

ORIGINAL

**THE SANCHEZ LAW FIRM P.C.**  
1155 F Street, N.W., Suite 1050  
Washington, D.C. 20004

Received & Inspected

APR 10 2015

Ernest T. Sanchez  
Attorney at Law

Telephone: (202) 237-2814  
Fax: (202) 540-9311  
Email: [ernestsanchez2348@gmail.com](mailto:ernestsanchez2348@gmail.com)

FCC Mail Room

April 9, 2015

Ms. Marlene Dortch, Secretary  
Federal Communications Commission  
445 12th Street S.W.  
Washington, DC 20554

ATTN: Peter H. Doyle, Chief Audio Division, Media Bureau

Re: Petition for Reconsideration, NAL/Acct. No. MB-201541410015  
In the Application of Peconic Public Broadcasting for Renewal of License for Station  
WPPB(FM), Southampton, New York, Facility ID #38340, File No. BRED-20140203ARX

Dear Ms. Dortch:

On behalf of Peconic Public Broadcasting ("Peconic"), licensee of the above-referenced facility, the undersigned counsel for Peconic, hereby files an original and four copies of this Petition for Reconsideration in connection with the above matter. Peconic urges the Media Bureau staff to reconsider and modify its above-referenced Forfeiture Order.

**Facts and Procedural History.** In a Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture ("NAL") released on March 11, 2015, the Chief, Audio Division, of the Commission's Media Bureau ("Media Bureau.") assessed a monetary forfeiture of \$ 10,000 for violation of Section 73.3527 of the Commission rules, 47 C.F.R. § 73.3527 for failing to retain 13 required quarterly issues/program lists in the WPPB station inspection file, during the prior license renewal period. This information was voluntarily disclosed by Peconic to the Commission, in the above referenced station license renewal application.

The March 11, 2015 NAL cited both the *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement"), Section 1.80 of the Commission's Rules, and the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act, 47 U.S.C. § 503(b)(2)(D). Those factors, which must be taken into account in assessing a monetary forfeiture amount, include the "nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, and any history of prior offenses, ability to pay, and other such matters as justice may require." (NAL, at 3, ¶ 6).

The Forfeiture Order, likewise, cites these same authorities for the same proposition regarding the factors – aggravating and mitigating – which § 503(b)(2)(D) requires the

2015 APR 14 A 9:32

RECEIVED

Letter to Ms. Dortch  
April 9, 2015  
Page two

Commission to consider in assessing a forfeiture (*see* Forfeiture Order, at 2, ¶ 5) Peconic requests reconsideration of the Forfeiture Order by the Media Bureau so that these statutory factors in mitigation, and the facts and circumstances described by Peconic President Mr. Wallace Smith, in his attached sworn statement in support of this request for mitigation, may receive a “hard look” as required under *KSCT-TV v. FCC*, 699 F. 2d 1185 (D.C. Cir. 1983) (“*KSCT-TV*”).

**Nature, Extent, and Circumstances of the Violation.** WPPB(FM) is a small facility, locally-owned, with locally-produced programming, and locally managed by an unpaid manager, during the period of the infraction. It is the public radio equivalent of a “mom-and-pop” operation, the type of station that is almost a dying breed, as reflected in the Commission’s past hearings on how to maintain the precise type of localism that Peconic exemplifies.

As Mr. Smith explains, WPPB(FM) under its previous call letters WLIU(FM), had been licensed and strongly supported by Long Island University (“LIU”) prior to its assignment to Peconic.. The assignment to Peconic was part of an emergency effort to save the station, after LIU in late 2009 abruptly decided to defund the station, lay off all the staff and to sell the frequency. In late 2009, the station went from a staff of 14 and a secure budget of \$1.4 million, to a handful of employees and volunteers, and an eviscerated budget being raised virtually on a day to day basis. As Mr. Smith explains, virtually all station funding during the transition was used for programming, and all paid station administrative positions were abolished. Even Mr. Smith’s position as General Manager, became unpaid, for much of the period covered by the Commission’s forfeiture.

Peconic does not argue that it should be *excused* from violation of the public file requirements during this extraordinarily difficult transitional period from LIU to Peconic. The policies underlying the public files rules are extremely important and licensees should be required to comply. But Peconic believes it is reasonable for the Commission to examine and understand the context of when and why this infraction took place, and take into account that these violations were entirely inadvertent and in no way purposeful or willful. In addition, Peconic wishes to point out that during its tenure as a Licensee, it has had a clean record with no other Commission violations. Peconic believes this clean regulatory record is grounds for the Commission to rescind the proposed forfeiture.

When the Commission finds violations, however, it is not only permitted but encouraged by the statute to take several factors into consideration, either to justify a particular forfeiture or, to the extent there are extenuating and mitigating factors, to reduce the dollar level of the forfeiture. It is well-settled that the FCC, like other administrative agencies, must always “take a hard look” and “consider all relevant factors whenever application of the general rule to a specific situation would undercut the public interest behind the rule.” *KSCT-TV*, 699, F.2d at 1191-1195. As the D.C. Circuit subsequently explained in *BellSouth Corporation v. FCC*, 162 F.3d 1215, 1224-25 (D.C. Cir. 1999):

The “hard look” requirement assures that a general rule serving the public interest in a broad

Letter to Ms. Dortch  
April 9, 2015  
Page three

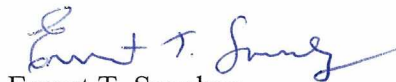
range of situations will not be rigidly applied where its application would not be in the public interest . . . [Citation to *WAIT* omitted]. Therefore, when an agency receives a request for waiver that is “stated with clarity and accompanied by supporting data,” such requests are not subject to perfunctory treatment, but must be given a hard look.

Although Peconic seeks rescinding or at least reduction of a fine rather than a specific rule waiver, the principle is a general one, not limited to situations that are formally styled as “requests for waiver.” Under Section 1.2 of the Commission’s rules, 47 C.F.R. § 1.3, the Commission, upon a showing of good cause, may suspend or waive all or part of any provision of its own rules. The D.C. Circuit has recognized that, under this “good cause” standard, the Commission may take into account “considerations of hardship, equity, or more effective implementation of overall policy.” *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). This standard was invoked in *Request for Waiver of the Decision of the Universal Service Administrator by Douglas-Omaha Tech Comm., Omaha, Nebraska*,<sup>1</sup> Peconic submits that a “hard look” at Mr. Wallace Smith’s supporting statement, which provides an explanation of the circumstances surrounding the public file violation, should result in recognition that mitigation is appropriate in this particular case.

**Such Other Matters as Justice Requires.** When Congress added this language as the final mitigation factors to be considered in weighing forfeiture reductions, it can be presumed to have meant something by these terms. This is not summary language but, rather, an additional factor, to be considered, and given equal weight, alongside “ability to pay” and the other factors. This factor directs the Commission to look at fairness, equity, and public interest policies, the same considerations that come into play in evaluating waivers requests. Among the “other factors” that, Peconic suggests, should be considered are the local nature of the broadcast service provided, and the value of the service provided to the community.

For the above reasons, Peconic requests that reconsideration of the Forfeiture Order and cancellation of the proposed forfeiture because of relevant factors under section 503(b) of the Act.

Respectfully submitted,



Ernest T. Sanchez  
Counsel for Peconic Public Broadcasting

<sup>1</sup> Order, File No. SLD-427054, DA 06-1658, 2006 WL 2403967 (rel. Aug. 18, 2006) at

### **Declaration of Wallace A. Smith**

1. My name is Wallace A. Smith. I am the President of Peconic Public Broadcasting ("Peconic"), and General Manager of WPPB(FM), and have held these positions since Peconic was incorporated. I have firsthand knowledge of the WPPB(FM) public file infractions discussed in the Media Bureau Memorandum Opinion and Order of March 11, 2015.
2. In late September, 2009 Long Island University ("LIU") abruptly announced its decision to close WPPB(FM), (previously WLIU(FM)). LIU said it intended to defund the station, lay off the staff, and sell the station studio facilities and frequency. Before defunding the station on November 30, 2009, the station had fourteen full-time paid professional staff and the full support and service of the business offices of the University at no direct cost to the station and an established annual budget of 1.4 million dollars.
3. When the date for defunding arrived, the community and the station were faced with the challenge of finding a way to save and secure Long Island's only local NPR or PBS station which, if lost, would leave a population of 7.5 million people without its own public broadcasting voice. We were faced with the challenge to operate the station with a skeletal staff of seven people, including only one administrative staff person, all of whom lost their jobs at Long Island University and agreed to continue with a fledgling new 501C-3 at vastly reduced salaries. The station was also required to vacate their state of art studios and offices in a campus facility that LIU sold to another University. That institution, Stony Brook University, required the station to vacate its offices and studios and relocate the station to a new yet unidentified space.

We were also faced with the simultaneous challenge of raising \$850,000 to purchase the station and the operating revenue to continue to deliver our well established quality local and NPR programming to our community. In spite of this chaotic challenge the station was only off the air for 8 hours during this entire transaction.

All of our effort was put into saving and securing Long Island's only public broadcasting license and uninterrupted programming service to our community. We successfully purchased the license from LIU on December 14, 2010. While the uncertainty and chaos of the previous months was reduced, we continue to work with a reduced number of staff who continues to work for significantly lower salaries in a very compromised office and studio space.

4. Because of the financial emergency, that threatened the continued existence of the station, I volunteered to serve as the station's general manager on an unpaid basis. I continued to work without salary and fulltime administrative support staff for over two years.

5. During the time of the public file infraction, I was consumed by the challenge of preserving Long Island's only local public broadcasting service and maintaining a quality uninterrupted program service for our community of license. I was faced with a series of Hobson's choices and regret that in my desperate attempt to save and secure the station for the community, I neglected to take better care of our most precious resource, the license we were so desperately working to preserve for it. I sincerely regret that during that period of time when we were faced with an ongoing series of emergencies threatening the success of our mission, I did not find a way to devote the time required to properly maintain the public file. I realize that in the midst of the battle to secure and stabilize the station, I made a serious mistake by not allocating the time and necessary resources to the station's administrative functions, including timely maintenance of our public file. I am a veteran broadcaster and understand that the public file is one of the most important rules of the FCC's regulatory requirements. With the growing success of the station and the help of communications counsel, I have rededicated myself to assuring proper and full compliance with the Commission's public file requirements.
  
6. I have assisted Peconic's attorney in preparation of Peconic's Request for Reconsideration of the Media Bureau's Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture and have reviewed Peconic's completed response. As an authorized officer of Peconic, I declare under penalty of perjury that the factual statements contained in this declaration and Peconic's Request are true and correct to the best of my knowledge and belief.

Wallace A. Smith

Wallace A. Smith, President

Dated: April 9, 2015