

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Cascade Access, L.L.C.)	File No.: EB-IHD-14-00017745 ¹
)	
Applicant for 700 MHz band licenses in Auction 73)	NAL/Acct. No.: 200932080027
)	
)	FRN: 004381547

MEMORANDUM OPINION AND ORDER

Adopted: December 7, 2015

Released: December 7, 2015

By the Chief, Enforcement Bureau:

1. We deny as procedurally and substantively deficient a Petition for Reconsideration (Petition) filed by Cascade Access, L.L.C. (Cascade or Company) to reduce the \$75,000 that the Company paid as a penalty for its collusive conduct in a recent Commission spectrum auction.² Our action was aimed at promoting the integrity of the Commission's competitive bidding process for spectrum licenses and preventing an anticompetitive market structure following the auction.

2. The Enforcement Bureau released the Forfeiture Order³ against Cascade for engaging in collusive conduct during the Auction 73 bidding process and for failing to notify the Commission of such behavior in willful violation of Section 1.2105(c)(1) and (c)(6) of the Commission's rules (Rules).⁴ As ordered, Cascade fully paid the \$75,000 fine, but now seeks partial reimbursement of that payment through a retroactive downward adjustment of the fine amount.⁵

3. In addition to being procedurally deficient and substantively without merit as described below, Cascade's payment of the forfeiture exhausts the Company's administrative appeal rights.⁶ Any forfeiture payments made to the Commission in the absence of fraud, duress, or mistake of fact are not recoverable.⁷ Cascade has not demonstrated the presence of any of these conditions. Thus, the Company's Petition is denied.

4. Even setting aside this waiver, there are separate and independent procedural bases for denying the Petition. A review of the Petition⁸ and the entire record demonstrates that Cascade failed to comply with the requirements of Section 1.106 of the Rules.⁹ In particular, Cascade's Petition relies on

¹ This case was formerly assigned File No. EB-09-IH-0012.

² See *Cascade Access, L.L.C.*, Forfeiture Order, 28 FCC Rcd 141, para. 1 (Enf. Bur. 2013) (*Cascade Forfeiture Order*).

³ See *id.*

⁴ See 47 C.F.R. §§ 1.2105(c)(1), (c)(6).

⁵ See *Cascade Access, L.L.C.*, Request for Reconsideration (Feb. 6, 2013) (on file in EB-IHD-14-00017745) (Petition).

⁶ See *Associated Broadcasters, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd. 3324 (1997).

⁷ See *id.* at 3327, para. 8 (citing *Putnam Tool Co. v. United States*, 147 F.Supp. 746, 748 (1957), *cert. denied*, 355 U.S. 825 (1957)).

⁸ See Petition.

⁹ See 47 C.F.R. § 1.106.

two arguments: one of which has been already fully considered and rejected by the Bureau,¹⁰ and another that was untimely presented to the Bureau.¹¹ We could also therefore deny the Petition for failure to comply with the rules governing petitions for reconsideration.

5. Furthermore, even if the Petition were procedurally proper, we also would find no basis for reconsideration were we to reach the merits of Cascade's arguments. Reconsideration is appropriate only when 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.¹² Cascade's Petition fails to present such information warranting reconsideration.¹³ We would therefore find that the Enforcement Bureau properly decided the matters raised, and we would uphold the *Cascade Forfeiture Order* for the reasons stated therein.

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended (Act), and Section 1.106 of the Rules, the Petition for Reconsideration filed by Cascade is hereby **DENIED**.¹⁴

¹⁰ See *id.* at (p)(3). In response to the Bureau's release of the *Cascade NAL*, Cascade argued that it should receive a downward adjustment from the recommended forfeiture of \$75,000 on the basis of having had no prior history of rule violations. See Cascade Access, L.L.C., Request for Cancellation or Reduction of Proposed Forfeiture at 6 (Mar. 12, 2009) (on file in EB-IHD-14-00017745) (NAL Response); *Cascade Access, L.L.C.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1350 (Enf. Bur. 2009) (*Cascade NAL*). Although this argument was addressed and rejected in the subsequent *Cascade Forfeiture Order*, Cascade has repeated this argument in its Petition. See *Cascade Forfeiture Order*, 28 FCC Rcd at 145-46, para. 11; Petition at 4-5.

¹¹ See 47 C.F.R. § 1.106(p)(2). Per the *Cascade NAL*, Cascade was on notice that the Bureau's decision to propose a forfeiture in the amount of \$75,000 had relied in part upon the precedent set in the auction collusion case of Star Wireless, LLC. See *Cascade NAL*, 24 FCC Rcd at 1354, para. 14 (citing *Star Wireless, LLC and Northeast Communications of Wisconsin, Inc.*, Order on Review, 22 FCC Rcd 8943 (2007) (*Star Wireless Order on Review*), appeal denied, *Star Wireless, LLC v. FCC and USA*, 522 F.3d 469 (D.C. Cir. 2008) (*Star Wireless*)). The appropriate time for Cascade to have raised any and all arguments in response to the Bureau's reliance on the *Star Wireless Order on Review* was within thirty calendar days of the release of the *Cascade NAL* on February 10, 2009. See 47 C.F.R. § 1.80(f)(3). See also *Cascade NAL*, 24 Rcd at 1355, para. 16. It was only after the release of the *Cascade Forfeiture Order* that Cascade presented its new argument that it was entitled to a downward adjustment of the forfeiture amount based on the similarities between its collusive behavior and that of the entity in the *Star Wireless* matter. See Petition at 3-5. The presentation of this argument was untimely.

¹² 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)); see also *Ely Radio, LLC*, Memorandum Opinion and Order, 27 FCC Rcd 7608, 7610, para. 6 (Enf. Bur. 2012) (articulating the standard of review for Petitions for Reconsideration).

¹³ Cascade argues for the first time in its Petition that, because the Bureau relied in part on the wireless license auction collusion decision in the *Star Wireless Order on Review*, it must follow the course of that case in its entirety. Specifically, in the *Star Wireless Order on Review* the Commission made a 25 percent downward adjustment to \$75,000 from a \$100,000 forfeiture assessed by the Bureau. This was done on the basis of a record of no prior violations of the Commission's rules. See *Star Wireless Order on Review*, 22 FCC Rcd at 8953, para. 23. Cascade asserts that "[t]he Bureau's willingness to apply a downward adjustment based on a history of prior compliance in the *Star Wireless* matter and its refusal to approve, at a minimum, a comparable adjustment with regard to the Cascade forfeiture cannot be reconciled." Petition at 3. Cascade, however, fundamentally misconstrues the record in this matter. Cascade's history of compliance was explicitly considered and factored into the proposed forfeiture at the NAL stage. See *Cascade NAL*, 24 FCC Rcd at 1354, para. 14. The *Cascade Forfeiture Order*, again explicitly referencing Cascade's history of compliance, affirmed the proposed forfeiture, which, as noted, already accounted for Cascade's history of compliance. *Cascade Forfeiture Order*, 28 FCC Rcd at 145-46, para. 11. Thus, with respect to the forfeiture amount and the consideration of the licensee's history of compliance, the decision in the *Cascade Forfeiture Order* is completely consistent with the Commission's decision in the *Star Wireless Order on Review*, which was upheld on appeal to the U.S. Court of Appeals for the District of Columbia. See *Star Wireless*, *supra* note 7.

¹⁴ 47 U.S.C. § 405; 47 C.F.R. § 1.106.

7. **IT IS FURTHER ORDERED** that a copy of this Memorandum Opinion and Order shall be sent by first class mail and certified mail, return receipt requested, to Brenda C. Crosby, President, Cascade Access, L.L.C., 301 South Broadway Street, Estacada, Oregon 97023, and to Elizabeth R. Sachs, Esq., Lukas, Nace, Gutierrez & Sachs, LLP, 8300 Greensboro Dr., Suite 1200, McLean, Virginia 22102.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau