

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

In the Matter of)	
)	
Neal Davis)	File No.: EB-11-MA-0009
)	NAL/Acct. No.: 201232600001
Fort Lauderdale, Florida)	FRN: 0021223367
)	

MEMORANDUM OPINION AND ORDER

Adopted: September 28, 2012

Released: September 28, 2012

By the Chief, Enforcement Bureau:

1. In this Memorandum Opinion and Order, issued pursuant to Section 405 of the Communications Act of 1934, as amended (Act),¹ and Section 1.106 of the Commission's rules (Rules),² we deny the petition for reconsideration (*Petition*) filed by Neal Davis.³ Mr. Davis seeks reconsideration of the *Forfeiture Order* issued by the Enforcement Bureau's South Central Region in this proceeding.⁴ The *Forfeiture Order* imposed a monetary forfeiture in the amount of ten thousand dollars (\$10,000) against Mr. Davis for willfully and repeatedly violating Section 301 of the Act, by operating an unlicensed radio broadcast station on the frequency 96.1 MHz in Fort Lauderdale, Florida.⁵

2. In his *Petition*, Mr. Davis does not deny that he operated an unlicensed radio station in Fort Lauderdale and, therefore, violated Section 301. Rather, Mr. Davis urges cancellation of the forfeiture based on an inability to pay claim.⁶ Specifically, Mr. Davis asserts that he is currently unemployed and has no income.⁷

3. With respect to a claim of financial hardship, the Commission will not consider reducing or canceling a forfeiture in response to inability to pay, unless the individual or entity making the request submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared

¹ 47 U.S.C. § 405.

² 47 C.F.R. § 1.106.

³ See Letter from Neal Davis to Federal Communications Commissioner (Dec. 15, 2011) (on file in EB-11-MA-0009) (*Petition*).

⁴ See *Neal Davis*, Forfeiture Order, 26 FCC Rcd 16424 (Enf. Bur. 2011) (*Forfeiture Order*), *aff'g*, Notice of Apparent Liability, 26 FCC Rcd 14375 (Enf. Bur. 2011) (*NAL*). After the *NAL* was issued, Mr. Davis did not pay the forfeiture or file a response. Thereafter, the Bureau issued the *Forfeiture Order*.

⁵ 47 U.S.C. § 301.

⁶ See *Petition*, *supra* note 3.

⁷ *Id.* at 1. In addition, Mr. Davis claims to be "homeless." *Id.* We cannot confirm the veracity of his claim or otherwise discern his exact personal circumstances (e.g., if he is asserting that he is "homeless" because he does not own his own home, but instead is renting an apartment unit or living with a family member or a friend), especially in view of official records reflecting a residential address for him. Further, we note that service of the *NAL* and *Forfeiture Order* were sent to Mr. Davis's residential address of record by both first class mail and certified mail, return receipt requested, and Mr. Davis does not dispute that proper service was completed.

according to generally accepted accounting principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the individual's or entity's current financial status.⁸ Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.⁹ Further, in general, an individual's or entity's gross revenues are the best indicator of its ability to pay a forfeiture.¹⁰ Mr. Davis, however, has not provided any financial or other documentation to support or corroborate his asserted financial status.¹¹ In the absence of any supporting financial or other reliable documentation, we simply have no basis by which to evaluate Mr. Davis's inability to pay claim and are constrained by the limited record before us.¹² We therefore deny the Petition and affirm the *Forfeiture Order*.

4. Accordingly, **IT IS ORDERED**, pursuant to Section 405 of the Act,¹³ and Section 1.106 of the Rules,¹⁴ that the petition for reconsideration filed by Neal Davis **IS DENIED**.

5. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311, and 1.80(f)(4) of the Rules,¹⁵ Neal Davis **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of Section 301 of the Act.¹⁶

6. 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.¹⁷ 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.¹⁸ Neal Davis shall send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made. 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.¹⁹ 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

⁸ *NAL*, 26 FCC Rcd at 14378, para. 11. See *Greenwood Acres Baptist Church*, Memorandum Opinion and Order, 22 FCC Rcd 1442, 1448, para. 20 (specifying same).

⁹ *Id.*

¹⁰ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (Enf. Bur. 1992); *Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385 (Enf. Bur. 2000); *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 8640 (Enf. Bur. 2002). See also 47 C.F.R. 1.80(f)(3).

¹¹ After Mr. Davis filed his *Petition*, the Bureau's Miami Office sent two letters to Mr. Davis, requesting documentation of his gross revenues. See Letter from Stephanie Dabkowski, Resident Agent, Miami Office, to Neal Davis (May 3, 2012) (on file in EB-11-MA-0009); Letter from Stephanie Dabkowski, Resident Agent, Miami Office, to Neal Davis (June 13, 2012) (on file in EB-11-MA-0009). To date, Mr. Davis has not responded.

¹² See, e.g., *Bureau D'Electronique Appliquee, Inc.*, Forfeiture Order, 20 FCC Rcd 17893 (Enf. Bur. 2005) (denying inability to pay claim because company failed to provide supporting financial documentation).

¹³ See 47 U.S.C. § 405.

¹⁴ See 47 C.F.R. § 1.106.

¹⁵ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁶ 47 U.S.C. § 301.

¹⁷ 47 C.F.R. § 1.80.

¹⁸ 47 U.S.C. § 504(a).

¹⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

7. 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. 20554.²⁰ 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.

8. **IT IS FURTHER ORDERED** that this Memorandum Opinion and Order shall be sent by both First Class Mail and Certified Mail, Return Receipt Requested, to Neal Davis at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

²⁰ See 47 C.F.R. § 1.1914.