

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

In the Matter of)	
)	
J&J Broadcasting, Inc.)	File No.: EB-FIELDNER-12-00004568
)	NAL/Acct. No.: 201232360008
Licensee of Radio Stations WIMI(FM) and)	FRN: 0015161508
WJMS(AM), Ironwood, Michigan)	Facility ID Nos.: 57226, 57223
)	ARS No.: 1035236

MEMORANDUM OPINION AND ORDER

Adopted: February 5, 2016

Released: February 8, 2016

By the Deputy Chief, Enforcement Bureau:

1. We deny the Petition for Reconsideration filed by J&J Broadcasting, Inc. (J&J) seeking reconsideration of a Forfeiture Order¹ issued by the Enforcement Bureau. On August 21, 2012, the Enforcement Bureau's Detroit Office issued a Notice of Apparent Liability for Forfeiture Order (*NAL*) proposing a \$13,000 forfeiture against J&J for apparently willfully and repeatedly violating Sections 73.3526(e)(12) and 17.57 of the Commission's rules (Rules)² by failing to maintain and make available the quarterly issues/programs lists in the public inspection file and failing to immediately notify the Commission upon change in ownership information of its antenna structure number 1035236.³ In the Forfeiture Order that followed, the Bureau reduced the proposed penalty of \$13,000 to \$10,500 against J&J based on its history of compliance.

2. 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.⁴ J&J's Petition fails to present such information warranting reconsideration. A petition for reconsideration that only reiterates facts and arguments previously considered and rejected will be denied.⁵

¹ *J&J Broadcasting, Inc.*, Forfeiture Order, 30 FCC Rcd 7050 (Enf. Bur. 2015) (Forfeiture Order).

² 47 C.F.R. § 73.3526(e)(12) and 17.57.

³ *J&J Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 10054 (Enf. Bur. 2012) (*NAL*).

⁴ 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)(providing standard of review for petitions for reconsideration).

⁵ 47 C.F.R. § 1.106(a)(3)(petitions for reconsideration may be dismissed or denied where they "[r]ely on arguments that have been fully considered and rejected by the Commission within the same proceeding"). See, e.g., *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964) (reconsideration "will not be granted merely for the purpose of again debating matters on which the tribunal has once deliberated and spoken"), *aff'd* (continued....)

3. Were we to reach the merits of J&J's arguments, we also would find no basis for reconsideration. J&J does not deny that the issues/program lists were missing. Rather it argues that a forfeiture reduction is warranted because the issues/program lists were in the file until they were deliberately removed by the general manager of its major competitor.⁶ As explained in the Forfeiture Order, the files remained missing for over two months before the inspection by an FCC field agent. As the licensee, J&J bears the responsibility for its regulatory obligations and for the failure to maintain the issues/programs lists.⁷ The fact that the initial removal of the issues/programs lists may have resulted from the actions of a third party does not diminish J&J's liability for failing to identify and correct that deficiency in a timely manner.⁸

4. J&J's Petition fails to present any information or argument warranting reconsideration of the Forfeiture Order. The Petition does not challenge the Bureau's finding that J&J failed to make available the required issues/programs lists in its public inspection file. Accordingly, because J&J failed to provide any new information, or to raise any new arguments not previously considered and rejected by the Bureau, we deny the Petition pursuant to Section 405 of the Act and Section 1.106 of the Commission's rules.⁹

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended (Act),¹⁰ and Section 1.106 of the Rules,¹¹ the Petition for Reconsideration filed by J&J Broadcasting, Inc. is hereby **DENIED**.

6. **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, J&J Broadcasting, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand five hundred dollars (\$10,500) for willfully and repeatedly violating Section 73.3526(e)(12) and 17.57 of the Rules.¹²

7. 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 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

8. 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. J&J Broadcasting, Inc., shall send electronic notification of payment to NER-Response@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be

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Lorain Journal Co. v. FCC, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966); *Ely Radio*, 27 FCC Rcd at 7610, para. 6; *EZ Sacramento*, 15 FCC Rcd at 18257, para. 2.

⁶ Petition at 1.

⁷ See, e.g., *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7437, para. 12 (2004).

⁸ See *Steckline Communications, Inc.*, Forfeiture Order, 29 FCC Rcd 1082, 1084, para. 5 (Enf. Bur. 2014) (finding violations willful even in the event of storms damaging antenna fencing because the party failed to repair the fencing "just prior" to the FCC inspection).

⁹ 47 U.S.C. § 405, 47 C.F.R. § 1.106.

¹⁰ 47 U.S.C. § 405.

¹¹ 47 C.F.R. § 1.106.

¹² 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80, 73.3526(e)(12), 17.57.

¹³ 47 C.F.R. § 1.80.

¹⁴ 47 U.S.C. § 504(a).

submitted.¹⁵ When completing the 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 completed Form 159) must be mailed to the 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.

9. 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, SW, Room 1-A625, Washington, DC 20554.¹⁶ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

10. **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 Mr. Gerald J. Hackman, President, J & J Broadcasting, Inc., 63120 Phantom Lake Road, Iron River, WI 54847.

FEDERAL COMMUNICATIONS COMMISSION

William Davenport
Deputy Chief
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.