfeiture, and consistent with Commission precedent, we reduce the amount to two thousand eight hundred seventy five dollars (\$2,875).

II. BACKGROUND

2. In its *Petition*, L&R requests reduction or rescission of the forfeiture based on its inability to pay.⁶ Specifically, L&R states that it only owns a stand-alone AM station in a small town and is

¹ 47 U.S.C. § 405.

² 47 C.F.R. § 1.106.

³ See Letter from Anne Goodwin Crump, Counsel for The L.R. Radio Group, Inc., to Federal Communications Commissioner (Oct. 26, 2012) (on file in EB-11-DL-0014) (*Petition*).

⁴ See *The L.R. Radio Group, Inc.*, Forfeiture Order, 27 FCC Rcd 11260 (Enf. Bur. 2012) (*Forfeiture Order*), *aff'g*, Notice of Apparent Liability, 27 FCC Rcd 977 (Enf. Bur. 2012) (*NAL*).

⁵ 47 C.F.R. § 73.3526.

⁶ See *Petition*, *supra* note 3.

operating at a net loss.⁷ Alternatively, L&R requests to pay the forfeiture in monthly installments of \$500.⁸

III. DISCUSSION

3. Petitions for reconsideration are granted only in limited circumstances. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order, raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters, or the Commission determines that consideration of the facts is required in the public interest.⁹ The latter is the case here. Although L&R could have requested a reduction based on inability to pay in response to the *NAL*, because Section 503(b)(2)(E) of the Act¹⁰ directs us to consider a violator's ability to pay when determining a forfeiture penalty, we conclude the public interest requires us to evaluate L&R's petition at this time.

4. When faced with claims alleging an inability to pay, the Commission has determined that, in general, gross income or revenues are the best indicator of an individual or entity's ability to pay a forfeiture.¹¹ Based on the financial documents provided by L&R, we find that there is a sufficient basis to reduce (but not cancel) the forfeiture to \$2,875.¹² We caution L&R, however, that a party's inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.¹³ In this regard, we have previously rejected inability to pay claims in cases of repeated or otherwise egregious violations.¹⁴ Therefore, future violations of this kind may result in significantly higher forfeitures that may not be

⁷ *Id.* at 1-2.

⁸ *Id.* at 2.

⁹ See 47 C.F.R. § 1.106(c); *EZ Sacramento, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 18257, 18257, para. 2 (Enf. Bur. 2000) (citing *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966)). See, e.g., *Ely Radio, LLC*, Memorandum Opinion and Order, 27 FCC Rcd 7608, 7610, para. 6 (Enf. Bur. 2012) (providing standard of review for petitions for reconsideration).

¹⁰ 47 U.S.C. § 503(b)(2)(E); see also 47 C.F.R. § 1.80(b)(8).

¹¹ See *Local Long Distance, Inc.*, Forfeiture Order, 16 FCC Rcd 24385 (Enf. Bur. 2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broad. Corp.*, Forfeiture Order, 15 FCC Rcd 8640 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

¹² This forfeiture amount falls within the percentage range that the Commission has previously found acceptable. See *supra* para. 4, note 11. If L&R finds it financially infeasible to make full payment of this amount within 30 days, it can request an installment plan, as described in paragraph 8, *infra*, of this Memorandum Opinion and Order.

¹³ See 47 U.S.C. § 503(b)(2)(E) (requiring Commission to 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 such other matters as justice may require).

¹⁴ See, e.g., *Whisler Fleurinor*, Forfeiture Order, 28 FCC Rcd 1087 (Enf. Bur. 2013) (affirming \$25,000 forfeiture and rejecting inability to pay claim because violator was previously afforded a reduction based on inability to pay, but later committed the same violation). *Accord Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur. 2011) (holding that violator's repeated acts of malicious and intentional interference outweigh evidence concerning his ability to pay claim), *aff'd*, Memorandum Opinion and Order, 28 FCC Rcd 1170 (Enf. Bur. 2013) *aff'd* File No. EB-09-LA-0026, Memorandum Opinion and Order, DA 13-2411, 2013 WL 6705802 (Enf. Bur. Dec. 19, 2013); *Hodson Broadcasting Corp.*, Forfeiture Order, 24 FCC Rcd 13699 (Enf. Bur. 2009) (holding that permittee's continued unauthorized operation outweighed its inability to pay claim).

reduced due to L&R's financial circumstances. We therefore grant, in part, and deny, in part, L&R's Petition.

IV. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED**, pursuant to Section 405 of the Communications Act of 1934, as amended,¹⁵ and Section 1.106 of the Commission's rules,¹⁶ that the petition for reconsideration filed by The L.R. Radio Group, Inc. **IS GRANTED IN PART AND DENIED IN PART**.

6. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, and 1.80(f)(4) of the Commission's rules,¹⁷ The L.R. Radio Group, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two thousand eight hundred seventy five dollars (\$2,875) for violations of Section 73.3526 of the Act.¹⁸

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Memorandum Opinion and Order.¹⁹ 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 Act.²⁰ The L.R. Radio Group, Inc. shall send electronic notification of payment to SCR-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.²¹ 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:

- 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 –

¹⁵ See 47 U.S.C. § 405.

¹⁶ See 47 C.F.R. § 1.106.

¹⁷ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁸ 47 C.F.R. § 73.3526.

¹⁹ 47 C.F.R. § 1.80.

²⁰ 47 U.S.C. § 504(a).

²¹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

8. Any request for making 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. 20554.²² 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.

9. **IT IS FURTHER ORDERED** that this Memorandum Opinion and Order shall be sent by both First Class Mail and Certified Mail, Return Receipt Requested, to The L.R. Radio Group, Inc. at 1620 Weatherford Highway, Granbury, Texas 76048 and to its counsel, Anne Goodwin Crump, Fletcher, Heald & Hildreth, 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

²² See 47 C.F.R. § 1.1914.