

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Fabrice Polynice)	File No.: EB-FIELDSCR-12-00004798
)	NAL/Acct. No.: 201332600001
North Miami, Florida)	FRN: 0022240279
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: August 30, 2016**Released: August 30, 2016**

By the Regional Director, Region Two, Enforcement Bureau:

1. In the *Forfeiture Order*,¹ the Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) imposed a forfeiture of \$25,000 against Fabrice Polynice for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (Act)² by operating an unlicensed radio station on the frequency 90.1 MHz in North Miami, Florida. Mr. Polynice has filed a Petition for Reconsideration (Petition) of the *Forfeiture Order*. In this Order, we dismiss the petition as untimely.

2. Section 405(a) of the Act and Section 1.106(f) of the Rules require a petition for reconsideration to be filed within thirty (30) days of the date from which public notice of the action is given.³ Public notice of the action in this case was given on April 4, 2013, the date the *Forfeiture Order* was released.⁴ Therefore, a petition for reconsideration of the *Forfeiture Order* had to be filed with the Commission by May 4, 2013 in order to be considered timely. Mr. Polynice's Petition, however, was not filed with the Commission until September 23, 2013. The time period for filing petitions for reconsideration is prescribed by statute, and the Commission may not, with one narrow exception not applicable here, waive or extend the filing period. Because we have no basis to extend or waive the 30-day filing period, we must dismiss Mr. Polynice's Petition as untimely.

3. Furthermore, even if Mr. Polynice had filed his Petition in a timely fashion, we would have separate and independent grounds for denial of the Petition. First, the Bureau has determined that a petition for reconsideration that simply reiterates arguments previously considered and rejected will be denied.⁵ Mr. Polynice's Petition simply reiterates an argument previously rejected by the Bureau. First, Mr. Polynice maintains that the \$25,000 penalty imposed should be rescinded because an unknown third party "was re-broadcasting his internet radio stream illegally over the terrestrial airwaves..."⁶ As the *Forfeiture Order*

¹ See *Fabrice Polynice*, Forfeiture Order, 28 FCC Rcd 4297 (Enf. Bur. 2013) (*Forfeiture Order*), *aff'g* *Fabrice Polynice*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 15079 (Enf. Bur. 2012).

² 47 U.S.C. § 301.

³ 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(f).

⁴ 47 C.F.R. § 1.4(b)(2) (stating public notice for non-rulemaking documents occurs on the release date).

⁵ See *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).

⁶ Petition at 2.

noted, Mr. Polynice did not submit any evidence to support his allegations. Rather, the Bureau found that the available record evidence supported the conclusion that Mr. Polynice did, in fact, operate an unlicensed broadcast radio station on 90.1 FM.⁷ Mr. Polynice has placed no evidence in the record to support revisiting the Bureau's decision.

4. Second, Mr. Polynice asserts that we should cancel or reduce the forfeiture amount based on his alleged inability to pay.⁸ Mr. Polynice did not raise the issue of his purported inability to pay until reconsideration. Reconsideration based on new information 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,⁹ or we find that such reconsideration is required in the public interest.¹⁰ Since Mr. Polynice had control of information about his own income at all times during this proceeding, his Petition fails to raise additional facts not known or not existing until after the petitioner's last opportunity to present such matters.

5. Moreover, the NAL specifically stated that a cancellation or reduction of the proposed forfeiture based on inability to pay will not be considered unless the petitioner provides (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Mr. Polynice only submitted a tax return for one year. Therefore, Mr. Polynice has not provided enough information to show that there was any material error in the *Forfeiture Order*. Moreover, Mr. Polynice has not offered any public interest rationale in favor of considering his inability-to-pay claim here.

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 Fabrice Polynice is hereby **DISMISSED**.¹¹

7. **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, Fabrice Polynice **IS LIABLE FOR A MONETARY FORFEITURE** of \$25,000 for willfully and repeatedly violating Section 301 of the Act.¹²

8. 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.¹³ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.¹⁴

⁷ Mr. Polynice admitted he operated an internet radio station, that he was known as "DJ Paz," and that he created the brand known as "Touche Douce," which was broadcast on 90.1 FM. Mr. Polynice had acknowledged the unlicensed radio station on 90.1 FM on his webpages. Multiple webpages contained posts from DJ Paz that he was "live on the air" on station 90.1 FM, and the posts also referenced Mr. Polynice's personal phone number. The Bureau concluded that if Mr. Polynice only operated an Internet radio station, it was unlikely that he would encourage listeners of his Internet program to tune in "live" to an unlicensed terrestrial radio station on 90.1 FM operated (supposedly) by others; nor would the Internet site he controls mention the unlicensed FM station. Given the foregoing, the Bureau found Mr. Polynice's claim that someone else operated the unlicensed broadcast radio station was unconvincing. *Forfeiture Order*, 28 FCC Rcd 4297, 4298, para. 4 (2016).

⁸ Petition at 2.

⁹ 47 C.F.R. § 1.106(c)(1).

¹⁰ 47 C.F.R. § 1.106(c)(2).

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

¹² 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹³ 47 C.F.R. § 1.80.

¹⁴ 47 U.S.C. § 504(a).

9. 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. Fabrice Polynice shall send electronic notification of payment to Janet Moran at Janet.Moran@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁵ 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 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.

10. 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. 20554.¹⁶ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

11. **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 Fabrice Polynice at his address of record and to his counsel Terrence Moons, 1031 Ives Dairy Road, Suite 228, Miami, FL 33179.

FEDERAL COMMUNICATIONS COMMISSION

Ronald Ramage
Regional Director, Region Two
Enforcement Bureau

¹⁵ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁶ See 47 C.F.R. § 1.1914.