

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

In the Matter of
Vision Latina Broadcasting, Inc.
Licensee of Station KBPO
Port Neches, Texas
File No.: EB-10-HU-0068
NAL/Acct. No.: 201232540005
FRN: 0010019115
Facility ID No.: 68762

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 14, 2012

Released: June 14, 2012

By the Resident Agent, Houston Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find Vision Latina Broadcasting, Inc. (Vision Latina Broadcasting), licensee of Station KBPO, Port Neches, Texas, apparently liable for a forfeiture in the amount of twenty five thousand dollars (\$25,000) for willful violation of Section 1.17(a)(2) of the Commission’s rules (Rules).1 The noted violation involves Vision Latina Broadcasting’s provision of incorrect factual information of a material nature to the Commission regarding Station KBPO’s public inspection file without a reasonable basis for believing that the information was correct and accurate.

II. BACKGROUND

2. On December 9, 2010, during regular business hours, an agent from the Enforcement Bureau’s Houston Office (Houston Office) inspected Station KBPO’s public inspection file and found it did not contain a current copy of the station authorization, service contour map, the most recent ownership report, Public and Broadcasting manual, or any issues-programs lists. The Enforcement Bureau issued a Notice of Apparent Liability for Forfeiture and Order2 to Vision Latina Broadcasting for its violations, among other things, of the Commission’s public inspection file rules.3 The 1st NAL also directed Vision Latina Broadcasting to “submit a statement signed under penalty of perjury by an officer or director of the licensee that ... Station KBPO’s public inspection file is complete.”4 On August 25, 2011, Vision Latina submitted a certification that “[i]n coordination with [an independent consultant], all

1 47 C.F.R. § 1.17(a)(2).

2 See Vision Latina Broadcasting, Inc., Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 9231 (Enf. Bur. 2011) (1st NAL).

3 See 47 C.F.R. § 73.3526.

4 1st NAL at 9231.

missing materials cited in the *NAL* have been placed in the Station's Public Inspection File, and the undersigned confirms that it is complete as of the date of this response."⁵

3. On October 13, 2011 agents from the Houston Office inspected the public inspection file for Station KBPO located at its main studio. The file made available by Station staff did not contain any issues-programs listings. None of the Station employees present were aware of Station KBPO having ever maintained any issues-programs listings for the Station. In response to a Letter of Inquiry regarding the October 13, 2011 inspection, Vision Latina Broadcasting stated "the 'Issue Programs Lists' folder was empty due to an oversight by the licensee."⁶ Vision Latina Broadcasting stated that it believed the public inspection file contained daily logs of the programming aired by a party to a Time Brokerage Agreement. Moreover, "despite hiring an outside consultant to review the public file, and receive [sic] indications from the consultant that the public file was complete, Vision was not aware that the logs it believed to be sufficient were missing from the public file."⁷ Vision Latina Broadcasting attached to its response newly created issues-programs listings for 2010 and 2011 and stated they have been placed in Station KBPO's public inspection file.⁸

III. DISCUSSION

4. Section 503(b) of the Communications Act of 1934, as amended (Act), provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁹ 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.¹⁰ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹¹ and the Commission has so interpreted the term in the Section 503(b) context.¹² The Commission may also

⁵ Letter from Gilardo Castro, Vice President, Vision Latina Broadcasting, Inc., to Lee. R. Browning, Resident Agent, Houston Office at 2 (Aug. 25, 2011) (*LOI Response*).

⁶ Letter from Gilardo Castro, President, Vision Latina Broadcasting, Inc., to Lee. R. Browning, Resident Agent, Houston Office at 1 (Dec. 15, 2011) (*2nd LOI Response*).

⁷ *Id.*

⁸ *Id.*

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 U.S.C. § 312(f)(1).

¹¹ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in Section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission's application of those terms").

¹² See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

assess a forfeiture for violations that are merely repeated, and not willful.¹³ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁴

A. Vision Latina Broadcasting Apparently Provided Incorrect Material Factual Information to the Commission

5. Section 1.17 of the Rules states that no person may provide, in any written statement of fact, “material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.”¹⁵ Any holder of any Commission authorization is subject to the Rule.¹⁶ In expanding the scope of Section 1.17 of the Rules in 2003 to include written statements that are made without a reasonable basis for believing the statement is correct and not misleading, the Commission explained that this requirement was intended to more clearly articulate the obligations of persons dealing with the Commission, ensure that they exercise due diligence in preparing written submissions, and enhance the effectiveness of the Commission’s enforcement efforts.¹⁷ Thus, even in the absence of an intent to deceive, a false statement provided without a reasonable basis for believing that the statement is correct and not misleading constitutes an actionable violation of Section 1.17 of the Rules.¹⁸

6. As the Commission has stated, parties must “use due diligence in providing information that is correct and not misleading to the Commission, including taking appropriate affirmative steps to determine the truthfulness of what is being submitted. A failure to exercise such reasonable diligence would mean that the party did not have a reasonable basis for believing in the truthfulness of the information.”¹⁹ In Vision Latina Broadcasting’s certification dated August 25, 2011, it stated that “all missing materials cited in the *NAL* have been placed in the Station’s Public Inspection File, and the undersigned confirms that it is complete as of the date of this response.”²⁰ As noted above, however, Vision Latina Broadcasting admits that, between August 25, 2011 and December 15, 2011, its public

¹³ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁴ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

¹⁵ 47 C.F.R. § 1.17(a)(2).

¹⁶ 47 C.F.R. § 1.17(b)(2).

¹⁷ See *Amendment of Section 1.17 of the Commission’s Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4021 (2003) (*Amendment of Section 1.17 R&O*), *recon. denied*, Memorandum Opinion and Order, 19 FCC Rcd 5790, *further recon. denied*, Memorandum Opinion and Order, 20 FCC Rcd 1250 (2004) (*Amendment of Section 1.17 MO&O*).

¹⁸ See *Amendment of Section 1.17 MO&O*, 20 FCC Rcd at 4017 (stating that the revision to Section 1.17 of the Rules is intended to “prohibit incorrect statements of omissions that are the results of negligence, as well as an intent to deceive”).

¹⁹ *Amendment of Section 1.17 R&O*, 18 FCC Rcd at 4021.

²⁰ *LOI Response* at 2.

inspection file contained only daily programming logs, rather than the required issues-programs listings, and that on October 13, 2011, the station's public inspection file was missing even the daily logs.²¹

7. Had Vision Latina Broadcasting exercised even minimal diligence prior to the submission of its certification, it would not have submitted incorrect and misleading material factual information in its certification.²² Although there is insufficient information to conclude that Vision Latina Broadcasting's provision of incorrect material factual information was intentional in violation of Section 1.17(a)(1) of the Rules,²³ we find that Vision Latina Broadcasting apparently willfully violated Section 1.17(a)(2) of the Rules by providing material factual information that was incorrect without a reasonable basis for believing that the information was correct and not misleading.²⁴

B. Proposed Forfeiture

8. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for misrepresentation or lack of candor is the statutory maximum.²⁵ Therefore, for broadcasters such as Vision Latina, the base forfeiture is \$37,500 for each violation or each day of a continuing violation.²⁶ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, 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.²⁷

²¹ 2nd LOI Response at 1.

²² See *Invision Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 13095, 13103-04 (2008) (finding that a television importer's failure to exercise due diligence to ensure that the information provided in its LOI Response was correct and not misleading constituted a violation of Section 1.17(a)(2) of the Rules) (*Invision*); *Syntax-Brilliant Corporation*, Forfeiture Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6323, 6342 (2008) (finding that a television manufacturer apparently provided incorrect material information concerning its importation and interstate shipment of non-DTV-compliant televisions without a reasonable basis for believing that the information was correct and not misleading, in violation of Section 1.17(a)(2) of the Rules) (*Syntax-Brilliant Further NAL*); *Citicasters License, L.P., et al.*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 19324, 19338 (2007) (forfeiture paid) (finding that a licensee's false certification that it had not violated the Act or any Commission Rules during the preceding license term had no reasonable basis and was not made with the intent to deceive the Commission but nonetheless, violated Section 1.17(a)(2) of the Rules). See also *Cardinal Broadband LLC, aka Sovereign Telecommunications*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 12233, 12237 (Enf. Bur. 2008) (*Cardinal Broadband LLC*), response pending (finding that an interconnected VoIP provider provided without a reasonable basis for believing that the information was correct and accurate incorrect material factual information in violation of Section 1.17(a)(2) of the Rules).

²³ 47 C.F.R. 1.17(a)(1).

²⁴ See, e.g., *Cardinal Broadband LLC*, 23 FCC Rcd at 12237.

²⁵ *The Commission's 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) (*Forfeiture Policy Statement*), recons. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80. See, e.g., *SBC Communications, Inc.*, Notice of Apparent Liability, 16 FCC Rcd 19091, 19120 (2001) (statutory maximum forfeiture amount proposed for intentional violation of Section 1.17 of the Rules) (subsequent history omitted).

²⁶ See *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 23 FCC Rcd 9845 (2008).

²⁷ 47 U.S.C. § 503(b)(2)(E).

Given the totality of the circumstances, we find a significant forfeiture appropriate.²⁸ The Commission has stated that “[we rely] heavily on the truthfulness and accuracy of the information provided to us. If information submitted to us is incorrect, we cannot properly carry out our statutory responsibilities.”²⁹ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Vision Latina Broadcasting is apparently liable for a total forfeiture in the amount of \$25,000 for providing incorrect factual information to the Commission.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission’s rules, Vision Latina Broadcasting, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty five thousand dollars (\$25,000) for violation of Section 1.17(a)(2) of the Rules.³⁰

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission’s rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Vision Latina Broadcasting, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must also be submitted. An FCC Form 159 may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>. When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments 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. 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,

²⁸ See, e.g., *Access.1 New York License Company, LLC*, Notice of Apparent Liability, 22 FCC Rcd 15205, 15209 para. 11 (Media Bur. 2007) (forfeiture amount proposed for provision of incorrect material factual information adjusted downward from statutory maximum amount of \$32,500 to \$10,000 on basis that violation was unintentional). Compare *Syntax-Brilliant Further NAL*, 23 FCC Rcd at 6343 para. 46 (proposing statutory maximum forfeiture (\$11,000) for apparent negligent misrepresentation based on totality of the circumstances; company corrected the erroneous information only after the Commission had relied on it in an earlier enforcement action); *Intelsat North America*, Notice of Apparent Liability, 21 FCC Rcd 9246, 9250 para. 12 (Enf. Bur., Inv. & Hearings Div. 2006) (proposing statutory maximum forfeiture (\$11,000) for apparent negligent misrepresentation based on the totality of the circumstances, including ability to pay and the Commission’s reliance on the incorrect information). We note that in the *Syntax-Brilliant* and *Intelsat* cases, our statutory maximum forfeiture was significantly less than that applicable to broadcast licensees and common carriers.

²⁹ *Amendment of Section 1.17 of the Commission’s Rules Concerning Truthful Statements to the Commission*, Notice of Proposed Rulemaking, 17 FCC Rcd 3296, 3297, para. 3 (2002).

³⁰ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.17(a)(2), 1.80.

Washington, D.C. 20554.³¹ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or E-mail: ARINQUIRIES@fcc.gov. Vision Latina Broadcasting, Inc. will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

12. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.³² Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Houston Office, 9597 Jones Road #362, Houston, Texas 77065, and include the NAL/Acct. No. referenced in the caption. Vision Latina Broadcasting, Inc. also shall e-mail the written response to SCR-Response@fcc.gov.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Vision Latina Broadcasting, Inc. recently submitted its financial information in response to another Notice of Apparent Liability for Forfeiture. If Vision Latina Broadcasting, Inc. seeks to request a reduction based on inability to pay, it should submit updated financial information.

14. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and first class mail to Vision Latina Broadcasting, Inc. at 419 Stadium Road, Port Arthur, Texas 77642.

FEDERAL COMMUNICATIONS COMMISSION

Lee R. Browning
Resident Agent
Houston Office
South Central Region
Enforcement Bureau

³¹ See 47 C.F.R. § 1.1914.

³² 47 C.F.R. §§ 1.16, 1.80(f)(3).