

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

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|-----------------------------|---|---------------------------------------|
| In the Matter of |) | |
| |) | |
| Hilltop Tower Leasing, Inc. |) | File No.: EB-10-PA-0014; EB-FIELDNER- |
| |) | 12-00004389 |
| Licensee of Station WPSQ972 |) | NAL/Acct. No.: 201132400003 |
| Everett, Pennsylvania |) | FRN: 0016896722 |

MEMORANDUM OPINION AND ORDER

Adopted: December 30, 2014

Released: December 30, 2014

By the Deputy Chief, Enforcement Bureau:

1. We dismiss on procedural grounds a Petition for Reconsideration (Petition) filed by Hilltop Tower Leasing, Inc. (Hilltop) and affirm a forfeiture of \$3,200 against it for operating its private mobile radio service station from an unauthorized location. Hilltop failed to file the Petition with the Commission's Secretary by the applicable deadline. The Enforcement Bureau's (Bureau) finding of violations by Hilltop was supported by sufficient evidence and warranted the fine that has been imposed.

2. Specifically, in this Memorandum Opinion and Order, issued pursuant to Section 405 of the Communications Act of 1934, as amended (Act),¹ we dismiss the Petition² filed by Hilltop, licensee of Station WPSQ972 in Everett, Pennsylvania, seeking reconsideration of the *Forfeiture Order* issued by the Bureau on November 26, 2013.³ The *Forfeiture Order* imposed a monetary forfeiture in the amount of \$3,200 against Hilltop for willfully and repeatedly violating Section 1.903(a) of the Commission's rules (Rules),⁴ by operating Station WPSQ972 from an unauthorized location from December 12, 2009, until January 20, 2010.⁵

3. Section 405(a) of the Act⁶ and Section 1.106(f) of the Rules⁷ require the filing of a petition for reconsideration with the Commission's Secretary in Washington, D.C. within thirty days from the date of public notice of the final action.⁸ In this case, public notice of the *Forfeiture Order* occurred upon release on November 26, 2013.⁹ The due date for a petition for reconsideration, taking into account holidays, was December 26, 2013.¹⁰ Thus, Hilltop should have filed its Petition with the Commission's Secretary in

¹ See 47 U.S.C. § 405.

² See *Hilltop Tower Leasing, Inc.*, Letter Seeking Reconsideration of Forfeiture Order (filed Dec. 23, 2013) (Petition).

³ *Hilltop Tower Leasing, Inc.*, Forfeiture Order, 28 FCC Rcd 16059 (Enf. Bur. 2013) (*Forfeiture Order*), *aff'g*, *Hilltop Tower Leasing, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 341 (Enf. Bur. 2011).

⁴ 47 C.F.R. § 1.903(a).

⁵ *Forfeiture Order*, 28 FCC Rcd at 16060–61, para. 5.

⁶ 47 U.S.C. § 405(a).

⁷ 47 C.F.R. § 1.106(f).

⁸ See 47 C.F.R. § 1.106(i).

⁹ See 47 C.F.R. § 1.4(b).

¹⁰ See 47 C.F.R. § 1.4(j).

Washington, D.C. no later than December 26, 2013.¹¹ While Hilltop submitted a copy of its Petition to the Bureau's Regional Office in Chicago on December 23, 2013, there is no evidence that a copy was ever received by the Secretary of the Commission. As Section 1.106(i) of the Rules explicitly states, "[p]etitions submitted only by electronic mail and petitions submitted directly to staff without submission to the Secretary shall not be considered to have been properly filed."¹² Accordingly, because Hilltop failed to properly file its Petition, we dismiss the Petition on procedural grounds.¹³

4. Were we to reach the merits of Hilltop's Petition, we would find no basis for reconsideration.¹⁴ We agree that the forfeiture was supported by sufficient evidence that Hilltop knowingly and repeatedly operated equipment for Station WPSQ972 from an unauthorized location in violation of Section 1.903(a) of the Rules.¹⁵ However, we need not reach this issue given that Hilltop's Petition is procedurally defective and must be dismissed for failing to comply with the requirements of the Act and the Rules.

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act¹⁶ and Section 1.106 of the Rules,¹⁷ the Petition for Reconsideration filed by Hilltop Tower Leasing, Inc. **IS DISMISSED** and the *Forfeiture Order*, issued November 26, 2013, **IS AFFIRMED**.

6. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules immediately and no later than fifteen (15) calendar days after the release date of this Memorandum Opinion and Order.¹⁸ If the forfeiture is not paid within the period specified, this 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 Hilltop Tower Leasing, Inc. shall send electronic notification of payment to NER-Response@fcc.gov on the date said payment is made.

7. 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

¹¹ See 47 C.F.R. §§ 1.4(j), 1.106(f).

¹² 47 C.F.R. § 1.106(i).

¹³ See *Bold Gold Media WBS, L.P.*, Memorandum Opinion and Order, DA 14-1782 (Enf. Bur. Dec. 8, 2014) (dismissing a petition for reconsideration filed only with Bureau's Philadelphia Office).

¹⁴ Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters. See 47 C.F.R. § 1.106(c); *EZ Sacramento, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 18257, 18257, para. 2 (Enf. Bur. 2000) (citing *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966)). A petition for reconsideration that simply reiterates arguments that were previously considered and rejected will be denied. *EZ Sacramento, Inc.*, 15 FCC Rcd at 18257, para. 2; 47 C.F.R. § 1.106(p).

¹⁵ *Forfeiture Order*, 28 FCC Rcd at 16060-61, para. 5.

¹⁶ 47 U.S.C. § 405.

¹⁷ 47 C.F.R. § 1.106.

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>.

“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.

8. Any request for making full payment over time 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.

9. **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 Hilltop Tower Leasing, Inc., at 400 Highland Avenue, Altoona, Pennsylvania 16602.

FEDERAL COMMUNICATIONS COMMISSION

William Davenport
Deputy Chief
Enforcement Bureau

²¹ See 47 C.F.R. § 1.1914.