

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

In the Matter of)
JOSEPH W. HARTMANN, JR.) FCC File No. 0002462228
Application for New License in the Amateur)
Radio Service)

HEARING DESIGNATION ORDER

Adopted: December 11, 2006 Released: December 11, 2006

By Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this Hearing **Designation** Order, we commence a hearing proceeding before a Commission Administrative Law Judge (ALJ) to determine whether the **above-captioned** application filed by Joseph W. Hartmann, Jr. (Hartmann, Jr.) for a new Amateur Radio Service license should be granted. As discussed below, prior to filing the above-captioned application, Hartmann, Jr. filed numerous administrative update applications' seeking to change the name and address associated with Amateur Radio Service General Class License K3GUX from Joseph V. Hartman, **Sr.** (Hartman, Sr.) of Delaware to Joseph W. Hartmann, Jr. of Ohio. The record before us suggests that Hartmann, Jr. intentionally submitted fraudulent administrative updates to obtain the privileges associated with Call Sign K3GUX. Based on the information before us, we believe that Hartmann, Jr.'s actions raise a substantial and material question of fact as to whether he possesses the requisite character qualifications to be a Commission licensee. Because we are unable to make a determination on the record currently before us that grant of Hartmann, Jr.'s application for a new amateur license would serve the public interest, convenience, and necessity, we hereby designate the application for hearing, as required by Section 309(e) of the Communications Act of 1934, as amended (the Act)?

II. BACKGROUND

2. The license for Call Sign K3GUX was initially granted to Hartman, Sr. in 1964. The license was most recently renewed in 1997. According to the Commission's licensing records, Hartman, Sr., was born on September 9, 1919, and resides in Ocean View, Delaware. On **February 11, 2005**, Hartmann, Jr. associated his Federal Communications Commission Registration Number (FRN)³ with Call Sign K3GUX. On February 11, 2005, Hartmann, Jr. filed two administrative update applications for Call Sign K3GUX, both seeking to change Hartman, Sr.'s name and address to Hartman, Jr.'s name and

¹ See FCC File Nos. 0002044953 (Feb. 11, 2005), 0002044980 (Feb. 11, 2005), 0002045576 (Feb. 14, 2005), 0002074626 (Mar. 10, 2005), 0002085053 (Mar. 14, 2005), 0002112456 (Apr. 4, 2005), 0002222784 (Jun. 30, 2005), 0002236752 (July 12, 2005), 0002236757 (July 12, 2005).

² 47 U.S.C. § 309(e).

³ An **FRN** is a 10-digit number that is assigned to a business or individual that has registered with the FCC. It is used to uniquely identify an individual or business in all transactions with the FCC. Only the entity whose FRN is associated with a particular license may file applications relating to that license in the Commission's Universal Licensing System.

address: The Universal Licensing System (ULS) automatically granted the administrative updates on February 12, 2005, but the Wireless Telecommunications Bureau (WTB) set aside that action on March 9, 2005.⁵ On March 10, 2005, Hartmann, Jr. filed another administrative update application for Call Sign K3GUX, seeking to change Hartman, Sr.'s name and address to Hartman, Jr.'s name and address! ULS automatically granted the administrative update on March 11, 2005, but WTB set aside that action on April 1, 2005. On April 4, 2005, Hartmann, Jr. filed another administrative update application for Call Sign K3GUX, seeking to change Hartman, Sr.'s name and address to Hartman, Jr.'s name and address.' ULS automatically granted the administrative update on April 5, 2005, but WTB set aside that action on April 25, 2005. On June 30, 2005, Hartmann, Jr. filed another administrative update application for Call Sign K3GUX, seeking to change Hartman, Sr.'s name and address to Hartman, Jr.'s name and address.' While it was pending, on July 12, 2005, Hartmann, Jr. tiled two more administrative update applications for Call Sign K3GUX, both seeking to change Hartman, Sr.'s name and address to Hartman, Jr.'s name and address?

3. WTB set aside the grant of the February, March, and April administrative update applications, and held the June and July administrative update applications in abeyance, at the request of the Commission's Enforcement Bureau (EB), based upon apparent discrepancies regarding the identity of the licensee for Call Sign K3GUX. EB staff contacted Hartmann, Jr. by telephone in spring 2005, but did not obtain a satisfactory explanation of the matter. Consequently, pursuant to Section 308(b) of the Communications Act of 1934, as amended, "EB on June 21, 2005 sent a certified letter to Hartmann, Jr. at the address listed on the administrative update applications." The letter directed Hartmann, Jr. to explain his justification for associating his FRN with Call Sign K3GUX, and seeking to change the licensee information from Hartman, Sr.'s name and address to Hartman Jr.'s name and address. On July 20, 2005, the letter was returned to the Commission unclaimed.

4. On January 17, 2006, WTB dismissed Hartmann, Jr.'s administrative update applications for failure to prosecute, in light of Hartmann, Jr.'s failure to respond to the EB letter,¹² as required by

⁴ FCC File Nos. 0002044953, 0002044980 (Feb. 11, 2005) (changing the name from Joseph V. Hartman, Sr. to Joseph W. Hartmann, Jr.; changing the address from 3 Balsa, Oceanview, Delaware 19970 to P.O. Box 2869, Youngstown, Ohio 44511).

⁵ See 47 C.F.R. § 1.113(a).

⁶ FCC File No. 0002074626 (Mar. 10, 2005) (changing the name from Joseph V. Hartman, Sr. to Joseph W. Hartmann, Jr.; changing the address from 3 Balsa, Oceanview, Delaware 19970 to P.O. Box 2869, Youngstown, Ohio 44511).

⁷ FCC File No. 0002112456 (Apr. 4, 2005) (changing the name from Joseph V. Hartman, Sr. to Joseph W. Hartmann, Jr.; changing the address from 3 Balsa, Oceanview, Delaware 19970 to P.O. Box 2869, Youngstown, Ohio 44511).

⁸ FCC File No. 0002222784 (June 30, 2005) (changing the name from Joseph V. Hartman, Sr. to Joseph W. Hartmann, Jr.; changing the address from 3 Balsa, Oceanview, Delaware 19970 to 3320 - 1B Trappers Cove Trail, Trappers Cove Trail, Michigan 48910).

⁹ FCC File No. 0002236752, 0002236757 (July 12, 2005) (changing the name from Joseph V. Hartman, Sr. to Joseph W. Hartmann, Jr.; changing the address from 3 Balsa, Oceanview, Delaware 19970 to 3320 1B Trappers Cove Trail, Lansing, Michigan 48910).

¹⁰ 47 U.S.C. § 308(b).

¹¹ See Letter dated June 21, 2005 from W. Riley Hollingsworth, Special Counsel, Spectrum Enforcement Division, Enforcement Bureau to Joseph W. Hartmann, Jr.

¹² See FCC Dismissal Letter 3887786 (dismissing FCC File No. 0002044980); FCC Dismissal Letter 3887787 (Jan. 18, 2006) (dismissing FCC File No. 0002045576); FCC Dismissal Letter 3887788 (Jan. 18, 2006) (dismissing FCC File No. 0002074626); FCC Dismissal Letter 3887789 (dismissing FCC File No. 0002085053); FCC Dismissal (continued...)

Section 1.951 of the Commission's Rules.¹³ On January 27, 2006, Hartmann, Jr. filed the above-captioned application for a new amateur radio service license.

III. DISCUSSION

5. The Commission and the courts have recognized that “[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing.”¹⁴ As the Commission recently stated, “Misrepresentation and lack of candor raise immediate concerns as to whether a licensee will be truthful in future dealings with the Commission.”¹⁵ Misrepresentation is “a false statement of fact made with intent to deceive.”¹⁶ Lack of candor is “concealment, evasion, or other failure to be fully informative, accompanied by intent to deceive.”¹⁷ Intent to deceive is established if a licensee knowingly makes a false statement,¹⁸ and also can also be inferred when the surrounding circumstances clearly show the existence of intent to deceive.¹⁹ The Commission may disqualify an applicant who deliberately makes misrepresentations or lacks candor in dealing with the agency.²⁰

6. Hartmann, Jr.'s repeated attempts to change the licensee information for Call Sign K3GUX from Hartman, Sr.'s name and address to Hartman Jr.'s name and address raise substantial and material question of fact as to whether Hartmann, Jr. made false certifications, misrepresented facts to the Commission, and/or demonstrated a lack of candor in order to claim the identity and higher class license of Hartman, Sr. Hartmann, Jr. continued to file administrative update applications even after having spoken with EB staff investigating the discrepancies regarding the identity of the licensee for Call Sign K3GUX. In each application, Hartmann also certified that all of the statements therein were true, complete, correct, and made in good faith, even though his filings appear to have satisfied none of these standards.

7. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the Commission is required to designate an application for evidentiary hearing if a substantial and material

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Letter 3887790 (dismissing FCC File No. 0002112456); FCC Dismissal Letter 3887791 (dismissing FCC File No. 0002222784); FCC Dismissal Letter 3887785 (dismissing FCC File No. 0002236752); FCC Dismissal Letter 3887792 (dismissing FCC File No. 0002236757).

¹³ See 47 C.F.R. § 1.951.

¹⁴ See Commercial Radio Service, Inc., *Order to Show Cause*, 21 FCC Rcd 9983, 9986 ¶ 12 (2006) (*CRS Order*) (citing, e.g., *Contemporary Media, Inc., v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000) (*Contemporary Media*)).

¹⁵ *CRS Order*, 21 FCC Rcd at 9986 ¶ 12 (citing Policy Regarding Character Qualifications in Broadcast Licensing Amendment of Rules of Broadcast Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentation to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications, *Report, Order, and Policy Statement*, 102 F.C.C. 2d 1179, 1210-11 ¶ 60 (1986) (*1986 Character Policy Statement*)).

¹⁶ *Id.* at 9986 ¶ 12 (citing *Fox River Broadcasting, Inc., Order*, 93 FCC 2d 127, 129 (1983) (*Fox River Order*)). A false certification may also constitute a misrepresentation. *Id.* at 9986 n.15 (citing *San Francisco Unified School District, Hearing Designation Order and Notice of Apparent Liability for Forfeiture*, 19 FCC Rcd 13326, 13334 ¶ 19 nn.40-41 (2004)).

¹⁷ *Id.* at 9986 ¶ 12. An applicant has a duty to be candid with all facts and information before the Commission, irregardless of whether that information was elicited. See *Fox River Order*, 93 FCC2d at 129.

¹⁸ *Id.* at 9986 ¶ 12 (citing *Leflore Broadcasting, Co., Inc. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980)).

¹⁹ *Id.* at 9986 ¶ 12 (citing *American International Development, Inc., Memorandum Opinion and Order*, 86 F.C.C.2d 808, 816 n.39 (1981), *aff'd sub nom. KXIV, Inc. v. FCC*, 704 F.2d 1294 (D.C. Cir. 1983)).

²⁰ *Contemporary Media*, 214 F.3d at 196.

question of fact is presented regarding whether grant of the application would serve the public interest, convenience, and necessity.²¹ The record suggests that Hartmann, Jr. has engaged in false certification, misrepresentation and lack of candor in order to assumed the identity and higher class licensee of Hartman, Sr. for Commission licensing purposes. The circumstances presented herein raise substantial and material questions of fact as to whether Hartmann, Jr. will “deal truthfully with the Commission and ... comply with [the Commission’s] rules and policies,”” and thus whether he is qualified to be a Commission licensee.

IV. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED that, pursuant to Sections 4(i) and 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(e), the captioned application **IS DESIGNATED FOR HEARING** in a proceeding before an FCC Administrative Law Judge, at a **time** and place to be specified in a subsequent **Order**, upon the following issues:

- a) To determine whether Joseph W. Hartmann, Jr. made false certifications, misrepresentations to, and or lacked candor before, the Commission in applications and or responses to Commission inquires.
- b) To determine the effect of Joseph W. Hartmann, Jr.’s representations of fact to, and candor before, the Commission on his qualifications to be licensed by the Commission.
- c) In light of the evidence adduced pursuant to the foregoing issues, to determine whether Joseph W. Hartmann, Jr. is qualified to be a Commission licensee.
- d) In light of the evidence adduced pursuant to the foregoing issues, to determine whether the captioned application filed by Joseph W. Hartmann, Jr. should be granted.

9. **IT IS FURTHER ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.221(c) of the Commission’s Rules, 47 C.F.R. § 1.221(c), in order to avail himself of the opportunity to be heard, Hartmann, Jr., in person or by his attorney, **SHALL FILE** with the Commission, within twenty days of the mailing of this Hearing **Designation Order** to him, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified herein.

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.221(c) of the Commission’s Rules, 47 C.F.R. § 1.221(c), if Hartmann, Jr. fails to file a written appearance within the **twenty-day** period, or has not filed prior to the expiration of the twentyday period, a petition to dismiss without prejudice, or a petition to accept, for good cause shown, a written appearance beyond ~~the~~ expiration of the twenty-day period, the Presiding Administrative Law Judge **SHALL DISMISS** the captioned application with prejudice for failure to prosecute.

11. **IT IS FURTHER ORDERED** that, pursuant to Sections 4(i) and 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(e), the **burden** of proceeding with the introduction of evidence and the burden of proof with respect to all of the issues specified above **SHALL BE on** Hartmann, Jr.

²¹ 47 U.S.C. § 309(e).

²² Policy Regarding Character Qualifications in Broadcast Licensing, *Policy Statement and Order*, 5 FCC Rcd. 3252, 3252 § 3 (1990) (citing *1986 Character Policy Statement*, 102 F.C.C. 2d at 1190-1191), *recon. granted in part*, 6 FCC Rcd 3448 (1991).

12. IT IS FURTHER ORDERED, that this hearing will be governed by the rules of practice and procedure pertaining to the Commission's Hearing Proceedings, 47 C.F.R. §§ 1.201-1.364, subject to the ALJ's discretion to regulate the hearing.

13. IT IS FURTHER ORDERED, that all Discovery shall be conducted in accordance with 47 C.F.R. §§ 1.311-1.325, subject to the ALJ's discretion.

14. IT IS FURTHER ORDERED that the Secretary of the Commission SHALL CAUSE to have this *Hearing Designation* Order or a **summary** thereof published in the Federal Register.

15. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION


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