

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

In the Matter of)	
)	
Dexter Blake)	File No.: EB-08-NY-0291
)	NAL/Acct. No.: 200932380004
Mount Vernon, New York)	FRN: 0018292433
)	

MEMORANDUM OPINION AND ORDER

Adopted: December 13, 2012

Released: December 13, 2012

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order (MO&O), 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 grant in part and deny in part the Petition for Reconsideration (Petition) filed by Dexter Blake.³ Mr. Blake seeks reconsideration of the *Forfeiture Order* issued by the Enforcement Bureau's Northeast Region in this proceeding.⁴ The *Forfeiture Order* imposed a monetary forfeiture in the amount of ten thousand dollars (\$10,000) against Mr. Blake for willfully and repeatedly operating an unlicensed radio broadcast station on the frequency 101.5 MHz in Mount Vernon, New York, in violation of Section 301 of the Act.⁵ For the reasons discussed below, we reduce the forfeiture to one thousand seven hundred dollars (\$1,700).

II. BACKGROUND

2. On March 3, 2009, the Enforcement Bureau's New York Office issued a Notice of Apparent Liability for Forfeiture (*NAL*) in the amount of \$10,000 to Mr. Blake for operating an unlicensed broadcast station on the frequency 101.5 MHz in Mount Vernon, New York.⁶ Mr. Blake did not file a response to the *NAL*. On July 22, 2010, the Enforcement Bureau's Northeast Region issued a *Forfeiture Order* affirming the findings in the *NAL* and assessing a \$10,000 forfeiture.⁷

3. In his Petition, Mr. Blake admits to having operated the unlicensed station, but claims that cancellation is warranted because the individual from whom he received the equipment did not advise him

¹ 47 U.S.C. § 405.

² 47 C.F.R. § 1.106.

³ See *Dexter Blake*, Petition for Reconsideration (Aug. 23, 2010) (on file in EB-08-NY-0291) (Petition).

⁴ *Dexter Blake*, Forfeiture Order, 25 FCC Rcd 10038 (Enf. Bur., Northeast Region 2010) (*Forfeiture Order*), *aff'g*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200932380004 (Enf. Bur., New York Office rel. Mar. 3, 2009) (*NAL*).

⁵ *Forfeiture Order*, *supra* note 4. See 47 U.S.C. § 301.

⁶ *NAL*, *supra* note 4.

⁷ *Forfeiture Order*, *supra* note 5.

that he needed an FCC license.⁸ In addition, Mr. Blake requests a reduction or cancellation of the forfeiture based on his inability to pay.⁹

III. DISCUSSION

4. A petition for reconsideration that relies on facts not previously presented to the designated authority will be entertained only if: (1) the designated authority (the Enforcement Bureau in this instance) determines that consideration of the new facts is required to serve the public interest; (2) the petition relies on facts that relate to events that occurred or circumstances that have changed since the last opportunity to present such matters; or (3) the petition relies on facts unknown to the petitioner until after his last opportunity to present such matters.¹⁰ In this instance, we find that the public interest warrants consideration of Mr. Blake's Petition.

5. Although Mr. Blake concedes operating an unlicensed radio station, in violation of Section of the 301 of the Act, he nonetheless urges the Bureau to cancel the forfeiture by arguing that his violation resulted from his reliance on erroneous advice. We decline to cancel the forfeiture on this basis. It is well established that the Commission does not consider ignorance of the law or reliance on erroneous or misleading advice from third parties as mitigating circumstances that justify cancellation or reduction of a forfeiture, and we see no reason to depart from that long-established policy.¹¹

6. Mr. Blake also asserts that the forfeiture, in any event, would pose a financial hardship and, therefore, requests reduction or cancellation of the forfeiture on this basis as well. With regard to an individual's or entity's inability to pay, the Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.¹² We have reviewed the documents that Mr. Blake submitted in support of his inability to pay claim, and find sufficient basis to reduce the forfeiture to \$1,700. However, we caution Mr. Blake that a party's inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.¹³ We have previously rejected inability to pay claims in cases

⁸ Petition at 1.

⁹ *Id.*

¹⁰ 47 C.F.R. §1.106(c).

¹¹ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387, para. 3 (holding that ignorance of the law or inadvertent mistakes are not mitigating circumstances that can serve to justify a forfeiture reduction); *Paisa 2 Car and Limousine Service, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 14423, 14424, para. 5 (Enf. Bur. 2011) (declining to cancel forfeiture based on licensee's claim that it did not know that it was operating on unauthorized frequency); *Kenneth Paul Harris, Sr.*, 15 FCC Rcd 12933, 12935, para. 7 (Enf. Bur. 2000) (denying a mitigation claim of a broadcast licensee, stating that licensee's ignorance of the law did not excuse the unauthorized transfer of the station); *Lakewood Broadcasting Service, Inc.*, 37 FCC 2d 437, 438, para. 6 (1972) (denying a mitigation claim of a broadcast licensee who asserted an unfamiliarity with the station identification requirements).

¹² See *PJB Communications of Virginia, Inc.*, Forfeiture Order, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, Forfeiture Order, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation, Forfeiture Order, 15 FCC Rcd 8640 (2002)* (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

¹³ See 47 U.S.C. § 503(b)(2)(E) (requiring Commission to take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require).

of repeated or otherwise egregious violations.¹⁴ Therefore, future violations of this kind may result in significantly higher forfeitures that may not be reduced due to Mr. Blake's financial circumstances.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,¹⁵ and Section 1.106 of the Commission's rules,¹⁶ that the Petition for Reconsideration filed by Dexter Blake **IS GRANTED IN PART AND DENIED IN PART**.

8. **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 Commission's rules,¹⁷ Dexter Blake **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand seven hundred dollars (\$1,700) for violation of Section 301 of the Act.

9. 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.¹⁸ 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.¹⁹ Dexter Blake shall send electronic notification of payment to NER-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.²⁰ 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.

¹⁴ *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur., Western Region 2011) (holding that violator's repeated acts of malicious and intentional interference outweigh evidence concerning his ability to pay) (petition for reconsideration pending); *Hodson Broadcasting Corp.*, Forfeiture Order, 24 FCC Rcd 13699 (Enf. Bur. 2009) (holding that permittee's continued operation at variance with its construction permit constituted an intentional and continuous violation, which outweighed permittee's evidence concerning its ability to pay the proposed forfeitures). See *Michael W. Perry*, Forfeiture Order, 27 FCC Rcd 2281, 2284, para. 8 (2012) (reducing forfeiture based on inability to pay, but warning that future violations of the same kind may not be reduced due to financial circumstances).

¹⁵ 47 U.S.C. § 405.

¹⁶ 47 C.F.R. § 1.106.

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

¹⁸ 47 C.F.R. § 1.80.

¹⁹ 47 U.S.C. § 504(a).

²⁰ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- 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.

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. 20554.²¹ 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.

10. **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 Mr. Blake at his address of record and to Lewis H. Goldman, counsel for Mr. Blake, at 45 Dudley Court, Bethesda, Maryland 20814.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

²¹ See 47 C.F.R. § 1.1914.