

**Before the
Federal Communications Commission
Washington, DC 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

MEMORANDUM OPINION AND ORDER

Adopted: February 5, 2015

Released: February 6, 2015

By the Regional Director, Western Region, Enforcement Bureau:

1. We deny the Petition for Reconsideration filed by Catholic Radio Network of Loveland, Inc. (Catholic Radio), licensee of broadcast Station KPIO(AM), in Loveland, Colorado (Station) seeking reconsideration of the Forfeiture Order issued by the Enforcement Bureau. In the Forfeiture Order, the Enforcement Bureau (Bureau) imposed a forfeiture of \$3,200 against Catholic Radio for willfully and repeatedly violating Section 73.1745(a) of the Commission's rules (Rules) by failing to operate the Station as authorized on the Station's license.

2. Upon review of the Petition for Reconsideration¹ and the entire record,² we find no basis for reconsideration. Petitions for Reconsideration are granted only in limited circumstances. Pursuant to Section 405 of the Communications Act of 1934, as amended (Act),³ and Section 1.106 of the Rules,⁴ reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order, or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.⁵ A Petition for Reconsideration that reiterates arguments that were previously considered and rejected will be denied.⁶ Catholic Radio's Petition fails to present such information warranting reconsideration.

3. Catholic Radio does not dispute the violations but argues that the forfeiture should be cancelled because the violation was not willful,⁷ and because it cured the violation.⁸ There is no merit to

¹ See *Catholic Radio Network of Loveland, Inc.*, Petition for Reconsideration (filed Feb. 7, 2014) (Petition).

² See *Catholic Radio Network of Loveland*, Forfeiture Order, 29 FCC Rcd 121 (Enf. Bur. 2014) (Forfeiture Order); *Catholic Radio Network, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 15204 (Enf. Bur. 2011).

³ 47 U.S.C. § 405.

⁴ 47 C.F.R. § 1.106.

⁵ 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 also *Ely Radio, LLC*, Memorandum Opinion and Order, 27 FCC Rcd 7608, 7610, para. 6 (Enf. Bur. 2012) (articulating the standard of review for Petitions for Reconsideration).

⁶ *EZ Sacramento, Inc.*, 15 FCC Rcd at 18257, para. 2.

⁷ Petition at 2–6.

⁸ Petition at 6.

either of Catholic Radio's arguments that because Station personnel were unaware of the violation, they could not be found to have consciously and deliberately violated Section 73.1745, or that Station personnel's prompt actions to resolve the violation, undertaken after being made aware of the violation by the FCC agent, warrant cancellation.

4. It is well settled that the "Commission expects, and it is each licensee's obligation to know and comply with all of the Commission's rules."⁹ As the licensee of a broadcast station, Catholic Radio "is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules . . . and in accordance with the terms of the station authorization."¹⁰ Section 503(b) of the 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.¹¹ 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.¹² 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,¹³ and the Commission has so interpreted the term in the Section 503(b) context.¹⁴ Thus, the definition of "willful" under the Communications Act is clear and settled, and Catholic Radio's attempt to have us utilize another definition of willful is wholly unavailing.¹⁵ Catholic Radio further appears to argue that despite its responsibility to operate the Station in a manner that complies with the Rules, its apparent lack of knowledge of the Station's overpower operations requires the forfeiture be cancelled. We disagree. Catholic Radio's lack of knowledge is "at best, ignorance of the law, which the Commission does not consider a mitigating circumstance."¹⁶ There was no material error made by the Bureau in the application of Section 503(b) of the Act and Commission precedent to the facts of this case. Even if we were to accept Catholic Radio's argument that its conduct was not "willful," it was nevertheless repeated.¹⁷

⁹ *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, 17099, para. 22 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

¹⁰ 47 C.F.R. § 73.1350(a).

¹¹ 47 U.S.C. § 503(b).

¹² 47 U.S.C. § 312(f)(1).

¹³ H.R. Rep. No. 97-765, 97th 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").

¹⁴ *See, e.g., S. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁵ Catholic Radio asserts that we must show that its acts evidenced either an "intentional disregard" or "plain indifference" because courts have defined "willful" violations in that manner when reviewing the Department of Labor's Occupational Health and Safety Administration's decisions. Petition at 5-6, quoting *Dayton Tire v. Sec'y of Labor*, 671 F.3d 1249, 1254-55 (D.C. Cir. 2012) (*Dayton Tire*). As the court notes in *Dayton Tire*, the Occupational Safety and Health Act "does not define what a willful violation is." *Id.* at 1254. The Communications Act, however, does define willful and we must abide by that definition, as detailed above.

¹⁶ *S. Cal. Broad. Co.*, 6 FCC Rcd at 4387, para. 3.

¹⁷ Forfeiture Order, 29 FCC Rcd at 122, para. 4. *See S. Cal Broad. Co.*, 6 FCC Rcd at 4388, para.5; *see also Infinity Broad. Corp. of Florida*, Order on Review, 24 FCC Rcd 4270, 4279, para. 25 (2009).

5. There is also no merit to Catholic Radio's reiterated argument that the Commission's decision in *Queen of Peace Radio, Inc.*,¹⁸ requires that the forfeiture be cancelled.¹⁹ It is undisputed that Catholic Radio's corrective action occurred *after* being advised of its violation of the Rules. Thus, the Bureau correctly found that Catholic Radio did not make good faith efforts to comply with the Rules *prior* to Commission notification of the violation, as is required under current precedent for consideration of a good faith reduction in an assessed forfeiture.²⁰

6. We find that the Bureau properly decided the matters raised and that Catholic Radio is not entitled to a reduction or cancellation of the \$3,200 forfeiture, and we therefore uphold the Forfeiture Order for the reasons stated herein.

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended (Act), and Section 1.106 of the Rules, the Petition for Reconsideration filed by Catholic Radio Network of Loveland, Inc., is hereby **DENIED**.²¹

8. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311, and 1.80 of the Rules, Catholic Radio Network of Loveland, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** of \$3,200 for willfully and repeatedly violating Section 73.1745(a) of the Rules.²²

9. 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.²³ 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.²⁴

10. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Catholic Radio Network of Loveland, Inc., shall send electronic notification of payment to WR-Response@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁵ 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 that should be followed based on the form of payment selected:

¹⁸ *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).

¹⁹ Petition at 6.

²⁰ Forfeiture Order, 29 FCC Rcd at 122–23, paras. 5–6; *see also 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").

²¹ 47 U.S.C. § 405; 47 C.F.R. § 1.106.

²² 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80, 73.1745(a).

²³ 47 C.F.R. § 1.80.

²⁴ 47 U.S.C. § 504(a).

²⁵ 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.

11. 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. 20554.²⁶ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

12. **IT IS FURTHER ORDERED** that a copy of this Memorandum Opinion and Order shall be sent by first class mail and certified mail, return receipt requested, to Catholic Radio Network of Loveland, Inc., 201 N. Industrial Park Road, Excelsior Springs, Missouri, 64024, and to Dennis J. Kelly, Esquire, P.O. Box 41177, Washington, D.C. 20018.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director
Western Region
Enforcement Bureau

²⁶ See 47 C.F.R. § 1.1914.