

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

MEMORANDUM OPINION AND ORDER

Adopted: June 18, 2014 Released: June 18, 2014

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Video Division ("Bureau") has before it a petition for reconsideration ("Petition"), filed by Ernesto Bustos ("Petitioner"), licensee of Station WTBL-CD ("Station"). Licensee seeks reconsideration of a forfeiture in the amount of Thirteen Thousand Dollars (\$13,000) issued by the Video Division for Licensee's failure to place in its public inspection file and file with the Commission electronically the Station's Children's Television Programming Reports in a timely manner for multiple quarters. For the reasons set forth below, we deny reconsideration.

II. BACKGROUND

2. On April 18, 2013, the Video Division issued a Notice of Apparent Liability for Forfeiture proposing a monetary forfeiture of \$13,000 for the Licensee's willful and repeated violations of multiple parts of Section 73.3526(e)(11)(iii) of the Commission's Rules.

3. The Licensee filed a timely response on June 24, 2013 admitting that it could not rebut the claimed violations but nonetheless arguing that the forfeiture amount should be cancelled or reduced. The Licensee advanced four main arguments in support of its request. First, the Licensee argued, relying on Section 503(b)(6)(B) of the Act, that because the violations occurred when Catawba Broadcasting was the nominal licensee, Ernesto Bustos, the sole equity and voting owner of Catawba Broadcasting, should not be found liable for the violations. Second, the Licensee argued that it did not receive adequate notice that a forfeiture would be imposed for late filing of the reports because the Forfeiture Policy Statement does not specifically note that forfeitures are imposed for late filings as opposed to filings that are never completed at all. The Licensee third asserted that assessing forfeitures for violations of independent provisions of Section 73.3526(e)(11)(iii) created a "sort of double jeopardy" for which the licensee did

1 Ernesto Bustos, Forfeiture Order, DA 14-244 (Feb. 24, 2014) ("Forfeiture Order").
2 Ernesto Bustos, Notice of Apparent Liability for Forfeiture, DA 13-779 (Apr. 18, 2013) ("NAL") (citing 47 C.F.R. § 73.3526(e)(11)(iii)).
3 Licensee Response to Notice of Apparent Liability ("Licensee Response to NAL") (May 17, 2013).
4 Id. at 2-3. The Forfeiture Order concluded that the Licensee was incorrect because Catawba Broadcasting and Ernesto Bustos are the same "person" for purposes of analysis under Section 503(b)(6)(B). Forfeiture Order at para. 14.
5 Id. at 3-5.

not receive adequate notice.⁶ Fourth, and finally, the Licensee argues that the forfeiture amount was a departure from past practice and therefore unfair, citing to *Melody Music*.⁷

4. In the Forfeiture Order, the Video Division rejected these arguments and declined to reduce the forfeiture.⁸ Licensee filed a Petition for Reconsideration on August 30, 2013.

III. DISCUSSION

5. Petitions for reconsideration are only appropriate where 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, or the Commission determines that consideration of the facts is required in the public interest.⁹ A petition for reconsideration that simply reiterates previously rejected arguments will be denied.¹⁰ Arguments in a petition for reconsideration being raised for the first time will be considered only if they are based on changed circumstances or additional facts not known or existing at the time of petitioner's last opportunity to present such matters, or if consideration of such arguments is required to serve the public interest.¹¹

6. Petitioner argues that the forfeiture should be reduced based on its inability to pay.¹² Although Petitioner could have requested a reduction based on inability to pay in response to the NAL, we would be willing to evaluate any substantiated claim of inability to pay at this stage.¹³ However, we have made clear our policy that we will not consider reducing or cancelling a forfeiture based on a purported inability to pay unless the individual or entity making the request submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the individual's or entity's current financial status.¹⁴ Licensee has provided no such documentation here, so we deny this argument.¹⁵

7. To the extent that the Petitioner separately argues that the forfeiture should be reduced

⁶ *Id.* at 5.

⁷ Licensee Response at 6 (citing *Melody Music v. FCC*, 345 F.2d 730 (D.C. Cir. 1965)).

⁸ Forfeiture Order at 1-4.

⁹ 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, e.g., *Ely Radio, LLC*, Memorandum Opinion and Order, 27 FCC Rcd 7608, 7610, para. 6 (Enf. Bur. 2012) (providing standard of review for petitions for reconsideration).

¹⁰ *Saga Communications of Illinois, LLC*, Memorandum Opinion and Order, 26 FCC Rcd 5958, 5959 (MB 2011) (rejecting an argument from a petition for reconsideration because it did not raise any new information reflecting changed circumstances, did not present additional facts not known at the time of the last filing, and did not attempt to show anything more than a disagreement with the Commission's finding).

¹¹ 47 C.F.R. § 1.106(c).

¹² Petition for Reconsideration at 2-3.

¹³ *L.R. Radio Group, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 455 at ¶ 3 (Enf. Bur. Jan. 23, 2014)

¹⁴ Ernesto Bustos, Notice of Apparent Liability for Forfeiture, DA 13-779 at para. 13 (Vid. Div. Apr. 18, 2013); see also *Greenwood Acres Baptist Church*, Memorandum Opinion and Order, 22 FCC Rcd 1442, 1448, at para. 20, (Enf. Bur. 2007)(specifying same).

¹⁵ *Indiana Wesleyan University*, Forfeiture Order, 28 FCC Rcd 6208, 6210 (Vid. Div. 2013).

based on a purported history of compliance,¹⁶ we dismiss the argument because the Petitioner has not raised any new facts of decisional significance in support of this argument.¹⁷ Catawba Broadcasting became the Licensee of the Station on July 14, 2008.¹⁸ The violations in question covered the third and fourth quarters of 2009 and all four quarters of 2010.¹⁹

8. Petitioner next argues, invoking *Melody Music*, that the Commission is inconsistent in imposing fines for apparent violations of its children's television rules and policies. We dismiss this argument as repetitive of an argument raised in the NAL response and also conclude it is inaccurate.²⁰

9. The first set of cases cited by Petitioner²¹ each involved the same isolated violation of Section 73.670 of the Commission's rules, not the egregious and repeated violations of Section 73.3526 which the Petitioner does not dispute it committed. In those cases, the staff consistently determined that an admonishment was the appropriate sanction for that violation, just as the staff applied a consistent approach in evaluating violations of Section 73.3526. Indeed, the staff assesses forfeitures for violations of Section 73.670 that it concludes are more than isolated and/or de minimis instances.²² The other cases cited²³ involve different forfeiture amounts from this case because both the severity and type of violations were different from this case.²⁴ Although Petitioner alleges unequal treatment of Class A and full power stations, the staff uses the same standards, guidelines, and procedures in evaluating the compliance of Class A with full power television stations regardless of the stations' size or ownership.²⁵ We further conclude that Petitioner's constitutional claim of a violation of the Equal Protection Clause²⁶ fails for the same reasons that its *Melody Music* claim fails—Petitioner has not provided any evidence that it has been treated differently than similarly situated parties.

10. Finally, Petitioner argues that it did not receive adequate notice of the forfeiture.²⁷ We

¹⁶ Petition for Reconsideration at 2.

¹⁷ See *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 para.2 (1964) (stating that "it is universally held that rehearing will not be granted merely for the purpose of again debating matters on which the tribunal has once deliberated and spoken"), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965).

¹⁸ Forfeiture Order at para. 3.

¹⁹ *Id.* at para. 6.

²⁰ Forfeiture Order at para. 19; see *Highland Park Broadcasting, LP*, Memorandum Opinion and Order, 28 FCC Rcd 15630 at para. 7. (Vid. Div. 2013).

²¹ Petition for Reconsideration at para. 7.

²² See, e.g., *CMCG Puerto Rico License LLC*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 1423 (Vid. Div. 2013).

²³ Petition for Reconsideration at para. 8.

²⁴ *Korean American TV Broadcasting Corp.*, Forfeiture Order, 28 FCC Rcd 14515 (Vid. Div. 2013) & *Dominion Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 16390 (Vid. Div. 2013) (both cases involved only the failure to file reports electronically in a timely manner, for which a \$3,000 base forfeiture is recommended under the Forfeiture Policy Statement, not the failure to prepare and place the reports in the public file in a timely manner for which a \$10,000 base forfeiture is recommended and was imposed here).

²⁵ *Unity Broadcasting, Inc.*, Forfeiture Order, DA 14-241, at para. 16 n.32 (Vid. Div. 2014). As for whether the option of a consent decree was presented to Petitioner, Petition for Reconsideration at para. 12, the staff is under no obligation to present a potential settlement to each Licensee that violates the Rules. Petitioner's counsel has practiced before the Commission for some time and was aware that he could approach Video Division staff about the potential for a consent decree.

²⁶ Petition for Reconsideration at paras. 9-11.

²⁷ *Id.* at paras. 14-18.

dismiss this argument as repetitive of an argument raised in the NAL response.²⁸

IV. ORDERING CLAUSES

11. Accordingly, for the reasons discussed above, IT IS ORDERED, that the Petition for Reconsideration filed by Ernesto Bustos IS DENIED.

12. IT IS ALSO ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules, that Ernesto Bustos IS LIABLE FOR A MONETARY FORFEITURE in the amount of thirteen thousand dollars (\$13,000) for its apparent willful and repeated violations of Section 73.3526 of the Commission's Rules.

13. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that within 30 days of the release date of this Memorandum Opinion and Order, that Ernesto Bustos SHALL PAY the full amount of the proposed forfeiture.

14. In the event that the Licensee wishes to revert WTBL-CD to low power television status, the Licensee need only notify us of this election and request a change in status for the station.²⁹ Should the Licensee elect to revert to low power status, the Licensee would no longer be liable for the forfeiture amount described.

15. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank-Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

16. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³⁰

17. IT IS FURTHER ORDERED that copies of this Memorandum Opinion and Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Ernesto Bustos, 5110 SE Stark Street, Portland, Oregon, 97215, and to Petitioner's counsel, Dennis J. Kelly, P.O. Box 41177, Washington, D.C. 20018.

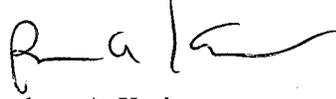
²⁸ Forfeiture Order at paras. 16-18; see *Highland Park Broadcasting, LP*, Memorandum Opinion and Order, 28 FCC Rcd 15630 at para. 7. (Vid. Div. 2013).

²⁹ See 47 C.F.R. § 73.6001(d).

³⁰ See 47 C.F.R. § 1.1914.

18. For further information concerning this proceeding, contact Peter D. Saharko, Video Division, Media Bureau, at Peter.Saharko@fcc.gov or (202) 418-1856.

FEDERAL COMMUNICATIONS COMMISSION



Barbara A. Kreisman
Chief, Video Division
Media Bureau