

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

In the Matter of	)	
	)	Facility ID No. 14051
<b>MANUEL HUERTA</b>	)	NAL/Acct. No. MB20051810039
	)	FRN: 00010774966
Licensee of Station WJHX(AM)	)	File No. BR-20040420AAO
Lexington, AL	)	

**FORFEITURE ORDER**

**Adopted: October 3, 2008**

**Released: October 6, 2008**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of twelve thousand eight hundred dollars (\$12,800) to Manuel Huerta (“Huerta”), licensee of Station WJHX(AM), Lexington, Alabama (the “Station”), for his willful and repeated violation of Section 73.3539 of the Commission's Rules (the “Rules”) and Section 301 of the Communications Act of 1934, as amended (the “Act”),<sup>1</sup> involving Huerta's failure to have timely filed a license renewal application for the Station and his unauthorized operation of WJHX(AM) after his license for the Station had expired; and for Huerta’s willful and repeated violation of Section 73.3526 of the Commission's Rules,<sup>2</sup> involving Huerta 's failure properly to maintain a public inspection file for Station WJHX(AM).<sup>3</sup>

**II. BACKGROUND**

2. On April 28, 2005, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of sixteen thousand dollars (\$16,000) to Huerta. Huerta filed a response requesting a substantial reduction of the forfeiture (the “Response”), on May 23, 2005.

3. *Section 73.3539 Violation.* As noted in the NAL, WJHX(AM)'s renewal application for the current WJHX(AM) license term was due on December 1, 2003, four months prior to the April 1, 2004, license expiration date. The application was not filed until April 20, 2004, nearly three weeks after the station's license had expired. Huerta provided no explanation for the untimely filing of the license renewal application. Upon the April 1, 2004, expiration of WJHX(AM)'s license, Huerta's operation of WJHX(AM) was unauthorized and should have ceased immediately. Huerta did not seek Special Temporary Authorization to continue operating the station pending action on the license renewal application.

<sup>1</sup> 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

<sup>2</sup> 47 C.F.R. § 73.3526.

<sup>3</sup> On February 1, 2005, Huerta filed an application to assign WJHX(AM)’s license to Bar Broadcasting, Inc., File No. BAL-20050201BIX. The application was granted on April 21, 2005.

4. *Section 73.3526 Violation.* Section III, Item 3 of the license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3526 or 73.3527, as applicable, has been placed in the station's public inspection file at the appropriate times. Huerta indicated "No" to that certification, filing an Exhibit explaining that he was new to broadcast ownership and did not realize until it was brought to his attention during the preparation of the license renewal application for WJXH(AM) that he was required to prepare quarterly issues/program lists. Accordingly, he prepared no issues/programs lists from the time he acquired the station in May 2002 until the license renewal application was prepared in April of 2004. He stated that he is now aware of the requirement and will comply with it in the future.

5. In his Response, Huerta requests that the proposed forfeiture be "substantially reduced" on various grounds. Specifically, Huerta asserts that he did not "fail to file a required form," but rather filed his renewal application late, a "significant difference" which should have a correlating smaller forfeiture amount. Huerta additionally argues that the proposed forfeiture for the public file violations is "far out of proportion" to the seriousness of the violations, challenging the significance of the issues/programs lists, and is in excess of the amount that the Commission has assessed for similar violations, in contravention of *Melody Music*.<sup>4</sup> Huerta also maintains that the forfeiture should be reduced because of Huerta's voluntary disclosure of the public file violations and his prior record of compliance with the Commission's rules.

## II. DISCUSSION.

6. The forfeiture amounts proposed in this case were assessed in accordance with Section 503(b) of the Act,<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and the Commission's *Forfeiture Policy Statement*.<sup>7</sup> In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>8</sup>

7. Section 73.3539 of the Rules requires a broadcast licensee to file its license renewal application four months before the license expiration date. WJXH(AM)'s renewal application for the current WJXH(AM) license term was due on December 1, 2003. In this regard, the staff found no record of WJXH(AM) having filed its application "on or before" December 1, 2003, therefore, Huerta was sanctioned for "failure to file a required form" as of December 1, 2003, notwithstanding the application's subsequent late filing. Therefore, Huerta's assertion that the proposed forfeiture should not be based on the "failure to file a required form," is without merit. Furthermore, licensees are responsible for knowing and observing the rules affecting their activities,<sup>9</sup> including the timely submission of required forms. Untimely renewal applications disrupt the orderly processing of renewal applications in accordance with the staggered filing deadlines set forth in Section 73.1020 of the Rules. Moreover, Section 301 of the Act sets forth the general mandate that no person shall use or operate any apparatus for the transmission of

---

<sup>4</sup> 345 F. 2d 730 (D.C. Cir. 1965)

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. 1.80.

<sup>7</sup> *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>8</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>9</sup> *See, e.g., Rego, Inc.*, Forfeiture Order, 16 FCC Rcd 16795, 16797 (EB 2001) ("*Rego*").

energy or communications or signals by radio within the United States except under and in accordance with the Act and in accordance with the terms of a license. Huerta's violation not only involved his untimely application for renewal of WJHX(AM)'s license, but also his unauthorized operation of the Station for nearly three weeks after its license had expired before filing a license renewal application. The \$7,000 forfeiture issued was appropriate under these circumstances.<sup>10</sup>

8. Furthermore, it is undisputed that Huerta's public file was incomplete for nearly two years during the license term, missing eight issues/programs lists. We have examined Licensee's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Huerta willfully and repeatedly violated Section 73.3526 of the Commission's Rules. Huerta's unfamiliarity with public file rule does not mitigate his violations.<sup>11</sup> Moreover, concerning Huerta's argument that the proposed forfeiture for the public file violations is not in proportion to the seriousness of the violations, this matter should be addressed in a rulemaking proceeding, not in the context of a station's license renewal. Additionally, Huerta argues that the proposed forfeiture amount is inconsistent with that issued to licensees in similar situations. We disagree. It is undisputed that Huerta's public file was incomplete, missing eight issues/programs lists. The \$9,000 forfeiture issued is consistent with prior forfeitures for similar violations.<sup>12</sup> Finally, contrary to his assertion, Huerta's disclosure of the public file violations was not "voluntary." Although the licensee admitted to violating Section 73.3526, it did so only in the context of the question contained in its license renewal application that compelled such disclosure.<sup>13</sup>

9. We have examined Huerta response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Huerta willfully and repeatedly violated Section 73.3539 of the Commission's Rules and Section 301 of the Communications Act of 1934, as amended; and willfully and repeatedly violated Section 73.3526 of the Commission's Rules. However, given Licensee's history of compliance with the Rules, we reduce the forfeiture amount to \$12,800.<sup>14</sup>

---

<sup>10</sup> See *Trinity Church of the Nazarene*, Forfeiture Order, 22 FCC Rcd 20940 (MB 2007) (\$7,000 Forfeiture imposed for license renewal application filed three weeks and two days after the station's license had expired).

<sup>11</sup> See *Rego*, *supra*.

<sup>12</sup> See *Citicasters Licenses, L.P.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 900, (MB 2007) (\$10,000 forfeiture issued for eight missing issues/programs lists); and *Urban Radio III, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 6376 (MB 2006) (same).

<sup>13</sup> See *Ramar Communications, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 20490, 20497 (MB 1997). Since 2007, we have declined to reduce forfeiture amounts based on a licensee's voluntary disclosure because, although licensees may admit to Section 73.3526 Rule violations, they only do so in the context of a question contained in the license renewal applications compelling such disclosure. *Faith Baptist Church, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9146, 9148 (MB 2007); *Geneva Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 10642, 10644 (MB 2006).

<sup>14</sup> See, e.g., *Claro Communications, Ltd.*, Forfeiture Order, 23 FCC Rcd 359, 362 (EB 2008) (reducing forfeiture amount based on licensee's history of compliance); *Traffic Control Products of Florida Inc.*, Forfeiture Order, 23 FCC Rcd 5452, 5454 (EB 2008) (same). See also 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Downward Adjustment Criteria.

#### IV. ORDERING CLAUSES

10. Accordingly, IT IS 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,<sup>15</sup> that Manuel Huerta SHALL FORFEIT to the United States the sum of \$12,800 for willfully and repeatedly violating Section 73.3539 of the Commission's Rules and Section 301 of the Communications Act of 1934, as amended; and for willfully and repeatedly violating Section 73.3526 of the Commission's Rules.

11. Payment of the forfeiture shall be made in the manner provide for in Section 1.80 of the Commission's 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.<sup>16</sup> 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).<sup>17</sup>

12. IT IS FURTHER ORDERED, that copies of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Manuel Huerta, 1426 5<sup>th</sup> Avenue SE, Decatur, Alabama 35601, and to his counsel, David Tillotson, Esq., 4606 Charleston Terrace, N.W., Washington, DC 20007.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle, Chief  
Audio Division  
Media Bureau

---

<sup>15</sup> 47 C.F.R. §§ 0.283, 1.80.

<sup>16</sup> 47 U.S.C. § 504(a).

<sup>17</sup> See 47 C.F.R. § 1.1914.