

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

In the Matter of Ernesto Bustos Licensee of Station WTBL-CD Lenoir, North Carolina Facility ID No. 54983 NAL/Acct. No.: 201341420009 FRN: 0021349188

ORDER ON RECONSIDERATION

Adopted: April 30, 2015

Released: April 30, 2015

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this Order on Reconsideration, we dismiss the November 14, 2014 Petition for Reconsideration filed by Ernesto Bustos (the "Petitioner"), licensee of Station WTBL-CD, Lenoir, North Carolina (the "Station"), pursuant to our delegated authority under Section 1.106(p) of the Commission's Rules ("Rules"). The Petitioner seeks reconsideration of the Memorandum Opinion and Order issued by the Commission dismissing in part and otherwise denying his Application for Review. The Memorandum Opinion and Order sustained a \$13,000 forfeiture against Petitioner for his failure to prepare, place in the Station's public file, and file electronically with the Commission the Station's Children's Television Programming Reports in a timely manner, in violation of Section 73.3526(e)(11)(iii) of the Rules.

II. BACKGROUND

2. On July 18, 2014, Petitioner filed an Application for Review of the Video Division's ("Division") Memorandum Opinion and Order. On review, Petitioner (1) repeated his argument that the imposed forfeiture was inconsistent with prior Commission precedent, in violation of Melody Music and the Equal Protection Clause of the Fifth and Fourteenth Amendments to the Constitution; (2) asserted that it is arbitrary and capricious for the Commission to impose a \$13,000 forfeiture against him for "far less serious violations of FCC rules than were committed by the likes of Hearst Broadcasting and KPLR-TV, non-minority major market broadcasters, who were let off with non-monetary "admonishments"; and (3) argued, for the first time, that the Bureau's action violated the Due Process Clause of the Fifth Amendment because the Commission did not provide him "fair notice" of the amount of the forfeiture

1 Ernesto Bustos, Memorandum Opinion and Order, 29 FCC Rcd 12863 (2014)

2 Ernesto Bustos, Application for Review (Jul. 18, 2014).

3 47 C.F.R. § 73.3526(e)(11)(iii).

4 Ernesto Bustos, Memorandum Opinion and Order, 29 FCC Rcd 7311 (Vid. Div. Jun. 18, 2014).

5 Melody Music, Inc. v. FCC, 345 F.2d 730 (D.C. Cir. 1965).

for the violations of the rules that he acknowledges he committed.<sup>6</sup> In a *Memorandum Opinion and Order* released on October 15, 2014, the Commission denied the first two arguments, concluding that the Petitioner had not demonstrated that the Bureau erred, and dismissed the third argument concerning “fair notice” because Petitioner failed to make the argument to the Bureau.<sup>7</sup>

3. To support the first two arguments above in earlier pleadings and demonstrate disparate treatment, Petitioner listed examples of enforcement actions we took against other broadcast stations at an earlier date which bore different results. In our decisions, we held that the cases Petitioner cited warranted different forfeiture amounts because they involved different Rule violations.<sup>8</sup>

4. On November 14, 2014, Petitioner filed a Petition for Reconsideration of this *Memorandum Opinion and Order* maintaining that, under Section 1.106(b)(2),<sup>9</sup> new events have occurred since he filed his Application for Review that warrant reconsideration.<sup>10</sup> Petitioner lists twenty-four broadcast stations which the Commission has admonished, but not monetarily fined, for violations of certain children’s television programming rules since he filed his Application for Review.<sup>11</sup> Using these twenty-four events, Petitioner argues again that the Commission must “explain how the disparate treatment of [him] is consistent with the federal Constitution. . . .”<sup>12</sup> Petitioner restates his position that there is no rational basis for how the Commission treats those whom it claims violate its children’s television rules.<sup>13</sup>

### III. DISCUSSION

5. Commission rules specify limited circumstances under which a party may seek reconsideration of a Commission denial of an Application for Review.<sup>14</sup> Under Section 1.106(b)(2), where the Commission has denied an Application for Review, a Petition for Reconsideration will be entertained only if the petition (i) “relies on facts or arguments which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission,” and/or (ii) “relies on facts or arguments unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity.”<sup>15</sup> Under Section 1.106(p), staff may dismiss or deny any petition for reconsideration of Commission action that “plainly does not warrant Commission consideration,” if for example, the petition “[f]ail[s] to identify any material error, omission, or reason

---

<sup>6</sup> See *Ernesto Bustos*, Application for Review (Jul. 18, 2014).

<sup>7</sup> See *Ernesto Bustos*, 29 FCC Rcd at 12863 (stating that “[t]he Bureau, in the Memorandum Opinion and Order, properly decided the matters raised, and we uphold its decision for the reasons stated therein.”)

<sup>8</sup> Petitioner already made the “disparate treatment” argument in both his NAL Response and Petition for Reconsideration of the Bureau’s Forfeiture Order. See *Ernesto Bustos*, Response to Notice of Apparent Liability for Forfeiture (May 17, 2013) at para 9-10. See also *Ernesto Bustos*, Petition for Reconsideration (Mar. 26, 2014) at para 4-13. We responded to Petitioner’s argument in both the Forfeiture Order and in the Division’s Memorandum Opinion and Order. See *Ernesto Bustos*, Forfeiture Order, 29 FCC Rcd 1898 (Feb. 24, 2014) at para 19 and *Ernesto Bustos*, Memorandum Opinion and Order, 29 FCC Rcd 7311 (Vid. Div. Jun. 18, 2014) at para 9.

<sup>9</sup> The Petitioner quotes the entirety of 1.106(b)(2) but does not cite a specific subsection to support his argument.

<sup>10</sup> *Ernesto Bustos*, Petition for Reconsideration (Nov. 14, 2014) at 2.

<sup>11</sup> The Petitioner makes a point of observing that these twenty-four stations are full power and mostly non-minority. See *Ernesto Bustos*, Petition for Reconsideration (Nov. 14, 2014) at 2-4.

<sup>12</sup> *Id.* at 4.

<sup>13</sup> *Id.* at 5.

<sup>14</sup> See *Atlanta Channel, Inc.*, Order on Reconsideration, 29 FCC Rcd 11848 at para. 6 (MB 2014).

<sup>15</sup> 47 C.F.R. § 1.106(b)(2).

warranting reconsideration.”<sup>16</sup>

6. Petitioner argues that new events have occurred since he filed his Application for Review which now entitle him to reconsideration. All twenty-four events Petitioner cites are enforcement actions the Division took against broadcast stations for violations of Section 73.670 of the Commission’s Rules, which deals with commercial limits in children’s programs. These twenty-four events are new in that they occurred since Petitioner last spoke. However, they are irrelevant to this case because all twenty-four actions deal with violations of a different Rule than the one at issue here.<sup>17</sup> These twenty-four enforcement actions concern Section 73.670 of the Rules, not Section 73.3526(e)(11)(iii), which Petitioner violated. This explains the disparate treatment accorded Petitioner. As we noted in the *Forfeiture Order*, in enforcement actions where the violations at issue were similar to Petitioner’s, our enforcement policy has been consistent.<sup>18</sup> Similarly, the Division’s treatment of the twenty-four stations Petitioner cites is also consistent with past precedent concerning that specific rule violation. Nothing in our policy has changed since Petitioner filed his Application for Review which might warrant reconsideration. Therefore, under Section 1.106(p) of the Rules, we find that Petitioner has failed to identify “any material error, omission, or reason warranting reconsideration” and we therefore dismiss this argument.<sup>19</sup>

7. Furthermore, to the extent that Petitioner separately reargues that there is no rational basis for how the Commission treats those whom it claims violate its children’s television rules, we also dismiss this argument as repetitive of an argument already raised both in his NAL response and in his Petition for Reconsideration of the Division’s Forfeiture Order.<sup>20</sup>

#### IV. ORDERING CLAUSE

8. ACCORDINGLY, IT IS ORDERED that, pursuant to 47 U.S.C. § 405(a), and Section 1.106(p) of the Commission’s rules, 47 C.F.R. § 106(p)(1), the Petition for Reconsideration of Ernesto Bustos IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

---

<sup>16</sup> 47 C.F.R. § 1.106(p)(1).

<sup>17</sup> 47 C.F.R. § 73.670. Section 73.670 of the Rules deals with commercial limits in children’s programs. Specifically, the rule limits the amount of commercial matter which may be aired during children’s programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays.

<sup>18</sup> See para. 19 and fn. 36 of *Ernesto Bustos*, Forfeiture Order, 29 FCC Rcd 1898 (Feb. 24, 2014).

<sup>19</sup> See 47 C.F.R. § 1.106(p)(1).

<sup>20</sup> The Bureau already responded to this argument. See para. 19 of *Ernesto Bustos*, Forfeiture Order, 29 FCC Rcd 1898 (Feb. 24, 2014) and see para. 9, *Ernesto Bustos*, Memorandum Opinion and Order, 29 FCC Rcd 7311 (Vid. Div. Jun. 18, 2014).