

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

In the Matter of)	File Number EB-02-TP-557
)	
Jhony Desinor)	NAL/Acct. No.200332700008
)	
)	FRN 0007-8795-62

MEMORANDUM OPINION AND ORDER

Adopted: July 11, 2006

Released: July 13, 2006

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we dismiss the petition for reconsideration filed by Jhony Desinor as untimely. Mr. Desinor seeks reconsideration of a *Forfeiture Order*¹ issued by the Enforcement Bureau on July 29, 2004, to him in the amount of ten thousand dollars (\$10,000) for willful violation of Section 301 of the Communications Act of 1934, as amended (“Act”).² The noted violation involves Mr. Desinor’s operation of an FM broadcast station on the frequency 105.9 MHz without Commission authorization. As discussed below, we are dismissing Mr. Desinor’s petition because it does not comply with the timeliness requirements of Section 405(a) of the Communications Act of 1934, as amended (“Act”)³ and Section 1.106(f) of the Commission’s Rules (“Rules”),⁴ and is, therefore, procedurally defective.

II. BACKGROUND

2. On July 2, 2002, the Tampa Office received a complaint alleging that an unauthorized radio station was being operated from a residence located at 4073 Coconut Circle North in Naples, Florida. Agents from the Tampa Office investigated the complaint on July 16, 2002. The agents observed an FM broadcast station operating on the frequency 105.9 MHz and, using direction-finding techniques, traced the station’s signal to an antenna located at 4073 Coconut Circle North, Naples, Florida. The agents determined on the basis of field strength measurements that a Commission authorization was required to

¹ *Jhony Desinor.*, 19 FCC Rcd 14137 (Enf. Bur. 2004).

² 47 U.S.C. § 301.

³ 47 U.S.C. § 405(a).

⁴ 47 C.F.R. § 1.106(f).

operate that station.⁵ Later the same day, the agents again observed an FM broadcast station operating on frequency 105.9 MHz and, using direction-finding techniques, traced its signal to the antenna located at 4073 Coconut Circle North, Naples, Florida. Shortly after these observations the agents inspected the station and observed Mr. Desinor talking into the microphone. The agents asked Mr. Desinor whether he had a license to operate the radio station; Mr. Desinor replied that he did not have a license.⁶ At the agents' request, Mr. Desinor deactivated the station's transmitter.

3. On November 18, 2002, the Commission's Tampa, Florida, Field Office ("Tampa Office") issued a *Notice of Apparent Liability for Forfeiture* ("NAL") to Mr. Desinor for a forfeiture in the amount of ten thousand dollars (\$10,000).⁷ In his response, filed December 18, 2002, Mr. Desinor admitted that he was a disc jockey at the station located at 4073 Coconut Circle North, Naples, Florida, and provided a roster indicating that he was one of the station's operators. Mr. Desinor, however, asserted that he "was not the owner and operator" of that station; that he "never knew the radio was functioning illegally"; that he did not receive any financial benefit from the operation of the station; that the "owner and operator" of the station is "free of charge"; and that he could not pay the proposed forfeiture. In the July 29, 2004, *Forfeiture Order*, we rejected these arguments and imposed a forfeiture in the amount of \$10,000 for willful violation of Section 301 of the Act. In his petition for reconsideration of the *Forfeiture Order*, Mr. Desinor argues that the forfeiture should be reduced or cancelled because he did not know the station was unlicensed, is not in the broadcasting business, and is unable to pay the forfeiture.

III. DISCUSSION

4. Section 405(a) of the Act and Section 1.106(f) of the Rules provide that a petition for reconsideration must be filed within thirty days from the date of public notice of the final action. In this case, public notice of the *Forfeiture Order* occurred upon its release on July 29, 2004.⁸ The thirtieth day after July 29, 2004, was August 28, 2004 (a Saturday). When the computation of the filing date indicates that a document is due to be filed on a Saturday, the document is due on the next business day.⁹ Thus to have been timely, Mr. Desinor's request for reconsideration had to be filed with the Commission no later than the following Monday, August 30, 2004. Mr. Desinor's submission was filed on August 31, 2004.¹⁰

⁵ See 47 C.F.R. § 15.239(b).

⁶ The Commission's license records indicated that there was no license covering the operation of the station located at 4073 Coconut Circle North, Naples, Florida.

⁷ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332700008 (Enf. Bur., Tampa Office, released November 18, 2002).

⁸ See 47 C.F.R. § 1.4(b).

⁹ 47 C.F.R. § 1.4(j) provides that, when the calculated filing date falls on a "holiday," the document is due to be filed on the next business day. 47 C.F.R. § 1.4(e)(2) defines the term "holiday" as "Saturday, Sunday, officially recognized Federal legal holidays and any other day on which the Commission's offices are closed and not reopened before 5:30 p.m."

¹⁰ The petition for reconsideration was received at the FCC on August 31, 2004. Documents are considered to be filed on the date of receipt at the location designated by the Commission. 47 C.F.R. § 1.7.

Mr. Desinor, therefore, did not timely file the petition for reconsideration. Accordingly, we are unable to consider Mr. Desinor's petition for reconsideration and it will be dismissed as untimely.¹¹

IV. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 405(a) of the Act and Section 1.106(f) of the Rules, Jhony Desinor's petition for reconsideration **IS DISMISSED** as untimely.

6. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹² Payment of the forfeiture must be made by check, money order or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to the Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.¹³

7. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Marc L. Shapiro, Esq., 720 Goodlette Rd., Suite #304, Naples, FL 34102.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

¹¹ See *Reuters Ltd. v. FCC*, 781 F. 2d 946, 951 (D.C. Cir. 1986); *National Black Media Coalition v. FCC*, 760 F. 2d 1297, 1299-1300 (D.C. Cir. 1985) (Court of Appeals has no jurisdiction to consider an appeal from an FCC decision filed more than 30 days after the date of public notice, distinguishing *Gardner v. FCC*, 530 F. 2d 1086 (D.C. Cir. 1976); *Washington Broadcast Management Co., Inc.* 15 FCC Rcd 6607 (2000); *Panola Broadcasting Co.*, 68 FCC2d 533 (1978); and *Bay Broadcasting Corporation*, 15 FCC Rcd 23449 (Enf. Bur. 2000); and *Media Broadcasting Corporation*, 19 FCC Rcd 1028 (Enf. Bur. 2004).

¹² 47 U.S.C. § 504(a).

¹³ See 47 C.F.R. § 1.1914.