

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

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

MEMORANDUM OPINION AND ORDER

Adopted: June 22, 2011

Released: June 23, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Audio Division has before it a Petition for Reconsideration (“Petition”) filed on November 20, 2008, by Manuel Huerta, licensee of Station WJHX(AM) (“Station”), Lexington, Alabama. The Petition requests reconsideration of a twelve thousand eight hundred dollar (\$12,800) *Forfeiture Order*¹ released on October 6, 2008, for Huerta’s willful violation of Section 73.3539 of the Commission’s Rules (“Rules”)² by failing to file a timely renewal application for the Station, and for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”),³ by engaging in unauthorized operation of the Station, and of Section 73.3526 of the Rules⁴ by failing to properly maintain a public inspection file for the Station. For the reasons discussed below, we dismiss the Petition.

II. BACKGROUND

2. The Station’s renewal application for the pertinent 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.

3. Additionally, 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,⁵ has been placed in the station's public inspection file at the appropriate times. Huerta indicated "No" to that certification, explaining that he did not realize he was required to prepare quarterly

¹ *Manuel Huerta, Forfeiture Order*, 23 FCC Rcd 14647 (MB 2008) (“*Forfeiture Order*”).

² 47 C.F.R. § 73.3539.

³ 47 U.S.C. § 301.

⁴ 47 C.F.R. § 73.3526.

⁵ 47 C.F.R. §§ 73.3526-27.

issues/program lists. Accordingly, he prepared no issues/program lists from the time he acquired the station in May of 2002 until preparing the license renewal application in April of 2004.

4. On April 21, 2005, the Bureau issued a Notice of Apparent Liability for Forfeiture in the amount of sixteen thousand dollars (\$16,000) to Huerta for these violations.⁶ On May 23, 2005, Huerta filed a response to the *NAL* (“Response”) requesting a waiver or substantial reduction of the forfeiture. In the Response, Huerta argued that: (1) he did not fail to file a required form but merely filed his renewal application late; (2) the forfeiture amount for the public file violation was much greater than that assessed against other licensees for the same violation, in contravention of *Melody Music v. FCC*;⁷ and (3) he voluntarily disclosed the public file violations and possessed a prior record of compliance with the Rules.⁸

5. In the *Forfeiture Order*, the Bureau found that: (1) filing a renewal application late, rather than not filing an application at all, violated the Rules and harms the public by disrupting the orderly processing of renewal applications;⁹ (2) the forfeiture was consistent with prior forfeitures for similar violations;¹⁰ and (3) Huerta disclosed the public file violations in response to a specific question on the license renewal application rather than voluntarily.¹¹ The Bureau did reduce the forfeiture to twelve thousand eight hundred dollars (\$12,800) based on Huerta’s history of compliance with the Rules.¹² Huerta then filed the subject Petition.

6. In the Petition, Huerta repeats his argument that the forfeiture amount is inconsistent with the amount assessed against other licensees for identical violations.¹³ He also claims the forfeiture should be waived or reduced because: (1) his failure to place issue/programs lists in a public file caused no harm to the public interest; and (2) the Commission’s Forfeiture Policy Statement¹⁴ does not comply with the

⁶ *Letter to David Tillotson, Esq. from Peter Doyle*, reference 1800B3 (MB Apr. 21, 2005) (“*NAL*”).

⁷ 345 F.2d 730, 732 (D.C. Cir. 1965).

⁸ *Forfeiture Order*, 23 FCC Rcd at 14648.

⁹ *Id.* at 14648-49.

¹⁰ *Id.* at 14649, citing *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/program lists); *Urban Radio III, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 6376 (MB 2006) (same).

¹¹ *Forfeiture Order*, 23 FCC Rcd at 14649, citing *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. See *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).

¹² *Forfeiture Order*, 23 FCC Rcd at 14650.

¹³ Petition at 2-3.

¹⁴ *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, ¶ 39 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

Small Business Regulatory Enforcement and Fairness Act (“SBREFA”)¹⁵ because it was not specifically formulated to respond to SBREFA and applies to small businesses and other entities alike.¹⁶

III. DISCUSSION

7. A petition for reconsideration must be filed within thirty days of the date upon which the Bureau gives public notice of the decision complained of.¹⁷ This thirty day filing period is statutory and cannot be waived or extended by the Commission, except in extraordinary circumstances.¹⁸ Here, the Bureau gave public notice of the *Forfeiture Order* with its release on October 6, 2008.¹⁹ Any petition for reconsideration of the *Forfeiture Order*, therefore, was due on November 6, 2008. Huerta, however, did not file the Petition until November 20, 2008.

8. Huerta claims that the fact he never received a copy of the *Forfeiture Order* in the mail excuses his failure to timely file the Petition.²⁰ We disagree. It is true that *Gardner*²¹ fashioned a limited exception to the thirty day filing period for the “extraordinary circumstance” where the late-filing is due to the Commission’s failure to give a party timely notice of the action for which reconsideration is sought.²² However, *Gardner* is limited to situations where the late-filing is “substantially due to the Commission’s failure to follow its own rules requiring personal notice of the decision.”²³ Huerta alleges no procedural errors committed by the Bureau. In fact, the Bureau strictly followed its rules and mailed the *Forfeiture Order* via Certified Mail-Return Receipt Requested and First Class Mail to Huerta’s last known address as well as his attorney’s address.²⁴ *Gardner*, therefore, is inapplicable and we dismiss the Petition as untimely.²⁵

¹⁵ 5 U.S.C. § 601-12 (2006).

¹⁶ Petition at 2-3.

¹⁷ 47 U.S.C. § 405; 47 C.F.R. § 1.106(f). Section 405 of the Act does not require the Commission to afford the licensee with personal notice of the decision.

¹⁸ *Gardner v. FCC*, 530 F.2d 1086, 1091 (D.C. Cir. 1976).

¹⁹ See 47 C.F.R. § 1.4.

²⁰ Petition at 1.

²¹ 530 F.2d at 1090-91.

²² *Letter to Amy Meredith from Peter Doyle*, 25 FCC Rcd 4714, 4715 (MB 2010).

²³ *Letter to Lee G. Petro, Esq. from Peter Doyle*, 25 FCC Rcd 2759, 2761 (MB 2010); see also *Fireside Media*, 25 FCC Rcd 2453, 2456 (2010) (not excusing licensee for filing petition for reconsideration after thirty day filing period because, in part, licensee did not demonstrate that “the delay in its filing is attributable to any error or omission by the Commission in giving [licensee] notice of the [Order]”).

²⁴ *Forfeiture Order*, 23 FCC Rcd at 14650, ¶ 12. It should be noted that Huerta’s attorney received a copy of the *Forfeiture Order* via Certified Mail. Moreover, Huerta’s attorney acknowledges that he did not have either Huerta’s current address or telephone number and proved unable to contact his client until November 10, 2008. Petition at 1. Licensees are responsible for maintaining a current address for the receipt of Commission documents. 47 C.F.R. § 1.5.

²⁵ Were we to consider the merits of the Petition, we would deny it. Absent a material error or omission in the underlying order, or, unless a petitioner raises additional facts not known or existing until after the petitioner’s last opportunity to present such matters, reconsideration is not warranted. See *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*, 387 U.S. 967 (1966). Huerta does not meet this standard. The Bureau determined in the *Forfeiture Order* that a nine thousand dollar (\$9,000) forfeiture was consistent with prior forfeitures issued for similar violations.

(continued...)

IV. ORDERING CLAUSE

9. Accordingly, IT IS ORDERED THAT the Petition for Reconsideration filed on November, 20, 2008, by Manuel Huerta IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle, Chief
Audio Division
Media Bureau

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Forfeiture Order, 23 FCC Rcd at 11924, citing *Citicasters Licenses, L.P.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 900 (MB 2007); *Urban Radio III, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 6376 (MB 2006). We will not grant reconsideration “to debate matters upon which the Commission has already deliberated and spoken.” *WWIZ, Inc.*, 37 FCC at 686. Moreover, it is established Commission policy that the public information requirements serve the useful purpose of indicating that a licensee meets the needs and interests of the community. *Saga Communications of Illinois, LLC*, 24 FCC Rcd 2479, 2481 (MB 2009), citing *Normandy Broadcasting Corporation and Lawrence N. Brandt*, Initial Decision, 8 FCC Rcd 1, 14 (ALJ 1992). Additionally, both the Commission and a federal court have held that the *Forfeiture Policy Statement* complies with the SBREFA. See *Forfeiture Policy Statement*, 12 FCC Rcd at 17109, ¶¶ 51-52; *U.S. v. Neely*, 595 F.Supp.2d 662, 668-69 (D. S.C. 2009).