

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

In the Matter of)
Patrick Keane) File No.: EB-08-TC-998
a/k/a The Street Map Co., Accurate Map Co.,) NAL/Acct. No.: 201132170002
Data World, Map World, Map. Co.) FRN: 0020318242
)
) File Nos. : EB-08-TC-998
) EB-07-TC-5233
) NAL/Acct. No.: 201132170002
) FRN: 0020318242
)
) File No.: EB-12-TCD-00000305
) NAL/Acct. No.: 201332170001
) FRN: 0020318242

ORDER ON RECONSIDERATION

Adopted: July 2, 2014

Released: July 2, 2014

By the Acting Chief, Enforcement Bureau:

I. INTRODUCTION

1. We deny Patrick Keane’s request that the Commission reduce a nearly \$1,000,000 penalty it issued against him for having sent at least 100 unsolicited “junk” fax advertisements to consumers. Junk faxes are a network nuisance. They impose unwanted burdens on the called party, including costs of paper and ink, while making fax machines unavailable for legitimate messages. It is unlawful for any person within the United States to use any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a fax machine. The Commission warned Mr. Keane as long ago as 2008 that his business marketing practice of faxing unsolicited advertisements violated federal law, but he persisted in the practice, prompting the Commission to issue three separate enforcement actions that collectively fined him nearly \$1,000,000. Although the Commission invited Mr. Keane to respond in each of the actions, and expressly stated that it would not consider any claim of inability to pay without documentation such as financial statements or tax returns, Mr. Keane did not respond to any of the proposed penalties. Instead, he waited until the completion of the Commission’s administrative enforcement process to claim that he could not pay the assessed fines, and then offered only scant support of this claim. Because Mr. Keane’s untimely request is also insufficiently supported, we decline to reduce the forfeiture. We therefore deny Mr. Keane’s petition for reconsideration.

II. BACKGROUND

2. Between 2010 and 2012, the Commission issued three Notices of Apparent Liability for Forfeiture (NAL) to Mr. Keane, operating as The Street Map Company, et al., for unsolicited faxes, which advertised laminated maps.¹ Each of the NALs gave Mr. Keane 30 days to pay each proposed

¹ The Street Map Company, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 16371 (2010) (NAL 1); The Street Map Company, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8318 (2011) (NAL 2); Patrick Keane a/k/a Street Map et al., Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 13757 (2012) (NAL 3) (collectively NALs). Pursuant to Section 503(b)(5) of the Communications Act, the Enforcement Bureau had previously issued a (continued....)

forfeiture or file a written statement seeking a reduction or cancellation. The NALs were explicit with respect to Mr. Keane's responsibilities if he wished to assert a claim of inability to pay. Specifically, the NALs stated:

The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.²

3. Mr. Keane did not pay the forfeiture amount or respond to any of these NALs seeking a reduction or cancellation. The Commission accordingly issued a *Forfeiture Order* for the full amount proposed in the NALs.³

4. On June 4, 2013, Mr. Keane responded to the *Forfeiture Order* with a one-page letter handwritten on an invoice for one of his companies, First State Map and Globe Company.⁴ Mr. Keane stated that he was "formally requesting a petition of re-consideration based on [his] inability to pay."⁵ Mr. Keane does not deny sending the unlawful faxes, but claims that he stopped faxing "some time ago." He also says he has "redirected [his] energies from inexpensive wall maps to school emergency guides," and has "struggled financially for many months."⁶ The letter is accompanied by two exhibits: a flip chart illustrating his current business product and a bank letter threatening foreclosure on his home mortgage, supposedly illustrating his financial struggles. The foreclosure letter is dated April 20, 2013, and it states that Mr. Keane made no payments on his home mortgage from March 2012 through February 2013.⁷

III. DISCUSSION

5. The Commission's rules state that a petition for reconsideration, such as Mr. Keane's, that relies on "facts or arguments not previously presented to the Commission" may be granted only if: (a) such facts or arguments "relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission"; (b) such facts or arguments were "unknown to petitioner until after his last opportunity to present them to the Commission, and he could

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citation to the Street Map Company and Mr. Keane in response to consumer complaints alleging that Street Map had faxed unsolicited advertisements. Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to The Street Map Company (Feb. 5, 2008) (on file in EB-12-TCD-00000305).

² *NAL 1*, 25 FCC Rcd at 16374, para. 12; *NAL 2*, 26 FCC Rcd at 8323, para. 17; *NAL 3*, 27 FCC Rcd at 13764, para. 20.

³ The NALs were served on Street Map to the attention of Mr. Keane or directly to Mr. Keane. *Patrick Keane a/k/a Street Map et al.*, Forfeiture Order, 28 FCC Rcd 6688, 6689, para. 4 (2013) (*Forfeiture Order*). To further ensure that Mr. Keane had clear notice of the NALs, the Enforcement Bureau sent copies of *NAL 1* and *NAL 2* to Mr. Keane a second time, and sent copies of *NAL 3* to four separate addresses associated with Mr. Keane. *Id.* at 6689 n.10.

⁴ Each of the NALs identified First State Map & Globe Co. as one of the business names used by Mr. Keane. *See NAL 1*, 25 FCC Rcd at 16371 n.1; *NAL 2*, 26 FCC Rcd at 8318 n.1; and *NAL 3*, 27 FCC Rcd at 13758 n.8.

⁵ Letter from Patrick Keane, First State Map & Globe Company, to Richard Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau at 1 (filed June 6, 2013, in EB-12-TCD-00000305).

⁶ *Id.*

⁷ Letter from Bank of America Mortgage to Patrick Keane at 2 (filed June 6, 2013, in EB-12-TCD-00000305) (Mortgage Letter).

not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity”; or (c) the Commission determines that “consideration of the facts or arguments relied on is required in the public interest.”⁸

6. The facts and arguments offered by Mr. Keane do not justify reconsideration of the forfeiture. Mr. Keane’s last opportunity to present facts and arguments to the Commission about the magnitude of the penalty at issue was in November 2012, in response to the last NAL. As indicated, he did not file a response of any kind to the third NAL, just as he had not filed a response of any kind to the two prior NALs. His claim in his June 2013 petition that he is unable to pay the forfeiture is not based on any circumstances that changed since November 2012, or on anything unknown to him at that time, because he states in his petition that he has “struggled financially for many months.” While the bank foreclosure letter Mr. Keane offers is dated April 2013, it shows that Mr. Keane had been in default on his home since March 2012; thus, to the extent the fact of default might support his claim that he cannot pay the forfeiture, the letter shows that the fact existed at the time his response to the last NAL was due.

7. There is otherwise no public interest reason to consider Mr. Keane’s late-filed claim. Due to his *pro se* status, Enforcement Bureau staff advised Mr. Keane, after he filed his petition, that the bank foreclosure letter, standing alone, was insufficient to support his claim; staff also described the additional documentation required for the Bureau to consider his claim further and offered Mr. Keane an additional 30 days to file this information. Again, Mr. Keane never responded.

8. Ordinarily, the full Commission, as opposed to one of its bureaus, must act on petitions for reconsideration of final actions taken by the full Commission, such as the forfeiture order at issue here. The agency’s rules, however, state that “[p]etitions for reconsideration that plainly do not warrant consideration by the Commission may be dismissed or denied by the relevant bureau(s) or office(s).”⁹ Examples of such petitions include, among others, those that “[f]ail to identify any material error, omission, or reason warranting reconsideration,” as well as those that “[r]ely on facts or arguments which have not previously been presented to the Commission and which do not meet the requirements” for presenting such information (referenced above).¹⁰ Mr. Keane’s petition therefore “plainly does not warrant consideration by the Commission,” and the Enforcement Bureau denies it.¹¹

⁸ 47 C.F.R. § 1.106(b)(2), 1.106(c).

⁹ 47 C.F.R. § 1.106(p).

¹⁰ *Id.* § 1.106(p)(1)–(2).

¹¹ Numerous other technical defects with Mr. Keane’s petition for reconsideration could serve as a further basis for denying his petition. Under the Commission’s rules, petitions for reconsideration in paper form must be typewritten or printed, conform to specific typeface sizes and margins, and be filed with the Secretary. 47 C.F.R. § 1.106(i). Mr. Keane’s handwritten letter, sent to an Enforcement Bureau division chief but not to the Secretary, complies with none of these requirements. The Bureau is nevertheless considering the petition on the merits.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to Sections 4(i), 4(j), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 405, and Sections 1.80 and 1.106(p) of the Commission's rules, 47 C.F.R. §§ 1.80 and 1.106(p), that the Petition **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Acting Chief
Enforcement Bureau