

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

In the Matter of)	
)	
Hispanic Broadcast System, Inc.)	File No. EB-04-IH-0381
Licensee of Noncommercial Educational Station)	NAL/Acct. No. 200532080121
WQQZ(FM), Clermont, Florida)	FRN 0006-5963-40

FORFEITURE ORDER

Adopted: July 5, 2005

Released: July 6, 2005

By the Chief, Enforcement Bureau:

1. In this *Forfeiture Order* ("*Order*") we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to Hispanic Broadcast System, Inc. ("HBS"), licensee of noncommercial educational broadcast station WQQZ(FM), Clermont, Florida, for the willful and repeated broadcast of advertisements in violation of section 399B of the Communications Act of 1934, as amended (the "Act"),¹ section 73.503(d) of the Commission's rules ("underwriting rules").²

2. In our *Notice of Apparent Liability for Forfeiture* ("*NAL*"), we proposed a monetary forfeiture in the amount of \$10,000 to HBS for its apparent violation of the underwriting rules through its broadcast of two underwriting announcements that impermissibly promoted for-profit entities a total of 288 times from May 31 through June 27, 2004.³ In its response, HBS requests cancellation or reduction of the proposed forfeiture.⁴ HBS does not dispute that Station WQQZ(FM) broadcast the underwriting announcements on the dates indicated, or that they were impermissibly promotional, as specified in the *NAL*, but asks that we consider the fact that this is its first such violation.⁵ HBS also contends that it has implemented programming format changes that will prevent the reoccurrence of such violations, and that such changes will likely ensure material compliance with the Commission's underwriting rules.⁶ Further, citing business losses, HBS claims that payment of the forfeiture would pose a financial hardship.⁷

¹ 47 U.S.C. § 399b.

² 47 C.F.R. § 73.503(d).

³ *Hispanic Broadcast System, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 2411 (Enf. Bur. 2005).

⁴ See Petition for Reconsideration of Forfeiture Order submitted by HBS, to the Chief, Enforcement Bureau, dated March 9, 2005, and supplemented March 21, 2005 (collectively "*Response*").

⁵ See *id.*

⁶ See *id.*

⁷ See *id.* In its response, HBS requested also, pursuant to 47 C.F.R. § 0.459, that the Commission afford confidentiality to certain proprietary financial information included therein. *Id.* While we have evaluated and compared the financial information that HBS has provided against relevant Commission precedent concerning alleged inability to pay, the *Order* does not discuss that information in specific terms. Consequently, we need not rule on HBS's request at this time. Until we so rule, we will honor HBS's request for confidential treatment of certain internal documents and business information that it has supplied to the Bureau during the course of this investigation. See 47 C.F.R. § 0.459(d)(1); see also *NAL*, n. 4.

3. We find that no mitigation is warranted on the basis of HBS's alleged correction of the violations. The Commission has long held that 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.⁸ In support of its claim that it is unable to pay, HBS provides its financial statements for the four recent years, 2000 through 2003. We have reviewed that information and find that it does not warrant cancellation or reduction of the forfeiture amount on the basis of inability to pay.

4. The Commission has determined that a licensee's gross revenues are the best yardsticks for determining its ability to pay⁹ and that net-loss experience does not, in the absence of other mitigating factors, demonstrate a licensee's inability to pay.¹⁰ In this case, the proposed forfeiture represents a very modest percentage of HBS's gross revenues averaged over its four most recent tax years, one that is comparable to instances where the forfeiture amounts were not reduced on the basis of being excessive.¹¹ Although HBS claims that it has incurred substantial net losses during recent years, we note that its losses appear to exceed its gross receipts only in 2000 and 2001, which, due to their remoteness in time, appear to be less probative of its present ability to pay than its more recent years.¹² In this connection, we find it significant that HBS's financial information from 2002 and 2003 demonstrate either profits or losses that do not exceed gross receipts.¹³ Moreover, apart from providing its financial statements, HBS has neither submitted, nor cited to, any other evidence supporting its claim of financial hardship.¹⁴ However, in recognition of the fact that HBS has maintained heretofore a good overall compliance record, we will reduce the forfeiture from \$10,000 to \$8,000.¹⁵

5. Accordingly, **IT IS ORDERED THAT**, pursuant to section 503(b) of the Act¹⁶, and

⁸ See *Seawest Yacht Brokers*, Notice of Forfeiture, 9 FCC Rcd 6099 (1994); *AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21875 (2002); *Callais Cablevision, Inc.*, Forfeiture Order, 7 FCC Rcd 22626, 22629 (2002).

⁹ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992) ("*PJB Communications*").

¹⁰ See *Independent Communications, Inc.*, Memorandum Opinion and Order and Forfeiture Order, 14 FCC Rcd 9605, 9610 (1999); *PJB Communications*, 7 FCC Rcd at 2089.

¹¹ See *Alpha Ambulance, Inc.*, Order, 19 FCC Rcd 2547, 2548 (2004), citing *PJB Communications, supra* (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Local Long Distance, Inc.*, Order on Reconsideration, 16 FCC Rcd 10023, 10025 (2001) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues).

¹² See *Response* at 1, and associated balance sheets; see also *Maria L. Salazar*, Memorandum Opinion and Order, 19 FCC Rcd 5050 (2004) (where recent financial information showing profit was deemed more reliable evidence of current ability to pay than older information demonstrating loss), petition for reconsideration pending.

¹³ See *id.*

¹⁴ Cf. *Rebus, Inc.*, Forfeiture Order, 16 FCC Rcd 2964 (Enf. Bur. 2001) (reduction from \$8,000 to \$1,000 warranted due to inability to pay where the station's loss of lease, substantial relocation expenses, and other mitigating circumstances demonstrated financial hardship); *Delta Radio*, Memorandum Opinion and Order and Forfeiture Order, 13 FCC Rcd 21708 (Mass Med. Bur. 1998) (reduction from \$7,500 to \$5,000 warranted due to inability to pay where licensee had no assets or insurance to replace transmitter tower lost during a storm).

¹⁵ See 47 C.F.R. § 1.80(b)(4); *Pittman Broadcasting Services, LLC*, Forfeiture Order, 19 FCC Rcd 15320 (Enf. Bur. 2004).

¹⁶ 47 U.S.C. § 503(b).

sections 0.111, 0.311 and 1.80(f)(4) of the Commission's rules,¹⁷ Hispanic Broadcast System, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for its willful and repeated broadcast of advertisements in violation of section 73.503(d) of the Commission's rules and section 399B of the Act.

6. Payment of the forfeiture must be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁸ Payment of the 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 above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁹

7. **IT IS FURTHER ORDERED THAT** a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to Hispanic Broadcast System, Inc., P.O. Box 1553, Quebradillas, Puerto Rico 00678, and to its counsel, James L. Oyster, Esq., 108 Oyster Lane, Castleton, Virginia 22716-2839.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief, Enforcement Bureau

¹⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁸ 47 U.S.C. § 504(a).

¹⁹ See 47 C.F.R. § 1.1914.