

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Pacific Empire Radio Corporation)	File No.: EB-FIELDWR-12-00002389
)	NAL/Acct. No.: 201232920001
Licensee of:)	FRN: 0006196612
Station KLBM, La Grande, Oregon)	Facility ID Nos.: 35047
Station KBKR, Baker, Oregon)	24794
Station KUBQ, La Grande, Oregon)	24796
Station KKBC-FM, Baker, Oregon)	24795
Station KRJT, Elgin, Oregon)	164224

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 Pacific Empire Radio Corporation (Pacific Empire), licensee of Station KLBM, La Grande, Oregon; Station KBKR, Baker, Oregon; Station KUBQ, La Grande, Oregon; Station KKBC-FM, Baker, Oregon; and Station KRJT, Elgin, Oregon (collectively, the Stations), seeking reconsideration of the Forfeiture Order issued by the Enforcement Bureau (Bureau). In the Forfeiture Order, the Bureau imposed a forfeiture of \$25,000 against Pacific Empire for willfully and repeatedly violating Section 73.3526 of the Commission's rules (Rules) by failing to retain multiple issues and programs lists in the local public inspection file for each of the Stations.

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 Pacific Empire's Petition fails to present such

¹ See *Pacific Empire Radio Corporation*, Petition for Reconsideration (filed Feb. 21, 2014) (Petition).

² See *Pacific Empire Radio Corporation*, Forfeiture Order, 29 FCC Rcd 1177 (Enf. Bur. 2014) (Forfeiture Order) Pacific Empire admitted to the Portland Office that the lists were either missing or misplaced due to changes in management. Forfeiture Order, 29 FCC Rcd at 1178, para. 5; *Pacific Empire Radio Corporation*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 5306 (Enf. Bur. 2012).

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.

information warranting reconsideration.

3. Pacific Empire does not dispute the violations, but only reiterates the same arguments it presented previously: that the Commission cannot assess fines against small broadcast licensees because the Commission allegedly never complied with the requirements of the Small Business Regulatory Enforcement Fairness Act of 1996⁷ (SBREFA);⁸ that the public file rules are so outdated and irrelevant that assessing fines for violating them is excessive;⁹ and that the amount assessed is inconsistent with precedent.¹⁰ The Bureau addressed and properly decided each of these arguments in the Forfeiture Order. There is absolutely no merit to Pacific Empire's reiterated argument that the Commission lacks jurisdiction to impose forfeitures against small broadcast licensees. As explained in the Forfeiture Order, and recently affirmed by the Commission,¹¹ the forfeiture assessment policies of the Commission as detailed in the *Forfeiture Policy Statement* comply with the SBREFA.¹²

4. There is also no merit to Pacific Empire's argument that the Bureau did not give reasoned consideration to its argument that fines should not be assessed for public file violations because the public file rules serve no useful purpose.¹³ As noted in the Forfeiture Order, the Commission and its Bureaus have consistently assessed fines for violations of the public file rules, and, indeed, the Commission recently affirmed the importance of the public file rules when it required the online posting of television broadcast licensees' public files to ensure greater access by the public,¹⁴ and then proposed to extend that requirement to broadcast radio licensees, cable and satellite TV operators, and satellite radio licensees.¹⁵ The Forfeiture Order also details the reasons for the amount of the forfeiture and explains how the forfeiture: 1) complies with the *Forfeiture Policy Statement* as well as the Act and the Rules;¹⁶ 2) differs from cases cited by Pacific Empire;¹⁷ and 3) is consistent with recent precedent.¹⁸ Thus, Pacific Empire

⁷ Pub. L. No. 104-121, 110 Stat. 847 (Mar. 29, 1996), as amended by Pub. L. No. 110-28, 121 Stat. 112 (May 25, 2007).

⁸ Petition at 2–3.

⁹ *Id.* at 3–7.

¹⁰ *Id.* at 7–10.

¹¹ See *N. Cnty. Broad. Corp.*, Memorandum Opinion and Order, 29 FCC Rcd 13261 (2014).

¹² See Forfeiture Order, 29 FCC Rcd at 1178–79, para. 6. See also *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, 17109, paras. 51–52 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

¹³ As noted in the Forfeiture Order, this argument is premised primarily on a long-dormant and recently terminated petition for rulemaking, RM-11332, that Pacific Empire's counsel filed over eight years ago. Forfeiture Order, 29 FCC Rcd at 1179, para. 7, n. 22. See *Termination of Certain Proceedings as Dormant*, Order, DA 14-1871, 2014 WL 7331973 (CGB Dec. 22, 2014).

¹⁴ See *Standardized and Enhanced Disclosure Requirements For Television Requirements For Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 (2012) (the Commission “modernize[d] the procedures television broadcasters use to inform the public about how they are serving their communities, by having stations post their public files online in a central, Commission-hosted database, rather than maintaining the files locally at their main studios”).

¹⁵ See *Expansion of Online Public File Obligations To Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Notice of Proposed Rulemaking, 29 FCC Rcd 15943 (2014) (proposing to expand the requirement that public inspection files be posted to the FCC's online database to cable, satellite, and radio broadcast licensees).

¹⁶ See Forfeiture Order, 29 FCC Rcd at 1179–80, para. 7.

¹⁷ See Forfeiture Order, 29 FCC Rcd at 1179, n.24.

¹⁸ See Forfeiture Order, 29 FCC Rcd at 1179, n.25.

presented no new facts or arguments.

5. Upon review, we find that 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. We also find that Pacific Empire raises no new facts. We therefore find that the Bureau properly decided the matters raised, and we uphold the Forfeiture Order and deny the Petition for Reconsideration filed by Pacific Empire.

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act and Section 1.106 of the Rules, the Petition for Reconsideration filed by Pacific Empire Radio Corporation is hereby **DENIED**.¹⁹

7. **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, Pacific Empire Radio Corporation **IS LIABLE FOR A MONETARY FORFEITURE** of \$25,000 for willfully and repeatedly violating Section 73.3526 of the Rules.²⁰

8. 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.²¹ 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.²²

9. 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. Pacific Empire Radio Corporation 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.²³ 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:

- 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.

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

²⁰ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80, 73.3526.

²¹ 47 C.F.R. § 1.80.

²² 47 U.S.C. § 504(a).

²³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

10. 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. 20554.²⁴ 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.

11. **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 Pacific Empire Radio Corporation, 403 Capital Street, Lewiston, Idaho 83501, and to David Tillotson, Esquire, 4606 Charleston Terrace, NW, Washington, D.C. 20007-1911.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director
Western Region
Enforcement Bureau

²⁴ See 47 C.F.R. § 1.1914.