

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

In the Matter of)	
)	
R.J.'s Late Night Entertainment Corporation)	File Nos.: EB-10-DT-0039; EB-
)	FIELDNER-12-00004557
Licensee of Station WHPR-FM)	NAL/Acct. No.: 2012323600002
Highland Park, Michigan)	FRN: 0011011509

MEMORANDUM OPINION AND ORDER

Adopted: February 9, 2015

Released: February 9, 2015

By the Deputy Chief, Enforcement Bureau:

I. INTRODUCTION

1. We deny the Petition for Reconsideration filed by R.J.'s Late Night Entertainment Corporation (RJLNE) seeking reconsideration of a Forfeiture Order issued by the Enforcement Bureau. In the Forfeiture Order, the Enforcement Bureau imposed a penalty of \$22,000 against RJLNE for failing to maintain operational Emergency Alert System (EAS) equipment, operate its FM station's transmitter from its authorized location, and make available its station's public inspection file. Although we recognize that RJLNE submitted a timely response to the Enforcement Bureau's Notice of Apparent Liability for Forfeiture and Order in this case, RJLNE's response does not provide sufficient basis for reconsideration of the imposed penalty. RJLNE's violations were willful and repeated, and its subsequent remedial actions to come into compliance do not warrant a forfeiture reduction.

II. BACKGROUND

2. On October 24, 2011, the Enforcement Bureau's Detroit Office issued a Notice of Apparent Liability for Forfeiture and Order (*NAL*) proposing a \$22,000 penalty against RJLNE for apparently willfully and repeatedly violating Sections 11.35(a), 73.1690(b)(2), and 73.3527(b)(1) of the Commission's rules (Rules).¹ The Enforcement Bureau subsequently issued a Forfeiture Order imposing the \$22,000 penalty against RJLNE after finding that it failed to file a timely response to the *NAL*.² In response, RJLNE filed a Petition for Reconsideration of the Forfeiture Order (Petition), stating that it "did respond to the *NAL*, and [its] response was on time."³ The Petition contained a copy of RJLNE's response to the *NAL*, in which RJLNE requested reduction of the proposed penalty because it had "no intent to violate the Communications Act."⁴ The *NAL Response* also requested a forfeiture reduction based on RJLNE's efforts to correct the EAS, unauthorized operation, and public file violations following the Enforcement Bureau's inspection of its station.⁵

¹ *R.J.'s Late Night Entm't Corp.*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 15022 (Enf. Bur. 2011) (*NAL*); 47 C.F.R. §§ 11.35(a), 73.1690(b)(2), 73.3527(b)(1).

² *R.J.'s Late Night Entm't Corp.*, Forfeiture Order, 27 FCC Rcd 4863 (Enf. Bur. 2012) (Forfeiture Order).

³ See Petition for Reconsideration filed by R.J. Watkins, President, R.J.'s Late Night Entm't Corp. (received May 22, 2012) (on file in EB-FIELDNER-12-00004557) (Petition).

⁴ See Answer to Liability for Forfeiture Order filed by R.J. Watkins, President, R.J.'s Late Night Entm't Corp. (received Nov. 23, 2011) (on file in EB-FIELDNER-12-00004557) (*NAL Response*).

⁵ *Id.*

III. DISCUSSION

3. Petitions for reconsideration are granted only in limited circumstances. 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.⁶ RJLNE's Petition fails to present such information warranting reconsideration.

4. RJLNE asserts that it submitted a timely response to the *NAL*.⁷ However, RJLNE admits that it mistakenly filed its *NAL Response* with the FCC's Headquarters in Washington, D.C., instead of the Enforcement Bureau's Detroit Office as required by the *NAL*.⁸ But while we accept the *NAL Response* as timely filed, we find that RJLNE did not provide sufficient grounds for reconsideration of the imposed forfeiture.

5. RJLNE argues that a forfeiture reduction is warranted because it did not intend to violate the Communications Act or the Rules.⁹ As explained in the *NAL*, the "conscious and deliberate commission or omission" of any act that violates the Communications Act or the Rules renders a violation willful, regardless of whether the party intended to violate the law.¹⁰ In its *NAL Response*, RJLNE did not deny that it operated its station's transmitter from an unauthorized location and failed to maintain required EAS equipment or its public inspection file. As a result, we find that RJLNE willfully violated the Rules. To the extent that RJLNE suggests that it was unaware that its actions violated the law, this lack of knowledge is "at best, ignorance of the law, which the Commission does not consider a mitigating circumstance."¹¹ RJLNE also conceded that the violations continued for extended periods of time.¹² As a result, even if we did not find RJLNE's violations willful, they were nevertheless repeated.¹³

6. RJLNE also requests a forfeiture reduction based on its remedial actions to resolve its EAS, unauthorized operation, and public inspection file violations.¹⁴ Specifically, RJLNE states that it installed the required EAS equipment, received Commission permission to operate its transmitter from a new location, and established a public inspection file at its main studio.¹⁵ While the Commission will generally reduce an assessed forfeiture based on the good faith corrective efforts of a violator, those

⁶ 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).

⁷ See Petition.

⁸ See *id.*; *NAL*, 26 FCC Rcd at 15025–26, paras. 10, 15 (ordering RJLNE to provide its response to the Detroit Office).

⁹ See *NAL Response*.

¹⁰ See *NAL*, 26 FCC Rcd at 15023, para. 5 (citing 47 U.S.C. § 312(f)(1)).

¹¹ See *S. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387, para. 3 (1991), *recons. denied*, Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992).

¹² *NAL*, 26 FCC Rcd at 15023, para. 4 (stating that RJLNE admitted that it moved its transmitter without Commission authorization years before the inspection and failed to maintain a public inspection file after the local library closed "several years ago").

¹³ See *NAL*, 26 FCC Rcd at 15023, para. 5 (citing 47 U.S.C. § 312(f)(2)).

¹⁴ See Petition.

¹⁵ See *NAL Response*.

corrective efforts must be taken *prior* to notification of the violation.¹⁶ As the Commission has repeatedly stated, “corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations.”¹⁷ Consequently, RJLNE’s remedial efforts to comply with the Rules following the inspection of its station do not justify a forfeiture reduction.

7. We therefore find that RJLNE fails to present information warranting reconsideration of the \$22,000 forfeiture and deny the Petition.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended (Act),¹⁸ and Section 1.106 of the Rules,¹⁹ the Petition for Reconsideration filed by R.J.’s Late Night Entertainment Corporation is hereby **DENIED**.

9. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311, and 1.80 of the Rules, R.J.’s Late Night Entertainment Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty-two thousand dollars (\$22,000) for willfully and repeatedly violating Sections 11.35(a), 73.1690(b)(2), and 73.3527(b)(1) of the Rules.²⁰

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 after the release date of this Memorandum Opinion and Order.²¹ 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.²² R.J.’s Late Night Entertainment Corporation shall send electronic notification of payment to NER-Response@fcc.gov on the date said payment is made.

11. Payment of the forfeiture 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.²³ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and

¹⁶ See, e.g., *Sutro Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 15274, 15277, para. 10 (2004) (stating that the Commission will generally reduce a forfeiture “based on the good faith corrective efforts of a violator when those corrective efforts were taken prior to Commission notification of the violation”); *Catholic Radio Network of Loveland, Inc.*, Forfeiture Order, 29 FCC Rcd 121, 122–23, para. 5 (Enf. Bur. 2014) (“The Commission will generally reduce an assessed forfeiture based on the good faith corrective efforts of a violator when those corrective efforts were taken *prior* to Commission notification of the violation.”) (emphasis in original); *Argos Net, Inc.*, Forfeiture Order, 28 FCC Rcd 1126, 1127, para. 4 (Enf. Bur. 2013) (“[C]orrective action taken after notification or inspection by the Commission does not mitigate the violation . . .”).

¹⁷ See, e.g., *Seawest Yacht Brokers*, Notice of Forfeiture, 9 FCC Rcd 6099, 6099, para. 7 (1994) (citations omitted); *Exec. Broad. Corp.*, Memorandum Opinion and Order, 3 FCC 2d 699, 700, para. 6 (1966) (“The fact that prompt corrective action was taken . . . does not excuse the prior violations.”).

¹⁸ 47 U.S.C. § 405.

¹⁹ 47 C.F.R. § 1.106.

²⁰ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80, 11.35(a), 73.1690(b)(2), 73.3527(b)(1).

²¹ 47 C.F.R. § 1.80.

²² 47 U.S.C. § 504(a).

²³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- 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.

12. 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. 20554.²⁴ 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.

13. **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 R.J.'s Late Night Entertainment Corporation, at 160 Victor, Highland Park, Michigan 48203, and to its counsel, Peter Tannenwald, Esq., at Fletcher, Heald & Hildreth, 1300 17th Street North #1100, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

William Davenport
Deputy Chief
Enforcement Bureau

²⁴ See 47 C.F.R. § 1.1914.