

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

In the Matter of	)	
	)	File No.: EB-07-SE-379
Side by Side, Inc.	)	
Toledo, Ohio	)	NAL/Acct. No.: 200832100014
	)	
	)	FRN: 0005850862

**MEMORANDUM OPINION AND ORDER**

**Adopted: September 19, 2012**

**Released: September 19, 2012**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Memorandum Opinion and Order (Order), we have before us an Application for Review,<sup>1</sup> filed by Side by Side, Inc. (Side by Side), former licensee of Ku Band earth station E950401,<sup>2</sup> in response to a *Forfeiture Order*<sup>3</sup> issued by the Spectrum Enforcement Division (Division) of the Enforcement Bureau (Bureau). The *Forfeiture Order* held Side by Side liable for a forfeiture in the amount of \$5,200 for willful and repeated violations of Section 301 of the Communications Act of 1934, as amended (Act),<sup>4</sup> and Sections 25.102(a) and 25.121(e) of the Commission's rules (Rules),<sup>5</sup> based on Side by Side's operation of its earth station without Commission authority for more than two years and its failure to file a timely renewal application for the station. Consistent with the procedural requirements of Section 1.115(c) of the Rules, we will treat Side by Side's Application for Review as a petition for reconsideration and consider herein the new facts and arguments offered by Side by Side.<sup>6</sup> For the reasons set forth below, we uphold the Division's findings and decline to further reduce the forfeiture.

<sup>1</sup> Application for Review, filed by Side by Side, Inc. (June 6, 2008) (on file in EB-07-SE-379) (Application for Review).

<sup>2</sup> File No. SES-LIC-19950620-00796 (filed June 20, 1995; granted Aug. 25, 1995). Earth station E950401 was licensed to Side by Side, Inc. d/b/a Yes Ministries.

<sup>3</sup> See *Side by Side, Inc.*, Forfeiture Order, 23 FCC Rcd 7393 (Enf. Bur. 2008) (*Forfeiture Order*).

<sup>4</sup> 47 U.S.C. § 301.

<sup>5</sup> 47 C.F.R. §§ 25.102(a), 25.121(e).

<sup>6</sup> Section 1.115(c) of the Rules, 47 C.F.R. § 1.115(c), states that the Commission will deny an application for review of a decision made on delegated authority if it relies on new questions of fact or law upon which the delegated authority did not have an opportunity to pass. The same section, however, notes that such new questions may be presented in a petition for reconsideration. *Id.* note. Under the circumstances of this case, it conserves administrative resources to treat Side by Side's Application for Review as a petition for reconsideration, and we do so on our own motion pursuant to our general authority to review petitions for reconsideration under Section 405 of the Act and Section 1.106 of the Rules. 47 U.S.C. § 405; 47 C.F.R. § 1.106. See, e.g., *Channel 51 of San Diego, Inc.*, Order, 27 FCC Rcd 1922, 1922-23, para. 3 (Enf. Bur. 2012) (on the Bureau's own motion, treating an application for review raising new arguments that had not been presented to the delegated authority as a petition for reconsideration); Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to Malcolm Stevenson, Esq., 25 FCC Rcd 17042, 17043 (Med. Bur. 2010) (same); *Ross Radio & T.V.*, Memorandum Opinion and Order, 12 FCC Rcd 7600, 7600, para. 1 (Enf. Bur. 1997) (same).

## II. BACKGROUND

2. Section 301 of the Act and Section 25.102(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy, communications, or signals by an earth station except under and in accordance with a Commission-granted authorization.<sup>7</sup> Section 25.121(e) of the Rules requires the licensee of an earth station to file its renewal application “no earlier than 90 days, and no later than 30 days, before the expiration date of the license.”<sup>8</sup> Absent a timely filed renewal application, an earth station license automatically terminates at the end of the license period.<sup>9</sup>

3. By its terms, Side by Side’s license for earth station E950401 expired on August 25, 2005.<sup>10</sup> In response to a Division letter of inquiry, Side by Side admitted that it had failed to timely renew its earth station license and had continued to operate earth station E950401 without Commission authority through October 15, 2007.<sup>11</sup> On January 30, 2008, the Division released a *Notice of Apparent Liability for Forfeiture*, finding that Side by Side continued to operate earth station E950401 without Commission authority after its license expired and failed to file a timely renewal application for the station by the license expiration date.<sup>12</sup> Consistent with Bureau precedent at the time, the Division reduced the base forfeiture for Side by Side’s unauthorized operation of earth station E950401 from \$10,000 to \$5,000, and reduced the base forfeiture for Side by Side’s failure to file a timely renewal application for the station from \$3,000 to \$1,500.<sup>13</sup> The Division further reduced the aggregate forfeiture from \$6,500 to \$5,200 based on Side by Side’s voluntary disclosure of the violation and corrective measures taken prior to any Commission inquiry or initiation of enforcement action.<sup>14</sup> Accordingly, the Division proposed an

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<sup>7</sup> 47 U.S.C. § 301; 47 C.F.R. § 25.102(a).

<sup>8</sup> 47 C.F.R. § 25.121(e).

<sup>9</sup> *See id.* § 25.161(b).

<sup>10</sup> *See* File No. SES-LIC-19950620-00796.

<sup>11</sup> *See Side by Side, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 898, 899, para. 4 (Enf. Bur. 2008) (*Notice of Apparent Liability for Forfeiture*) (citing Letter from A. Wray Fitch III, Esq., Counsel for Side by Side, Inc., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau at 1-2 (Nov. 14, 2007) (on file in EB-07-SE-379)).

<sup>12</sup> *See id.* at 899, para. 6. Although Side by Side’s license expired on August 25, 2005, Side by Side did not seek reauthorization until October 17, 2007, when it filed a request for Special Temporary Authority (STA) to continue operations pending the grant of a new license application. *See* SES-STA-20071017-01428 (filed Oct. 17, 2007; dismissed as moot Dec. 27, 2007). This STA was dismissed as moot on December 27, 2007, after Side by Side’s application for a new license for its earth station was granted on December 26, 2007. *See* SES-LIC-20071113-01562 (filed Nov. 13, 2007; granted Dec. 26, 2007).

<sup>13</sup> *See Notice of Apparent Liability for Forfeiture*, 23 FCC Rcd at 900, para. 10 (reasoning that a former licensee who operates a station with an expired license is in better stead than a “pirate” operator who lacks prior Commission authority to operate). However, as we have recently emphasized, reduced forfeitures imposed on licensees for unauthorized operations in past cases have not created sufficient incentives for licensees to monitor their license expiration dates and adopt appropriate procedures to ensure substantial compliance. *See, e.g., Emigrant Storage LLC*, Notice of Apparent Liability for Forfeiture, 2012 WL 3126903, \*2-\*3, paras. 8-9 & \*3 n.26 (Enf. Bur. 2012) (*Emigrant Storage*) (applying the recommended base forfeitures, as set forth in Section 1.80(b) of the Rules, 47 C.F.R. § 1.80(b), of \$10,000 for the unauthorized operation of a station and \$3,000 for the failure to file required forms or information when a licensee operated its station without authorization and failed to file a timely renewal application for its station, and finding no basis for downward adjustment of these base forfeitures); *Call Mobile, Inc.*, Notice of Apparent Liability Forfeiture, 26 FCC Rcd 74, 76-77, para. 11 (Enf. Bur. 2011) (*Call Mobile*) (same) (response pending); *Shubat Transportation Co.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 3782, 3785-86, para. 12 (Enf. Bur. 2011) (*Shubat*) (same); *BASF Corp.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17300, 17302-03, paras. 9-10 (Enf. Bur. 2010) (*BASF*) (same) (forfeiture paid).

<sup>14</sup> *See Notice of Apparent Liability for Forfeiture*, 23 FCC Rcd at 901, para. 11.

aggregate forfeiture of \$5,200 for Side by Side's apparent willful and repeated violations of Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Rules.<sup>15</sup>

4. In its February 29, 2008, response to the *Notice of Apparent Liability for Forfeiture*,<sup>16</sup> Side by Side did not dispute that it engaged in unauthorized operations or that it failed to file a timely renewal application. Instead, it sought reduction of the proposed forfeiture based on a claimed inability to pay the forfeiture. In support of this claim, Side by Side recounted its net losses, expenses it claimed were unforeseen and unavoidable, and potential limitations on its fundraising abilities.<sup>17</sup> According to Side by Side, these asserted expenses and limitations on incoming revenue would force Side by Side to reallocate payroll funds to pay the forfeiture, resulting in a potential reduction in staff and ultimately, a limitation on its ability to serve the public interest.<sup>18</sup> On May 7, 2008, the Division released the *Forfeiture Order*<sup>19</sup> denying Side by Side's inability to pay claim. The Division determined that the \$5,200 proposed forfeiture represented a small percentage of Side by Side's average gross revenues over the prior three years and was significantly less than the threshold the Commission uses to determine whether an inability to pay reduction is appropriate.<sup>20</sup> Accordingly, the *Forfeiture Order* imposed the full forfeiture amount proposed in the *Notice of Apparent Liability for Forfeiture*.<sup>21</sup>

5. On June 6, 2008, Side by Side filed the Application for Review, challenging only the amount of the forfeiture. Side by Side contends that the Bureau ignored its non-profit status<sup>22</sup> and did not adequately consider factors other than gross revenues in assessing whether Side by Side had the financial resources to pay the forfeiture amount, reiterating arguments made in its NAL Response regarding limitations on its fundraising abilities and unexpected expenses.<sup>23</sup> Side by Side also argues, for the first time, that its unauthorized operation was "highly unlikely to cause interference"<sup>24</sup> and that it has a history of overall compliance.<sup>25</sup> Based on these claims, Side by Side asserts that the Division should have significantly reduced the \$5,200 forfeiture amount.<sup>26</sup>

<sup>15</sup> *See id.*; *see also* 47 U.S.C. § 301; 47 C.F.R. §§ 25.102(a), 25.121(e).

<sup>16</sup> Request for Reduction of Proposed Forfeiture Due to Inability to Pay, filed by Side by Side, Inc. (Feb. 29, 2008) (on file in EB-07-SE-379) (NAL Response).

<sup>17</sup> *See id.* at 5-6.

<sup>18</sup> *See id.* at 7. To substantiate these claims, Side by Side submitted a Statement of Financial Position reflecting gross revenues and contributions for the four month period from October 1, 2007, through January 31, 2008; a Statement of Financial Position reflecting gross revenues and contributions for the 12-month period from October 1, 2006, through September 30, 2007; tax returns from 2004 and 2005 reflecting gross revenues and contributions from October 1, 2004, through September 30, 2006; a statement reflecting the current account status of Side by Side; and an Unpaid Bills Detail as of February 29, 2008. Side by Side requested confidential treatment of its financial statements and other financial documents. *See id.* at 2; *see also infra* note 20.

<sup>19</sup> *See supra* note 3.

<sup>20</sup> *See id.* at 7395-96, para. 8. Side by Side requested confidential treatment of certain financial documents and business information that it supplied to the Bureau during the course of this investigation. *See supra* note 18. We will continue to defer action on the confidentiality request, as we need not disclose potentially sensitive information in this Order. *See* 47 C.F.R. § 0.459(d)(3).

<sup>21</sup> *See Forfeiture Order*, 23 FCC Rcd at 7396, para. 9.

<sup>22</sup> Application for Review at 2.

<sup>23</sup> *See id.* at 2-3.

<sup>24</sup> *See id.* at 2.

<sup>25</sup> *See id.* at 1.

<sup>26</sup> *See id.* at 3.

### III. DISCUSSION

6. Under Section 1.106(c)(1) of the Rules, a petition for reconsideration that relies on facts or arguments not previously presented to the designated authority may be granted only if (1) the facts or arguments relate to events that occurred or circumstances that had changed since the last opportunity to present such matters; or (2) the facts or arguments were unknown to the petitioner, and could not have been known by the petitioner with the exercise of ordinary diligence, until after the petitioner's last opportunity to present such matters.<sup>27</sup> Section 1.106(c)(2) of the Rules, however, permits grant of a petition for reconsideration that raises new facts or arguments if the designated authority determines that consideration of the new information is required in the public interest.<sup>28</sup>

7. Side by Side, for the first time, seeks reduction of the forfeiture based on the limited potential for interference resulting from Side by Side's unauthorized operations.<sup>29</sup> We decline to reduce the forfeiture amount on this basis. Even had Side by Side adequately proven that its unauthorized operation would not cause interference, the Commission has routinely held that the absence of public harm—such as harmful interference—is not a mitigating factor warranting reduction of a forfeiture.<sup>30</sup> To hold otherwise would compromise the fundamental statutory framework in Section 301 of the Act, requiring that “no person . . . use or operate any apparatus for the transmission of energy or communications or signals by radio . . . except under and in accordance with this chapter and with a license . . . granted under the provisions of this chapter.”<sup>31</sup>

8. Side by Side also argues for the first time that its history of overall compliance with the Rules warrants a downward adjustment of the forfeiture. We disagree. Side by Side's violations, while concurrent, were also distinct,<sup>32</sup> and both violations continued over significant time periods.<sup>33</sup> The number,<sup>34</sup> duration,<sup>35</sup> and nature of these violations weigh heavily against a finding that Side by Side had

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<sup>27</sup> 47 C.F.R. § 1.106(c)(1).

<sup>28</sup> *Id.* § 1.106(c)(2).

<sup>29</sup> See Application for Review at 1-2.

<sup>30</sup> See, e.g., *Liberty Cable Co.*, Memorandum Opinion and Order, 16 FCC Rcd 16105, 16113, para. 25 (2001) (rejecting a cable company's claim that the forfeiture should be downwardly adjusted because the company “took care to avoid interference before commencing [unauthorized] service”); *Pac. W. Broadcasters, Inc.*, Memorandum Opinion and Order, 50 FCC 2d 819, 820, para. 4 (1975) (rejecting a broadcaster's claim that the forfeiture should be downwardly adjusted because its operation at excessive power levels did not cause public harm or complaint); *Nat'l Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3927, para. 13 (Enf. Bur. 2006) (rejecting a licensee's claim that the forfeiture should be downwardly adjusted because its unauthorized operation of an earth station did not cause interference or disrupt other users) (forfeiture paid).

<sup>31</sup> 47 U.S.C. § 301.

<sup>32</sup> See, e.g., *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7438, para. 15 (2004) (proposing forfeitures of \$5,000 and \$1,500 against a broadcaster who both operated its station for 14 months without Commission authority and failed to timely file its renewal application), *modified on other grounds*, Memorandum Opinion and Order and Forfeiture Order, 24 FCC Rcd 2206 (Med. Bur. 2009); *Criswell College*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 5106, 5108, para. 9 (Enf. Bur. 2006) (rejecting the argument that the unauthorized operation of a station and the failure to timely file a renewal application are a single violation and proposing separate base forfeitures for these violations) (forfeiture paid).

<sup>33</sup> See *supra* note 12.

<sup>34</sup> See, e.g., *Paulino Bernal Evangelism*, Memorandum Opinion and Order, 21 FCC Rcd 9532, 9536, para. 12 (Enf. Bur. 2006) (in determining whether a licensee has a history of overall compliance, offenses need not be “prior” to be considered nor must they be the subject of a “final [Commission] determination”), *review granted in part, denied in part*, Order on Review, 23 FCC Rcd 15959 (2008); see also *cf. JMK Commc'ns, Inc.*, Forfeiture Order, 19 FCC Rcd (continued . . .)

a history of compliance that would warrant reduction of the forfeiture amount. We are also unpersuaded that former licensees should be treated more leniently regardless of the duration of their unauthorized operation and because of the gloss of former licensure;<sup>36</sup> any such gloss certainly would have faded during the 52 months of Side by Side's unauthorized operation. In addition, the Bureau has already reduced the forfeiture at issue by 60 percent, from \$13,000 to \$5,200, based on its consideration of the statutory factors in Section 503(b)(2)(E) of the Act.<sup>37</sup>

9. Finally, we find no merit to the arguments that the Division ignored Side by Side's status as a non-profit entity, and that the Division failed to adequately credit factors other than the company's significant gross revenues when determining its ability to pay.<sup>38</sup> These arguments are merely reiterative

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16111, 16114, paras.11-12 (Enf. Bur. 2004) (denying a reduction for a history of compliance when the licensee committed additional violations following the violations on which the forfeiture was based).

<sup>35</sup> See, e.g., *Crocodile Broad. Corp., Inc.*, Forfeiture Order, 26 FCC Rcd 12724, 12726, para. 8 (Enf. Bur. 2011) (denying a reduction for a history of overall compliance where a licensee operated at unauthorized times for several years in disregard of the Commission's denial of its request for Special Temporary Authority for night operation); *LSM Radio Partners, L.L.C.*, Forfeiture Order, 25 FCC Rcd 10631, 10634, para. 11 (Enf. Bur. 2010) (denying a reduction for a history of overall compliance where the licensee operated without operational Emergency Alert System (EAS) equipment for approximately 21 months), *recon. granted in part*, Memorandum Opinion and Order, 26 FCC Rcd 14413 (Enf. Bur. 2011); *TV 45 Product., Inc.*, Forfeiture Order, 17 FCC Rcd 11259, 11261, para. 8 (Enf. Bur. 2002) (denying a reduction for a history of overall compliance where the licensee operated without operational EAS equipment for one year).

<sup>36</sup> As the Commission has emphasized, "[a]ll licensees are responsible for knowing the terms of their licenses and for filing a timely renewal application if they seek to operate beyond that term." See *Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, Report and Order, 13 FCC Rcd 21027, 21071, para. 96 (1998), *recon. granted in part*, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 11476 (1999). We are also mindful that the historical reduction of forfeitures based on former licensee status reduces incentives for licenses to know and comply with the terms of their licenses and the Rules. See *supra* note 13. Moreover, in recent cases, we have *upwardly adjusted* the base forfeiture amounts in cases where the unauthorized operation continued for an extended period of time. See, e.g., *BASF*, 25 FCC Rcd at 17303, para. 11 (five years of unauthorized operation); *Shubat*, 26 FCC Rcd at 3786, para. 13 (six years of unauthorized operation); *Call Mobile*, 26 FCC Rcd at 77-78, para. 12 (two and a half years of unauthorized operation); see also *Emigrant Storage*, 2012 WL 3126903 at \*3 n.26 (emphasizing that "the relative duration of a violation is a critical factor," as failure to take this factor into consideration when assessing forfeitures creates "perverse incentives").

<sup>37</sup> We note that in adopting the *Notice of Apparent Liability for Forfeiture* and the *Forfeiture Order*, the Division carefully considered the nature, circumstances, extent, and gravity of Side by Side's unauthorized operations and untimely filing of a renewal application. See 47 U.S.C. § 503(b)(2)(E); *Forfeiture Order*, 23 FCC Rcd at 7395, para. 6 (finding that "no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount"); *Notice of Apparent Liability for Forfeiture*, 23 FCC Rcd at 900-01, para. 8 (stating expressly that the Division had "considered the statutory factors"). As a result of this analysis, the Division reduced the total base forfeiture from \$13,000 to \$5,200 based on various factors, including Side by Side's voluntary disclosure and the corrective measures taken prior to any Commission inquiry or enforcement action. See *Notice of Apparent Liability for Forfeiture*, 23 FCC Rcd at 900-01, paras. 10-11.

<sup>38</sup> Application for Review at 2-3. In adopting the *Forfeiture Order*, the Division carefully reviewed Side by Side's arguments that it had limited fundraising abilities, annual losses, recent unexpected expenses, and potential limits on fundraising abilities, as well as its assertion that it may have to rely on payroll allocations to pay the forfeiture, as potential evidence of Side by Side's inability to pay the forfeiture. The Division ultimately found that Side by Side failed to demonstrate that it could not pay the forfeiture or that payment of the forfeiture would significantly impair Side by Side's financial solvency or ability to serve the public. See *Forfeiture Order*, 23 FCC Rcd at 7395-96, para. 8. We note that parties have routinely made, and the Commission has routinely rejected, arguments for reduction of a forfeiture based on non-profit status, either when standing alone or when used to show an inability to pay a forfeiture. See, e.g., *Lebanon Educ. Broad. Found.*, Memorandum Opinion and Order, 21 FCC Rcd 1442, 1446, (continued . . . )

of arguments previously raised by Side by Side that the Division fully considered and properly rejected in the *Forfeiture Order*.<sup>39</sup> Accordingly, we uphold the Division's finding that Side by Side willfully and repeatedly violated Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Rules<sup>40</sup> and decline to further reduce the forfeiture amount.

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended,<sup>41</sup> and Sections 0.111, 0.311, and 1.106 of the Commission's rules,<sup>42</sup> the Application for Review, filed on June 6, 2008, by Side by Side, Inc., which has been appropriately treated by the Bureau as a petition for reconsideration, is hereby **DENIED** and the *Forfeiture Order* **IS AFFIRMED**.

11. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Act,<sup>43</sup> and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>44</sup> Side by Side, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five thousand two hundred dollars (\$5,200) for willful and repeated violation of Section 301 of the Act,<sup>45</sup> and Sections 25.102(a) and 25.121(e) of the Rules.<sup>46</sup>

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's rules within seven (7) calendar days after the release date of this Memorandum Opinion and Order.<sup>47</sup> If the forfeiture is not paid within the period specified, the case may be referred to the U.S.

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para. 12 (Enf. Bur. 2006) ("Where the Rule is violated, Section 1.80 provides that a monetary forfeiture may be imposed, and there is no exemption or reduction based on the noncommercial status of a station."); *Donald Donovan Jackson*, Forfeiture Order, 19 FCC Rcd 15327, 15329, para. 9 (Enf. Bur. 2004) ("[O]peration for purposes other than financial gain will not, on its own, warrant the cancellation or reduction of a forfeiture."); *Concilio Mision Cristiana Fuente De Agua Viva*, Forfeiture Order, 17 FCC Rcd 19132, 19134, para. 7 (Enf. Bur. 2002) (rejecting a radio licensee's argument that its non-profit status, in and of itself, warranted reduction of the forfeiture), *recon. denied*, Memorandum Opinion and Order, 18 FCC Rcd 6210 (Enf. Bur. 2003) (forfeiture paid); *Valley Pub. Television, Inc.*, Memorandum Opinion and Order and Forfeiture Order, 12 FCC Rcd 22795, 22796, paras. 5-6 (1998) (rejecting a non-profit public television licensee's claim that payment of a \$9,000 forfeiture would threaten its continued provision of service to the public where the financial data submitted by the licensee showed that it had the ability to pay the forfeiture).

<sup>39</sup> See *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, Report and Order, 26 FCC Rcd 1594, 1606, para. 27 (2011) (delegating to the relevant bureaus or offices the authority to dismiss or deny petitions for reconsideration of staff level decisions that are procedurally defective or that merely repeat arguments that have been previously considered and rejected). See also, e.g., *EZ Sacramento, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 18257, 18257, para. 2 (Enf. Bur. 2000) (in denying a petition for reconsideration of related forfeiture orders, the Bureau emphasized that "[a] petition [for reconsideration] that simply reiterates arguments previously considered and rejected will be denied.") (citing *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965)).

<sup>40</sup> 47 U.S.C. § 301; 47 C.F.R. §§ 25.102(a), 25.121(e).

<sup>41</sup> 47 U.S.C. §§ 154(i), 405.

<sup>42</sup> 47 C.F.R. §§ 0.111, 0.311, 1.106.

<sup>43</sup> 47 U.S.C. § 503(b).

<sup>44</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>45</sup> 47 U.S.C. § 301.

<sup>46</sup> 47 C.F.R. §§ 25.102(a), 25.121(e).

<sup>47</sup> See *id.* § 1.80.

Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Communications Act of 1934, as amended.<sup>48</sup> Side by Side, Inc. shall send electronic notification of payment to Pamera Hairston at Pamera.Hairston@fcc.gov, Nissa Laughner at Nissa.Laughner@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made.

13. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>49</sup> 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 you should follow based on the form of payment you select:

- 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.

14. Any request for full payment 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.<sup>50</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

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<sup>48</sup> 47 U.S.C. § 504(a).

<sup>49</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>50</sup> See 47 C.F.R. § 1.1914.

15. **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 Mr. Todd Hostetler, Station Manager, Side by Side, Inc., 5115 Glendale Avenue, Toledo, OH 43614-1801, and to counsel for Side by Side, Inc., A. Wray Fitch III, Esq., Gammon & Grange, P.C., Seventh Floor, 8280 Greensboro Drive, McLean, VA 22102-3807.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau