

Before the
**FEDERAL COMMUNICATIONS
COMMISSION**
Washington, D.C. 20554

In the Matter of:)	
)	Facility ID Nos.: 187412; 187418
Henry B. Holmes, Jr.)	NAL/Acct. No. 202141420006
)	FRN No. 0023186240
Licensee of Stations)	LMS File No. 0000131352
W14DQ-D, Orlando, FL;)	
W36EC-D, Lakeland, FL)	

To: Chief, Enforcement Bureau

**RESPONSE TO NOTICE OF
APPARENT LIABILITY FOR FORFEITURE**

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June 25, 2021

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In the Matter of:

Henry B. Holmes, Jr.

Licensee of Stations

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RESPONSE TO NOTICE OF APPARENT LIABILITY FOR FORFEITURE

H.B. Holmes, by his attorney and pursuant to Section 503(b)(4)(C) of the Communications Act of 1934, as amended (the "Act")¹ and 1.80(f)(3) of the Commission's Rules², hereby responds to the Enforcement Bureau's ("Bureau") Notice of Apparent Liability for Forfeiture ("NAL") released on May 26, 2021.³ The NAL proposes a forfeiture on Henry B. Holmes, Jr., in the amount of \$3,000.00 for "apparently willfully" violation of section 73.3539(a) of the Commission's rules by "failing to timely file a license renewal application for the Stations."⁴ However, as is noted in the NAL, Mr. Holmes, through an agent no longer associated with Mr. Holmes, did file applications for renewal on January 15, 2021. And, as delineated below, Mr. Holmes at no point engaged in a conscious and deliberate act of commission (or omission). He has no history of prior late filings. He has already implemented changes in the manner of operation that will militate against any future license renewal applications being filed later than the first day of the fourth full calendar month prior to the expiration of the license sought to be renewed. Therefore, he requests cancellation of, or in the alternative, reduction of the proposed forfeiture of \$3,000.00.

I. INTRODUCTION

Pursuant to 47 CFR Section 1.80, Mr. Holmes files this written statement seeking cancellation or reduction of the NAL. Mr. Holmes obtained licenses for low-powered TV stations

¹ 47 U.S.C. Section 503(b)(4)(C).

² 47 C.F.R. Section 1.80(f)(3)

³ *In the Matter of Henry B. Holmes, Jr., Notice of Apparent Liability for Forfeiture*, Facility Nos.: 187412; 187418, NAL/Acct. No. 202141420006, FRN No. 0023186240, LMS File No. 0000131352, DA 21-612 (May 26, 2021).

⁴ *Id.*, at para. 1.

W14DQ-D in Orlando, Florida, and W36EC-D in Lakeland, Florida. He has been operating said stations in compliance ever since. Mr. Holmes hired Richard Goetz (“consultant”) to manage and enter technical information for compliance and renewal. It had been Mr. Holmes’ understanding and good faith belief that consultant would, and in fact had, engaged in timely procedures to comply with the Commission’s rules. Said consultant filed the application for renewal on January 15, 2021, and, as is noted in the NAL, said consultant did so without explanation.

After making an effort to obtain answers from Mr. Goetz regarding the filing of the license renewals, and not receiving a satisfactory answer, Mr. Holmes disassociated himself with Mr. Goetz. In conjunction with his attorney and through consultation with officials at the Commission, on June 25, 2021, Mr. Holmes attempted to change the point of contact associated with him in the LMS system to ensure that Mr. Goetz is no longer the agent associated with either of these licenses, or with Mr. Holmes.

Further, Mr. Holmes has had no history of prior late filings before the Commission. And, in response to the situation and unsatisfactory response from consultant, Mr. Holmes has made changes in his manner of operations such that future license renewals are made in a timely manner.

II. ARGUMENT: NO WILLFUL OR REPEATED ACT

According to the Commission’s *Forfeiture Policy*,⁵ the Commission shall impose a forfeiture based upon considerations of the factors enumerated in Section 503(b)(2)(D) of the Act⁶, such as “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 matters as justice

⁵ *The Commission’s Forfeiture Policy Statement and Amendment of Section 180 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997).

⁶ 47 U.S.C. Section 503(b)(2)(D).

may require.”⁷ The Commission further stated that “adjustment factors regarding the severity of the violation that may increase or decrease the forfeiture are: substantial harm, repeated or continuous violation, or substantial or economic gain derived from the violation, and the minor nature of the violation.”⁸

Here, the violation, if any, was undisclosed and undiscoverable to Mr. Holmes until it was past time. And, in any event, the violation was not willful. Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁹ Not only was there no *intent* to violate, there was no “conscious and deliberate” act or omission sufficient to make the delay in filing – on the part of H.B. Holmes’ former consultant – a willful act. And, as noted, there is no history of prior late filings on the part of Mr. Holmes.

III. CONCLUSION

For all the foregoing reasons, the Bureau should not impose its proposed forfeiture on Mr. Holmes or, in the alternative, should reduce the proposed forfeiture.

Respectfully submitted,

/s/ Andrew Clark

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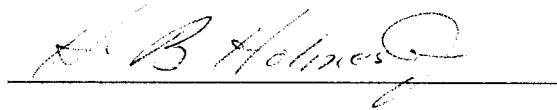
⁷ *Forfeiture Guidelines* at para. 27.

⁸ *Id.*

⁹ 47 U.S.C. Section 312(f)(1).

Declaration of H.B. Holmes

I, H.B. Holmes, as required by 47 C.F.R. § 1.16, do hereby declare, under penalty of perjury, that the information provided in the foregoing Response to Notice of Apparent Liability for Forfeiture is, to the best of my knowledge, information and belief, true, correct, and complete.

A handwritten signature in cursive script, appearing to read "H.B. Holmes", is written over a horizontal line.

H. B. Holmes
Executed on June 25, 2021