

**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
Former Licensee of Station KPIO(AM))	FRN: 0018470849
Loveland, Colorado)	Facility ID No.: 35517

MEMORANDUM OPINION AND ORDER

Adopted: June 10, 2015

Released: June 11, 2015

By the Commission:

1. We deny the Application for Review filed by Catholic Radio Network of Loveland, Inc. (Catholic Radio), former licensee of Station KPIO(AM), in Loveland, Colorado (Station),¹ seeking review of the Memorandum Opinion and Order issued by the Enforcement Bureau (Bureau) denying Catholic Radio's petition for reconsideration.² In the Memorandum Opinion and Order, the Bureau affirmed a forfeiture against Catholic Radio in the amount of \$3,200 for willfully and repeatedly violating Section 73.1745(a) of the Commission's rules (Rules) by failing to operate the Station within authorized power limits.³ In its Application for Review, Catholic Radio raises two issues, both of which were argued previously before the Bureau and rejected.⁴

2. Upon review of the Application for Review and the entire record, we conclude that Catholic Radio fails to demonstrate that the Bureau erred. Catholic Radio continues to contend that its

¹ On May 8, 2015, the Commission's Media Bureau granted an application assigning the license for Station KPIO(AM) from Catholic Radio to Loveland Radio Partners, LLC. See File No. BAL-20150324AAJ, granted May 8, 2015. The parties consummated the assignment on May 22, 2015. See Notice of Consummation, filed May 26, 2015.

² *Catholic Radio Network of Loveland, Inc.*, Application for Review (filed Mar. 9, 2015) (Application for Review); *Catholic Radio Network of Loveland, Inc.*, Memorandum Opinion and Order, 30 FCC Rcd 988 (Enf. Bur. 2015).

³ Memorandum Opinion and Order, 30 FCC Rcd at 990, paras. 5–6; *Catholic Radio Network of Loveland, Inc.*, Forfeiture Order, 29 FCC Rcd 121 (Enf. Bur. 2014). As detailed in the Forfeiture Order, an agent from the Enforcement Bureau's Denver Office determined that Catholic Radio operated the Station at a nighttime power level that far exceeded its authorized power limit on December 20 and 22, 2010, and January 5, 2011. Forfeiture Order, 29 FCC Rcd at 122, para. 4.

⁴ Catholic Radio maintains that the Bureau erred by finding that its violation was willful, considering its employees did not realize the Station was operating at an unauthorized power level. Application for Review at 5–8. The Bureau determined, in the Memorandum Opinion and Order, that Commission licensees like Catholic Radio are responsible for operating their stations in compliance with the terms of their licenses. Memorandum Opinion and Order, 30 FCC Rcd at 989, para. 4. The Bureau also determined that even if it accepted Catholic Radio's argument that its conduct was not willful, it was nevertheless repeated, which is an independent basis for assessing the forfeiture. *Id.*; 47 U.S.C. § 503(b). Catholic Radio also reiterates its claim that Commission precedent requires the cancellation of a forfeiture against a non-profit entity like itself when it makes significant good faith efforts to comply with the Rules. Application for Review at 9. The Bureau explained in the Memorandum Opinion and Order, that while the Commission may reduce forfeitures for good faith remedial efforts, such efforts must occur *prior* to Commission notification of the violation. Memorandum Opinion and Order, 30 FCC Rcd at 990, para. 5; Forfeiture Order, 29 FCC Rcd at 122–23, para. 5. Catholic Radio does not dispute that its corrective actions occurred after the Bureau informed it of the violation.

violation was not willful because it was unaware that its transmitter was operating at the increased power and consequently its actions cannot be considered “conscious and deliberate” as required for a finding of “willful” pursuant to the Communications Act of 1934, as amended (Act).⁵ The Commission has previously determined that the conscious and deliberate operation of a broadcast station that results in unauthorized emissions, even if the licensee is not aware of the unauthorized emissions, fulfills the “willful” standard required under the Act.⁶ There is no dispute that Catholic Radio consciously and deliberately operated Station KPIO(AM) on the days in question and, therefore, its operation was willful.⁷ Furthermore, we note that the Bureau not only determined that Catholic Radio willfully violated Section 73.1745(a) of the Rules, it found that Catholic Radio also repeatedly violated that Rule, as the overpower operation occurred for multiple days, a finding Catholic Radio does not dispute. Therefore, a finding of willfulness was not essential to imposition of the forfeiture.⁸ Consequently, we affirm the forfeiture.⁹

3. Accordingly, **IT IS ORDERED** that, pursuant to Section 5(c)(5) of the Act and Section 1.115 of the Rules, the Application for Review filed by Catholic Radio **IS DENIED**.¹⁰

4. **IT IS FURTHER ORDERED** that the Memorandum Opinion and Order **IS AFFIRMED** and that pursuant to Section 503(b) of the Act and Section 1.80 of the Rules, Catholic Radio **SHALL PAY A MONETARY FORFEITURE** in the amount of three thousand, two hundred dollars (\$3,200) as specified in the Memorandum Opinion and Order.¹¹

⁵ Application for Review at 5–7. 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. 47 U.S.C. § 312(f)(1).

⁶ See *Playa Del Sol Broadcasters*, Order on Review, 28 FCC Rcd 2666, 2668–69, para. 6 (2013) (where the Commission concluded that, because the licensee had consciously and deliberately operated its station, resulting in unauthorized emissions, irrespective of any intent by the licensee to violate the Rules, the violation was willful, as defined in Section 312(f)(1) of the Act).

⁷ To the extent that the violation was due to faulty Station equipment, we note that Section 73.1350 of the Rules places upon each licensee the responsibility “for maintaining and operating its broadcast station in a manner which complies with the technical rules,” including maintenance of the instruments used to monitor such compliance. 47 C.F.R. § 73.1350.

⁸ See *Infinity Broad. Corp. of Fla.*, Order on Review, 24 FCC Rcd 4270, 4279, para. 25 (2009) (where there is no dispute that a licensee has repeatedly violated the Rules, the imposition of a forfeiture does not require a showing of willfulness). See 47 U.S.C. § 503(b) (“Any person who is determined by the Commission . . . to have willfully or repeatedly failed to comply . . . shall be liable to the United States for a forfeiture penalty.”) (emphasis added).

⁹ We also affirm the Bureau’s determination that Catholic Radio’s efforts to correct the violation occurred after notification by the Bureau of the violation and, as such, do not entitle Catholic Radio to a reduction or cancellation of the forfeiture amount. See Memorandum Opinion and Order, 30 FCC Rcd at 990, para. 5; compare *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 staffing rule prior to notification by FCC personnel regarding the violation).

¹⁰ 47 U.S.C. § 155(c)(5); 47 C.F.R. § 1.115.

¹¹ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

5. **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, MO 64024, and to its counsel, Dennis J. Kelly, Esq., P.O. Box 41177, Washington, DC 20018.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary