

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

In the Matter of	)	
	)	
Albino Ortega and Maria Juarez	)	File Number: EB-08-PO-0079
	)	
Licensee of AM Station KIGO	)	NAL/Acct. No.: 200832920003
St. Anthony, Idaho	)	FRN: 0011338407
Facility ID No. 22622	)	

**FORFEITURE ORDER**

**Adopted: July 15, 2009**

**Released: July 17, 2009**

By the Regional Director, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of five hundred dollars (\$500) to Albino Ortega and Maria Juarez, licensees of AM radio station KIGO in St. Anthony, Idaho, for willful and repeated violations of Section 73.49 of the Commission’s Rules (“*Rules*”).<sup>1</sup> On July 31, 2008, the Enforcement Bureau’s Portland Resident Agent Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of \$7,000 to Ortega and Juarez for failing to maintain an effective locked fence around KIGO’s antenna.<sup>2</sup> Ortega and Juarez filed a response (“*Response*”) on August 8, 2008. In this *Order*, we consider Ortega and Juarez’s arguments that the violation occurred while they were in the process of upgrading the KIGO transmitter equipment, and that the forfeiture should be reduced because of Ortega and Juarez’s inability to pay.

**II. BACKGROUND**

2. Ortega and Juarez have previously violated Section 73.49 of the Rules.<sup>3</sup> On September 27, 2006, the Portland Office issued a *Notice of Apparent Liability for Forfeiture*<sup>4</sup> in the amount of \$7,000 to Ortega and Juarez for apparent willful and repeated violation of Section 73.49 of the Rules<sup>5</sup> by failing to enclose the KIGO antenna tower within an effective locked fence or other enclosures. Ortega and Juarez filed a response on October 25, 2006, admitting the violation of Section 73.49, providing evidence that an effective fence now enclosed the antenna structure, and requesting that the forfeiture amount be reduced based on their inability to pay. They also provided a statement of the corrective action taken by sending photographs of the newly built locked fence and the displayed ASR Number at the gate of the fence. On May 4, 2007, the Western Region, Enforcement Bureau, (“*Region*”) issued a *Forfeiture Order* assessing a \$500 forfeiture against Ortega and Juarez for violation of Section 73.49 of the Rules.<sup>6</sup>

<sup>1</sup> 47 C.F.R. §73.49.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832920003 (Enf. Bur., Western Region, Portland Resident Agent Office, released July 31, 2009).

<sup>3</sup> 47 C.F.R. § 73.49.

<sup>4</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200632920003 (Enf. Bur., Western Region, Portland Resident Agent Office, released September 27, 2006).

<sup>5</sup> 47 C.F.R. § 73.49.

The Region reduced the forfeiture amount proposed by the Portland Office based on Ortega and Juarez's inability to pay, supported by three years of tax returns. Ortega and Juarez later paid the \$500 forfeiture.<sup>7</sup>

3. On April 1, 2008, an agent from the Portland Office re-inspected KIGO's antenna tower site in Rigby, Idaho, and found that the gate of the base fence surrounding KIGO antenna tower was open. The agent also observed that there was no protective property fence surrounding the KIGO antenna site.

4. On April 2, 2008, the Portland returned to the KIGO antenna site and again found that the gate of the base fence surrounding KIGO antenna tower was open. The agent also observed that there was no protective property fence surrounding the KIGO antenna site.

5. On July 31, 2008, the Portland Office issued a *NAL* in the amount of \$7,000 to Ortega and Juarez, finding that they apparently willfully and repeatedly violated Section 73.49 of the Rules<sup>8</sup> by failing to maintain an effective locked fence around KIGO's antenna tower. In their *Response*, Ortega and Juarez argue that the violations occurred when they were upgrading their antenna transmitter equipment, and that the forfeiture amount should be reduced because of their demonstrated inability to pay. They also included a photograph of the closed, locked gate to the fence and reported that the gate to the fence is now locked and secure.

### III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>9</sup> Section 1.80 of the Rules,<sup>10</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*").<sup>11</sup> In examining Ortega and Juarez's response, Section 503(b) of the Act requires that the Commission 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 other such matters as justice may require.<sup>12</sup>

7. Section 73.49 of the Rules states that antenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) must be enclosed within effective locked fences or other enclosures.<sup>13</sup> Individual tower fences need not be installed if the towers are contained within a protective property fence.<sup>14</sup> In adopting the *Report and Order* promulgating the most recent amendment of Section 73.49, the Commission stated that "a fencing requirement is necessary to protect the general public."<sup>15</sup> The KIGO AM antenna tower is series fed. On April 1 and April 2, 2008, the

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<sup>6</sup> *Albino Ortega and Maria Juarez*, 22 FCC Rcd 8515 (EB 2007) ("*Forfeiture Order*").

<sup>7</sup> See 47 U.S.C. § 504(c).

<sup>8</sup> 47 C.F.R. § 73.49.

<sup>9</sup> 47 U.S.C. § 503(b).

<sup>10</sup> 47 C.F.R. § 1.80.

<sup>11</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>12</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>13</sup> 47 C.F.R. § 73.49.

<sup>14</sup> 47 C.F.R. § 73.49.

<sup>15</sup> *Review of the Technical and Operational Regulations of Part 73, Subpart A, AM Broadcast Stations*, 59 Rad. Reg. 2d (Pike & Fischer) 927, ¶6 (1986) ("*Report and Order*").

Portland Office inspected the KIGO antenna tower site and found that the gate of the base fence surrounding KIGO's antenna tower was open and that there was no protective property fence at the site beyond the base fence.

8. In its *Response*, Ortega and Juarez do not dispute that the KIGO tower fence gate was open at the time of the inspections on April 1 and April 2, 2008. Instead, Ortega and Juarez argue that they were in the process of upgrading the KIGO transmitter equipment and that the Portland agent must have inspected while this upgrading was occurring. While we do not doubt that Ortega and Juarez were upgrading their equipment at the time of the two inspections, this does not eliminate their responsibility to keep the gate closed and locked, especially in an area with no other protective property fence. Therefore, we find no merit to this argument.

9. Ortega and Juarez also ask that the forfeiture amount be reduced because they are a small broadcaster with limited financial resources. To support this claim, Ortega and Juarez supply their last three years of tax records. Because Ortega and Juarez have corrected the violation, and provided proof of their efforts, and are not involved in a continuing violation of Section 73.49, we will consider this claim. In analyzing a financial hardship claim, the Commission generally has looked to gross revenues as a reasonable and appropriate yardstick in determining whether a licensee is able to pay the assessed forfeiture.<sup>16</sup> While we find that Ortega and Juarez willfully and repeatedly violated Section 73.49 of the Rules, based upon their inability to pay, we conclude that pursuant to Section 503(b) of the Act and the *Forfeiture Policy Statement*, reduction of the \$7,000 forfeiture to \$500 is warranted.

#### IV. ORDERING CLAUSES

10. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Albino Ortega and Maria Juarez, **ARE LIABLE FOR A MONETARY FORFEITURE** in the amount of \$500 for willfully and repeatedly violating Section 73.49 of the Rules.<sup>17</sup>

11. Payment of the forfeiture shall 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.<sup>18</sup> 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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, 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, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When 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). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

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<sup>16</sup> See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992).

<sup>17</sup> 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.49.

<sup>18</sup> 47 U.S.C. § 504(a).

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Albino Ortega and Maria Juarez, at their address of record.

**FEDERAL COMMUNICATIONS COMMISSION**

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau