

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

In the Matter of)	
)	
Alexander Kissi)	File No.: EB-08-NY-053
)	NAL/Acct. No: 200832380010
Bronx, New York)	FRN: 0017 5841 29
)	

MEMORANDUM OPINION AND ORDER

Adopted: April 20, 2012

Released: April 20, 2012

By the Chief, Enforcement Bureau:

I. INTRODUCTION

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 Alexander Kissi.³ Mr. Kissi seeks reconsideration of a *Forfeiture Order*⁴ imposing a \$10,000 forfeiture for his willful and repeated operation of an unlicensed radio broadcast station on the frequency 96.5 MHz in Bronx, New York. For the reasons set forth below, the Petition is denied.

II. BACKGROUND

2. On February 28, 2008, and March 1, 2008, agents in the Enforcement Bureau's New York Office (New York Office) used direction-finding techniques to identify the source of radio frequency transmissions on the frequency 96.5 MHz from a two-story building at 3944 White Plains Road in Bronx, New York. On both days, the agents determined that the signals exceeded the limits for operation under Part 15 of the Rules,⁵ and therefore required a license. According to Commission records, no authorization was issued to Mr. Kissi or to anyone for operation of an FM broadcast station at or near this address on this frequency.

3. After completing the field strength measurements on March 1, 2008, the agents returned to 3944 White Plains Road to conduct a station inspection. The agents spoke to a man who worked there

¹ 47 U.S.C. § 405.

² 47 C.F.R. § 1.106.

³ *Bishop Alexander Kissi, Universal African Brotherhood Ministries*, Request for Pardon (Nov. 14, 2008) (on file in EB-08-NY-053). Although the document is styled as a "Request for Pardon," Mr. Kissi's request for pardon seeks cancellation or reduction of the forfeiture, and thus we are treating it as a petition for reconsideration.

⁴ *Alexander Kissi*, Forfeiture Order, 23 FCC Rcd 13338 (Enf. Bur. 2008) (*Forfeiture Order*).

⁵ Part 15 of the Rules sets out the conditions and technical requirements under which certain radio transmission devices may be used without a license. 47 C.F.R. § 15.1 *et seq.* In relevant part, Section 15.239 of the Rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 µV/m at three meters. 47 C.F.R. § 15.239.

and a woman who was doing a live radio broadcast from a small broadcast studio. In response to agents' questions about the radio station, both the man and the woman stated that Alexander Kissi was in charge of the station, but that he was not there at the time.⁶ The agents reached Mr. Kissi by phone on March 6, 2008, at which time Mr. Kissi took full responsibility for operation of the station.⁷

4. On June 18, 2008, the New York Office issued Mr. Kissi a *Notice of Apparent Liability for Forfeiture (NAL)*, finding that Mr. Kissi apparently willfully and repeatedly violated Section 301 of the Act⁸ by operating an unlicensed radio transmitter on the frequency 96.5 MHz in Bronx, New York and proposing a forfeiture in the amount of \$10,000.⁹ Mr. Kissi did not file a response to the *NAL*, and on September 11, 2008, the Enforcement Bureau's Northeast Region issued a *Forfeiture Order* affirming the findings in the *NAL* and assessing a \$10,000 forfeiture.¹⁰

5. In the Petition, Mr. Kissi provides no explanation for his failure to respond to the *NAL*. Mr. Kissi concedes that the unlicensed transmissions came from his radio transmitting equipment, but claims now, for the first time, that he was out of town at the time of the unlicensed transmissions.¹¹ More specifically, he alleges that a construction worker stole his radio transmission equipment for the purpose of selling it and that when the construction worker was doing equipment tests, he mistakenly left the equipment running for several days.¹²

III. DISCUSSION

6. 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 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

⁶ During the inspection, the agents provided the woman a handwritten Notice of Unlicensed Operation (NOUO), which was addressed to her and Mr. Kissi, warning both that operation of the unlicensed radio station on 96.5 MHz violated Section 301 of the Act, and outlining the potential penalties for operating an unlicensed station, including seizure of the equipment, fines, and imprisonment. The NOUO also directed Mr. Kissi to cease operation.

⁷ The New York Office issued Mr. Kissi a NOUO on March 3, 2008, warning him that operation of the unlicensed radio station on 96.5 MHz violated Section 301 of the Act and outlining the potential penalties for operating an unlicensed station, including seizure of the equipment, fines, and imprisonment. *Alexander Kissi*, Notice of Unlicensed Operation (Enf. Bur., New York Office, rel. Mar. 3, 2008). The NOUO also directed Mr. Kissi to terminate operation of the unlicensed station immediately. We note that Mr. Kissi previously received a NOUO on September 9, 2002, regarding operation of an unlicensed station on 87.9 MHz, also at 3944 White Plains Road. *Alexander Kissi*, Notice of Unlicensed Operation (Enf. Bur., New York Office, rel. Sept. 9, 2002).

⁸ 47 U.S.C. § 301.

⁹ *Alexander Kissi*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200832380010 (Enf. Bur., New York Office 2008) (*NAL*).

¹⁰ *See supra* note 4.

¹¹ Petition at 1.

¹² *Id.* Mr. Kissi also states in the Petition that the FM transmitter that the construction worker stole was old and had not been used since 2000. *Id.* Mr. Kissi reports that, since 2000, he had been using an AM transmitter that complied with Part 15 of the Rules. *Id.*

his last opportunity to present such matters.¹³ For the reasons discussed below, we find that reconsideration is not warranted and the Petition is denied.

7. We conclude that Mr. Kissi does not meet any of the three criteria that would allow the Bureau to consider his Petition. While Mr. Kissi accepted responsibility for the unauthorized operation just five days after the violation, he now asserts for the first time that a construction worker stole his radio transmission equipment and left the equipment running on the days in question. Because Mr. Kissi's new claim regarding the theft of his radio transmission equipment directly contradicts his March 6, 2008, admission to an FCC agent that he was fully responsible for the operation of the station on February 28, 2008, and March 1, 2008, we are not persuaded to reconsider our previous finding. We find no basis for disregarding Mr. Kissi's March 6, 2008, statement, which is memorialized in the agent's contemporaneous handwritten notes.¹⁴ Given that we find this newly-presented information unsubstantiated and unreliable, we do not believe that further consideration of the Petition would serve the public interest.¹⁵ Nor do we find it likely that circumstances have changed or that relevant facts were unknown to Mr. Kissi at the time of his earlier statement such that reconsideration of the *Forfeiture Order* is warranted. For these reasons, we find no basis for reconsideration and therefore affirm the finding in the *Forfeiture Order* that Mr. Kissi willfully and repeatedly violated Section 301 of the Act.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,¹⁶ and Section 1.106 of the Commission's rules,¹⁷ the Petition for Reconsideration filed by Alexander Kissi **IS DENIED**.

9. **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,¹⁸ Alexander Kissi **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of Section 301 of the Act.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the rules within thirty (30) calendar days of the release of this Memorandum Opinion and Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for enforcement pursuant to Section 504(a) of the Act.¹⁹ Payment of the forfeiture must be made by credit card, check, or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-

¹³ 47 C.F.R. §1.106(c).

¹⁴ We also note that the dates Mr. Kissi claims he was out of town post-date the dates on which the agents observed the unlicensed operation. Specifically, Mr. Kissi claims in the Petition that “[f]our months ago I traveled for three weeks.” Petition at 1. The Petition was filed on November 14, 2008, so four months prior to that date would be sometime in July 2008. The violations at issue here, however, occurred in February 2008 and March 2008.

¹⁵ Because we do not reconsider our reliance on Mr. Kissi's March 6, 2008, statement to the FCC agent, we need not determine when Mr. Kissi became aware of the facts underlying his new claims.

¹⁶ 47 U.S.C. § 405.

¹⁷ 47 C.F.R. § 1.106.

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

¹⁹ 47 U.S.C. § 504(a).

MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Alexander Kissi shall also send electronic notification to NER-Response@fcc.gov on the date said payment is made.

11. **IT IS FURTHER ORDERED** that this Memorandum Opinion and Order shall be sent by both regular mail and by certified mail, return receipt requested, to Alexander Kissi at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau