

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

In the Matter of	)	
	)	File Number: EB-06-DL-075
Community Broadcast Group, Inc.	)	
	)	NAL/Acct. No.: 200732500003
Licensee of Station KZEY	)	
Tyler, Texas	)	FRN: 0003773140
Facility ID # 12809	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: December 10, 2007**

**Released: December 12, 2007**

By the Associate Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order* (“*Order*”), we dismiss the Petition for Reconsideration filed by Community Broadcast Group, Inc., (“Community”) licensee of AM Broadcast Radio station KZEY, in Tyler, Texas. Community seeks reconsideration of the *Forfeiture Order*<sup>1</sup> in which the Enforcement Bureau (“Bureau”) found it liable for a monetary forfeiture in the amount of eleven thousand dollars (\$11,000) for willful and repeated violation of Sections 73.1350(a) and 73.3526 of the Commission’s Rules (“Rules”).<sup>2</sup> The noted violations involve Community’s failure to operate the station in accordance with the station authorization and failure to make available a complete public inspection file. For the reasons provided below, we dismiss Community’s petition for reconsideration as untimely.

**II. BACKGROUND**

2. On June 5, 2006, agents from the Commission’s Dallas Office of the Enforcement Bureau (“Dallas Office”) conducted an inspection of station KZEY’s main studio located in Tyler, Texas. When the agents asked to inspect the station’s public inspection file during regular business hours, the station could not produce a complete file. The file contained no Radio Issues/Program lists from any quarter. At the transmitter site, the agents found that the station was operating in an omni-directional mode from a single tower. The station authorization for station KZEY requires that the station operate in a two tower directional configuration. Station personnel stated that the station had been operating in an omni-directional mode from a single tower for more than a year.

3. On January 30, 2007, the Commission’s Dallas Office of the Enforcement Bureau (“Dallas Office”) issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of \$11,000 to Community.<sup>3</sup> Community submitted a late-filed response to the NAL requesting a reduction of the

<sup>1</sup> *Community Broadcast Group, Inc.*, Forfeiture Order, 22 FCC Rcd 5412 (South Central Region, Enf. Bur. 2007) (“*Forfeiture Order*”).

<sup>2</sup> 47 C.F.R. §§ 73.1350(a), 73.3526.

<sup>3</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732500003 (Enf. Bur., Dallas Office, released January 30, 2007).

forfeiture, which was received by the Dallas Office on March 22, 2007.

4. The Bureau affirmed the *NAL* in the *Forfeiture Order*, finding that Community provided no grounds upon which to cancel or reduce the forfeiture. Community filed a petition for reconsideration of the *Forfeiture Order*, which the Commission received on May 25, 2007.

### III. DISCUSSION

5. Section 405 of the Communications Act of 1934, as amended (“Act”)<sup>4</sup> requires that a petition for reconsideration of a Commission action or an action by delegated authority must be filed no later than 30 days after the action that is the subject of the appeal. Once it has made public notice of the action pursuant to Section 1.4 of the Rules,<sup>5</sup> the Commission loses jurisdiction to consider an appeal after 30 days have passed. Section 1.106 of the Rules reflects this statutory mandate.<sup>6</sup>

6. Community did not timely file his petition for reconsideration of the *Forfeiture Order*. The *Forfeiture Order* was released and placed on public notice on March 29, 2007.<sup>7</sup> The thirtieth day after March 29, 2007 was April 28, 2007 (a Saturday). Community’s petition for reconsideration was therefore due on April 30, 2007.<sup>8</sup> Community’s petition for reconsideration was not received by the Commission until May 25, 2007. After April 30, 2007, pursuant to the Act, the Commission has no jurisdiction to consider Community’s petition for reconsideration.<sup>9</sup> Accordingly, we must dismiss Community’s petition for reconsideration as untimely.<sup>10</sup>

7. Assuming *arguendo* that Community’s petition was timely filed, we would nevertheless deny it. Community’s petition contained no information other than a sentence stating “please consider this letter as a petition for reconsideration.” Accordingly, Community provided no grounds upon which to reconsider the forfeiture.

### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 405(b) of the Communications Act of 1934, as amended, and Section 1.106(f) of the Commission’s Rules,<sup>11</sup> the petition for reconsideration filed by Community Broadcast Group, Inc. **IS DISMISSED**.

9. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111,

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<sup>4</sup> 47 U.S.C. § 405(a).

<sup>5</sup> 47 C.F.R. § 1.4.

<sup>6</sup> 47 C.F.R. § 1.106(f).

<sup>7</sup> *Daily Digest*, Vol. 26, No. 60, March 29, 2007.

<sup>8</sup> 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.”

<sup>9</sup> *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, Scalia, J.) (FCC has no jurisdiction to consider an appeal after 30 days have passed from date of public notice, distinguishing *Gardner v. FCC*, 530 F. 2d 1086 (D.C. Cir. 1976)).

<sup>10</sup> *Metromedia, Inc.*, 56 FCC2d 909 (1975) (Commission may not waive 30 day filing period to accept a petition for reconsideration filed one day late); *Mobile Telephone, Inc.* 91 FCC 2d 907 ¶¶ 4-5 (1982); *Nextel Communications, Inc.*, 13 FCC Rcd. 281, 283 ¶ 6 (Wireless Telecom. Bur. 1998).

<sup>11</sup> 47 C.F.R. § 1.106(f).

0.311 and 1.80(f)(4) of the Rules,<sup>12</sup> Community Broadcast Group, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eleven thousand dollars (\$11,000) for violation of Sections 73.1350(a) and 73.3526 of the Rules

10. Payment of the forfeiture assessed by the *Forfeiture Order* 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.<sup>13</sup> Payment of the forfeiture must be made by check 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 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 payment of the full amount of the NAL under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12<sup>th</sup> Street, S.W., Room 1A625, Washington, D.C. 20554.<sup>14</sup>

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Community Broadcast Group, Inc. at its address of record and to its counsel, Edsel Guydon, Guydon Love LLP, 3309 Duke Street, Alexandria, VA 22314.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon  
Associate Chief, Enforcement Bureau

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<sup>12</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.1350(a), 73.3526.

<sup>13</sup> 47 U.S.C. § 504(a).

<sup>14</sup> See 47 C.F.R. § 1.1914.