

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

In the Matter of )
CruiseEmail ) File No.: EB-SED-13-00009464^1
)
) NAL/Acct. No.: 201032100030
)
) FRN: 0006501092

MEMORANDUM OPINION AND ORDER

Adopted: March 13, 2014

Released: March 13, 2014

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. We dismiss CruiseEmail’s late-filed Petition^2 seeking reconsideration of a Forfeiture Order,^3 which assessed a forfeiture of fifteen thousand dollars (\$15,000) on the company for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (Act), and Section 1.903(a) of the Commission’s rules (Rules).^4 The violations, which are undisputed, involved CruiseEmail’s operation of three Public Coast Stations at locations other than their licensed locations without prior Commission authorization.^5 Further, as explained below, even if the Petition were timely filed, we find no basis for reconsidering the Forfeiture Order. We therefore affirm the Forfeiture Order.

II. BACKGROUND

2. On June 11, 2010, the Enforcement Bureau’s Spectrum Enforcement Division (Division) issued a Notice of Apparent Liability for Forfeiture (NAL) of \$15,000 against CruiseEmail for its apparent willful and repeated violations of Section 301 of the Act and Section 1.903(a) of the Rules.^6 Pursuant to

^1 The investigation was initiated under File No. EB-09-SE-066 and subsequently assigned File No. EB-SED-13-00009464. Any future correspondence with the Commission concerning this matter should reflect the new case number.

^2 See Letter from Dr. John Gregory, Chief Executive Officer (CEO), CruiseEmail, to Nissa Laughner, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau (filed Mar. 18, 2013) (on file in EB-SED-13-00009464) (Petition).

^3 CruiseEmail, Forfeiture Order, 28 FCC Rcd 1075 (Enf. Bur. 2013) (Forfeiture Order).

^4 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

^5 Public Coast Stations are an integral part of the Maritime Services and traditionally have served the maritime community as commercial mobile radio service providers, permitting ships to send and receive messages and to interconnect with the public switched telephone network. See Coast Radio Stations, FCC, http://wireless.fcc.gov/services/index.htm?job=service\_home&id=coast\_stations (last updated Feb. 11, 2009). The three public coast stations at issue in this proceeding were KDS, Olympia, Washington; WGM, Fort Lauderdale, Florida; and WHX, Pocomoke, Maryland.

^6 See CruiseEmail, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 7386 (Enf. Bur. 2010). The NAL includes a more complete recitation of the facts and history of this case and is incorporated herein by reference.

CruiseEmail's request, the Division granted a 60-day extension of the deadline for filing a response to the *NAL*.<sup>7</sup> CruiseEmail, however, neither filed an *NAL* response nor paid the \$15,000 forfeiture. As a result, on February 7, 2013, the Division issued a *Forfeiture Order* against CruiseEmail for the full forfeiture amount.<sup>8</sup> On the date of release, the Division published the *Forfeiture Order* in the Commission's Daily Digest,<sup>9</sup> mailed a copy of the *Forfeiture Order* to CruiseEmail via First Class Mail, return receipt requested; and e-mailed a copy of the *Forfeiture Order* to CruiseEmail, thus notifying CruiseEmail of the 30-day response deadline for filing a petition for reconsideration.<sup>10</sup>

3. On or before February 11, 2013, CruiseEmail contacted Division staff to request copies of all documents that it had previously filed with the Division.<sup>11</sup> CruiseEmail noted that its request was for the purpose of preparing a petition for reconsideration. On February 20, 2013, the Division sent CruiseEmail the various record information requested, including a copy of its response to the Division's Letter of Inquiry, a copy of the *NAL*, and a copy of the *Forfeiture Order*.<sup>12</sup> The Division also reminded CruiseEmail of the March 11, 2013 filing deadline for the petition.<sup>13</sup> On February 21, 2013, CruiseEmail asked the Division for a copy of other "letters" that the company had previously submitted to the Division,<sup>14</sup> and the Division forwarded them to CruiseEmail on February 21, and 27, 2013.<sup>15</sup>

4. On March 8, 2013, CruiseEmail requested a 45-day extension of the March 11, 2013 filing deadline, asserting that an extension was necessary due to its loss of power (including phone and internet service) during the preceding four days and also because CruiseEmail believed that "two major documents [were] missing," though it did not specify which two documents.<sup>16</sup> In response, the Division

<sup>7</sup> See E-mail from Dr. John Gregory, CEO, CruiseEmail, to Nissa Laughner, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau (July 12, 2010, 11:45 DST) (on file in EB-SED-13-00009464).

<sup>8</sup> See *supra* note 3.

<sup>9</sup> See *Daily Digest*, Vol. 32, No. 26 (Feb. 7, 2013), FCC, [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Digest/2013/dd130207.html](http://transition.fcc.gov/Daily_Releases/Daily_Digest/2013/dd130207.html).

<sup>10</sup> See E-mail from Nissa Laughner, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau, to Dr. John Gregory, CEO, CruiseEmail (Feb. 7, 2013, 16:29 EST) (on file in EB-SED-13-00009464) (Division Feb. 7, 2013 E-mail). The mailing was returned unopened to the Commission on March 1, 2013. On January 9, 2013, CruiseEmail changed the contact information for its licenses on the Wireless Bureau's Universal Licensing System. However, the Division sent the *Forfeiture Order* to the address it had on file and continued to correspond with CruiseEmail using the e-mail address to which the *Forfeiture Order* had been sent until February 21, 2013, when CruiseEmail notified the Division of the change of address.

<sup>11</sup> CruiseEmail requested documents that it should have maintained as part of its record concerning this case.

<sup>12</sup> See E-mail from Nissa Laughner, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau, to Dr. John Gregory, CEO, CruiseEmail (Feb. 20, 2013, 16:16 EST) (on file in EB-SED-13-00009464) (Division Feb. 20, 2013 E-mail).

<sup>13</sup> See *id.*

<sup>14</sup> See E-mail from Dr. John Gregory, CEO, CruiseEmail, to Nissa Laughner, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau (Feb. 21, 2013, 9:12 EST) (on file in EB-SED-13-00009464). The Division interpreted CruiseEmail's reference to "letters" as the prior correspondence between CruiseEmail and the Division related to this investigation.

<sup>15</sup> See E-mails from Nissa Laughner, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau, to Dr. John Gregory, CEO, CruiseEmail (Feb. 21, 2013, 9:59 EST; Feb. 27, 2013, 11:37 EST, 11:38 EST, 11:39 EST) (on file in EB-SED-13-00009464). The additional correspondence primarily consisted of e-mails relating to deadlines, prospective meetings with Division staff, and other administrative issues.

<sup>16</sup> See E-mail from Dr. John Gregory, CEO, CruiseEmail, to Nissa Laughner, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau (Mar. 8, 2013, 10:01 EST) (on file in EB-SED-13-00009464). CruiseEmail did not otherwise identify or describe these documents.

informed CruiseEmail that, in general, the Division lacked discretionary authority to extend the deadline for filing petitions for reconsideration and, thus, the Commission needed to receive any petition that CruiseEmail intended to file by the March 11, 2013 deadline.<sup>17</sup> The Division further informed CruiseEmail that, if necessary, it could subsequently file a supplement to a timely petition (if one were filed) that the Division would then consider accepting in due course.<sup>18</sup> CruiseEmail filed its Petition on March 18, 2013, seven days after the March 11, 2013 deadline.<sup>19</sup>

### III. DISCUSSION

5. Section 405(a) of the Act, as implemented by Section 1.106(f) of the Rules, requires a petitioner to file its petition for reconsideration within 30 days of public notice of Commission action.<sup>20</sup> For non-rulemaking documents released by the Commission, such as the *Forfeiture Order* issued in this proceeding, public notice occurs upon the date of its release—i.e., February 7, 2013.<sup>21</sup> Thus, as the Division repeatedly informed CruiseEmail, the statutory deadline for filing a petition for reconsideration of the *Forfeiture Order* was March 11, 2013.<sup>22</sup> Because CruiseEmail filed its Petition after the expiration of this statutory deadline, the statute requires us to dismiss it.<sup>23</sup>

6. In so holding, we find that the Commission's narrow discretionary authority to waive or extend the statutory deadline in circumstances involving procedural unfairness is not applicable here. This exception, as articulated by the United States District Court of Appeals for the D.C. Circuit, covers situations in which the Commission's failure to provide timely personal notice of the pending action is in "substantial measure" the cause of the untimeliness of the petition.<sup>24</sup> To show causation, the petitioner must show that upon receiving actual notice, it was "impossible reasonably" to file the petition within the time remaining and that the petition (or request for extension) was filed promptly thereafter.<sup>25</sup>

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<sup>17</sup> See E-mail from Nissa Laughner, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau, to Dr. John Gregory, CEO, CruiseEmail (Mar. 8, 2013, 13:34 EST) (on file in EB-SED-13-00009464) (Division Mar. 8, 2013 E-mail). The Division recommended that CruiseEmail send its response by overnight mail to ensure a timely filing. See *id.*

<sup>18</sup> See *id.*; see also 47 C.F.R. § 1.106(f) (The Commission may consider late-filed supplements to timely-filed petitions for reconsideration "upon leave granted upon a separate pleading for leave to file, which shall state the grounds therefor").

<sup>19</sup> CruiseEmail's Petition, although dated March 9, 2013 and postmarked March 11, 2013, was not stamped as received by the Office of the Secretary until March 18, 2013. For purposes of computing time, "[t]he Secretary's date stamp is authoritative and conclusive." *Richardson Indep. Sch. Dist.*, Memorandum Opinion and Order, 5 FCC Rcd 3135, 3136, para. 9 (1990) (dismissing petitions and motions for leave to late-file a petition for reconsideration because they were, according to the Secretary's date-stamp, one day late; and noting that "the Commission is without authority to extend or waive the statutory 30-day filing period for petitions for reconsideration, even if the petition is filed only one day late").

<sup>20</sup> 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(f) ("petition[s] for reconsideration and any supplement[s] thereto shall be filed within 30 days from the date of public notice of the final Commission action, as that date is defined in [Section 1.4(b) of the Rules]"); see also 47 C.F.R. § 1.4(b) (computation of time for Commission-related deadlines).

<sup>21</sup> See 47 C.F.R. § 1.4(b)(2).

<sup>22</sup> See Division Feb. 7, 2013 E-mail; Division Feb. 20, 2013 E-mail; Division Mar. 8, 2013 E-mail.

<sup>23</sup> See *supra* note 20.

<sup>24</sup> *Gardner v. FCC*, 530 F.2d 1086, 1091 (D.C. Cir. 1976) (*Gardner*).

<sup>25</sup> *Id.* at 1092 n.24 (limiting Commission discretionary authority to situations where a petitioner can show "(a) when and how he received notice in fact, (b) that the time remaining was inadequate to allow him reasonably to meet the 30-day requirement (from date of issuance) of [Section 405 of the Act], and (c) that he moved for reconsideration

7. CruiseEmail has not argued—nor could it successfully argue—that any defect in serving the *Forfeiture Order* caused the untimeliness of its Petition. As discussed above, CruiseEmail had 30 days to file a petition for reconsideration. CruiseEmail contacted the Division within two business days of release of the *Forfeiture Order* and expressed its intention to file a response thereto. CruiseEmail’s last-minute extension request—received one business day prior to the statutory deadline—forestalls any finding that CruiseEmail promptly moved for reconsideration after receiving actual notice. Finally, CruiseEmail’s purported bases for filing late (i.e., a four-day loss of power immediately preceding its extension request and its need to obtain and review copies of its prior filings) do not otherwise show procedural unfairness warranting extension of the statutory deadline.<sup>26</sup>

8. Even if we could accept CruiseEmail’s late-filed Petition, its failure to raise material error or new (or previously unavailable) evidence precludes us from considering it.<sup>27</sup> In its Petition, CruiseEmail argues that the Division’s assessment of forfeiture liability with respect to Station WGM<sup>28</sup> is inequitable because CruiseEmail complied with a prior Wireless Bureau directive to file an application to amend the station’s license to reflect its new operating location.<sup>29</sup> The Division’s *Forfeiture Order*, however, imposed liability for the station’s relocation and subsequent operation for approximately four years *prior* to the filing of the amendment application.<sup>30</sup> Neither the amendment nor the Wireless

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promptly on receiving actual notice”); *see also Reuters Ltd. v. FCC*, 781 F.2d 946, 952 (D.C. Cir. 1986) (emphasizing that the *Gardner* court limited its holding to the “highly unusual circumstances presented there” and the prompt filing of the petition after receipt of informal notice).

<sup>26</sup> *See, e.g., Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order on Reconsideration, Order Denying Petition for Rulemaking, Second Order on Reconsideration, 12 FCC Rcd 20787, 20809–10, para. 44 (1997) (dismissing late-filed petition despite arguments that the delay was caused, in part, by a blizzard in Washington, D.C.); *Adelphia Commc’ns Corp.*, Order, 12 FCC Rcd 10759, 10761 n.13 (1997) (denying extension of time to file a petition where delay was caused by the petitioner’s inability to obtain a copy of the Commission’s Rules of Practice and Procedure). Furthermore, the Division informed CruiseEmail that, as an option, it could subsequently file a supplement to its timely petition that the Division would then consider accepting in due course. CruiseEmail chose not to pursue this option.

<sup>27</sup> *See* 47 C.F.R. § 1.106(c)–(d). *See also, e.g., EZ Sacramento, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 18257, 18257, para. 2 (Enf. Bur. 2000) (“Reconsideration is appropriate only where the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner’s last opportunity to present such matters.”).

<sup>28</sup> In its Petition, CruiseEmail states: “There is not any issues [sic] at the two stations KDS, or WHX.” *See* Petition at 2. We view this as an implicit acknowledgement of liability with respect to the operation of these two stations at unauthorized locations during the timeframes specified in the *NAL*.

<sup>29</sup> *See id.* On April 23, 2008, the Wireless Bureau sent a letter to CruiseEmail requesting construction and operational status for its stations. *See* Letter from Scott Stone, Deputy Chief, Mobility Division, FCC Wireless Telecommunications Bureau, to Dr. John Gregory, CruiseEmail (Apr. 23, 2008), attached to License WGM. In its response, CruiseEmail indicated that it had relocated all three stations at various times between 2004 and 2008. *See* Letter from Dr. John Gregory, CEO, CruiseEmail, to Scott Stone, Deputy Chief, Mobility Division, FCC Wireless Telecommunications Bureau (May 30, 2008), attached to License WGM. On March 27, 2009, the Wireless Bureau sent a follow-up letter to CruiseEmail directing the company to file applications to amend its licenses to reflect new operating locations and informing CruiseEmail that it was referring the matter to the Enforcement Bureau for investigation and possible sanction. *See* Letter from Scott Stone, Deputy Chief, Mobility Division, FCC Wireless Telecommunications Bureau, to Dr. John Gregory, CruiseEmail (Mar. 27, 2009), attached to License WGM. CruiseEmail subsequently filed applications to modify its licenses to reflect the new operating locations. *See* File Nos. 0003890798 (KDS) (granted Aug. 12, 2009), 0003889330 (WGM) (granted Aug. 25, 2009), 0003890009 (WHX) (granted Sept. 9, 2009).

<sup>30</sup> *See* File No. 0003889330 (filed July 1, 2009, granted Aug. 25, 2009); *see also NAL*, 25 FCC Rcd at 7387, para. 3 (noting CruiseEmail’s statement that, in 2005, it moved Station WGM from its licensed location in Lake Placid, Florida, to Fort Lauderdale, Florida, after the Lake Placid station had been destroyed by three major hurricanes).

Bureau's formal or informal advice authorizes such unauthorized operation retroactively,<sup>31</sup> and thus, we find no material error in the Division's assessment of forfeiture liability for such operation.

9. For the reasons set forth above, we hold that the Bureau lacks the authority to accept CruiseEmail's late-filed Petition. Furthermore, even if the Bureau could accept the late-filed Petition, the arguments therein do not provide any basis for reconsideration of the forfeiture. We therefore dismiss CruiseEmail's late-filed Petition and thereby affirm the Division's *Forfeiture Order* in its entirety.<sup>32</sup>

#### IV. ORDERING CLAUSES

10. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, and 1.106 of the Commission's rules,<sup>33</sup> the Petition for Reconsideration of the *Forfeiture Order* filed on March 18, 2013 by CruiseEmail is hereby **DISMISSED** and the *Forfeiture Order* **IS AFFIRMED**.

11. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, and 1.80 of the Commission's rules,<sup>34</sup> CruiseEmail **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended, and Section 1.903(a) of the Commission's rules.<sup>35</sup>

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's rules on or before March 31, 2014.<sup>36</sup> The case may also be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Communications Act of 1934, as amended.<sup>37</sup> On the date said payment is made, CruiseEmail shall send electronic notification of payment to Nissa Laughner at Nissa.Laughner@fcc.gov, Daudeline Meme at Daudeline.Meme@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov.

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

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<sup>31</sup> Even if CruiseEmail had erroneously interpreted the Wireless Bureau's directive as detailing the steps necessary to ensure retroactive compliance or otherwise relied on informal discussions with the Wireless Bureau, the Commission has repeatedly held that reliance on informal discussions or decisions by Commission staff does not mitigate forfeiture liability. *See, e.g., Koyo Worldwide Corp.*, Memorandum Opinion and Order, 24 FCC Rcd 14890, 14895–96, paras. 10–11 (2009) (refusing to mitigate forfeiture liability based on alleged staff promise not to enforce certain provisions of the Act).

<sup>32</sup> We note that had the *NAL* in this proceeding been issued more recently, the proposed forfeiture would have reflected a higher upward adjustment based on the extended duration of the violations. *See, e.g., Four Corners Broad., LLC*, Notice of Apparent Liability for Forfeiture and Order, DA 13-2059, 2013 WL 5780524, at \* 2, para. 6 (Enf. Bur. rel. Oct. 25, 2013) (proposing a \$13,000 upward adjustment of the \$12,000 base forfeiture for operating three stations at locations other than their authorized locations based on the intentional nature of the violations and their duration); *Emigrant Storage LLC*, 27 FCC Rcd 8917, 8920 n.26 (Enf. Bur. 2012) (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>33</sup> 47 U.S.C. §§ 154(i), 405; 47 C.F.R. §§ 0.111, 0.311, 1.106.

<sup>34</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>35</sup> 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

<sup>36</sup> 47 C.F.R. § 1.80.

<sup>37</sup> 47 U.S.C. § 504(a).



payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>38</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 CruiseEmail should follow based on the form of payment CruiseEmail selects:

- 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 over time 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>39</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](mailto:ARINQUIRIES@fcc.gov).

15. **IT IS FURTHER ORDERED** that a copy of this Memorandum Opinion and Order shall be sent by First Class and Certified Mail, Return Receipt Requested, to Dr. John S. Gregory, Chief Executive Officer, CruiseEmail, P.O. Box 95, HC64Box191, Hillsboro, WV 24946.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief  
Enforcement Bureau

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<sup>38</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>39</sup> See 47 C.F.R. § 1.1914.