

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

In the Matter of)	
)	
Vision Latina Broadcasting, Inc.)	File No.: EB-10-HU-0068
)	NAL/Acct. No.: 201232540006
Licensee of Station KBPO)	FRN: 0010019115
Port Neches, Texas)	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 that Vision Latina Broadcasting, Inc. (Vision Latina Broadcasting), licensee of Station KBPO, in Port Neches, Texas, apparently willfully violated Section 73.3526 of the Commission's rules (Rules),¹ by failing to make available a complete public inspection file. We conclude that Vision Latina Broadcasting is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. On October 13, 2011 agents from the Enforcement Bureau's Houston Office (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, Vision Latina Broadcasting stated "the "Issue Programs Lists" folder was empty due an oversight by the licensee."² Vision Latina Broadcasting also stated that issues-programming listings have since been placed in Station KBPO's public inspection file.

III. DISCUSSION

3. 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.³ 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.⁴ The legislative history to Section 312(f)(1) of the Act clarifies that this

¹ 47 C.F.R. § 73.3526.

² Letter from Gilardo Castro, President, Vision Latina Broadcasting, Inc., to Lee R. Browning, Resident Agent, Houston Office at 1 (Dec. 15, 2011) (on file in EB-10-HU-0068) (*LOI Response*).

³ 47 U.S.C. § 503(b).

⁴ 47 U.S.C. § 312(f)(1).

definition of willful applies to both Sections 312 and 503(b) of the Act,⁵ and the Commission has so interpreted the term in the Section 503(b) context.⁶ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁷ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁸

A. Failure to Make Available a Complete Public Inspection File

4. Section 73.3526 of the Rules states that “[e]very permittee or licensee of an AM, FM, TV or a Class A station in the commercial broadcast services shall maintain a public inspection file containing the material” set forth in that section.⁹ Section 73.3526(e)(12) of the Rules states that commercial AM and FM broadcast stations must retain in the file “every three months a list of programs that have provided the station’s most significant treatment of community issues during the preceding three month period. [. . .] The lists described in this paragraph shall be retained in the public inspection file until final action has been taken on the station’s next license renewal application.”¹⁰ The public inspection file must be maintained at the main studio of the station,¹¹ and must be available for public inspection at any time during regular business hours.¹²

5. On October 13, 2011, an agent from the Houston Office inspected the public inspection file for Station KBPO during regular business hours and found the file did not contain any issues-programs listings. Based on the evidence before us, we find that Vision Latina Broadcasting apparently willfully violated Section 73.3526 of the Rules by failing to make available a complete public inspection file.

⁵ 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 . . .”).

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

⁷ 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).

⁸ 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.

⁹ 47 C.F.R. § 73.3526(a)(2).

¹⁰ 47 C.F.R. § 73.3526(e)(12).

¹¹ 47 C.F.R. § 73.3526(b).

¹² 47 C.F.R. § 73.3526(c).

B. Proposed Forfeiture Amount

6. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for violation of public file rules is \$10,000.¹³ 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.¹⁴ We find that Vision Latina Broadcasting's history of prior offenses warrants an upward adjustment in forfeiture.¹⁵ On December 9, 2010, agents from the Houston Office inspected Station KBPO's public inspection file and found it was missing, among other things, all issues-programming lists.¹⁶ Because Vision Latina Broadcasting violated the Commission's public inspection file rules twice within a year and once after being informed of the violation, we find its actions demonstrate a deliberate disregard for the Commission's rules and a pattern of non-compliance, justifying an upward adjustment in the amount of \$5,000. 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 \$15,000 for failing to make available a complete public inspection file.

IV. ORDERING CLAUSES

7. 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 fifteen thousand dollars (\$15,000) for violation of Section 73.3526 of the Rules.¹⁷

¹³ *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.

¹⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵ *Pilot Travel Centers, L.L.C.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 23113, 23117, para.17 (2004) (upwardly adjusting a proposed forfeiture to \$125,000 from a base aggregate \$91,000 amount, based on a finding that the retailer continued to market unauthorized devices after receiving 9 citations, which evinced "a pattern of intentional non-compliance with and apparent disregard for" the Commission's equipment rules"); *SpectraSite Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 7884, 7888 paras. 16-18 (2002) (upwardly adjusting a proposed aggregate forfeiture to \$111,000 from a \$37,000 aggregate base amount, based on findings that the antenna owner continued to violate antenna marking, lighting and registrations requirements, after being issued forfeiture for similar violations).

¹⁶ See *Vision Latina Broadcasting, Inc.*, Forfeiture Order, 27 FCC Rcd 2978 (Enf. Bur. 2012). In a separate order released today, we also propose a \$25,000 forfeiture against Vision Latina for an apparent negligent misrepresentation to the Bureau in connection with this earlier proceeding. *Vision Latina Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, EB-10-HU-0068, DA 12-931 (Enf. Bur. rel. June 14, 2012). As explained therein, in response to the earlier Notice of Apparent Liability for Forfeiture and Order, Vision Latina submitted a sworn declaration that it had remedied its public file violations. A subsequent inspection by FCC field agents, however, revealed that this statement was mistaken. Given Vision Latina's continued compliance issues, we will not order the station to submit another sworn statement about its compliance with our public file rules, but instead will conduct a follow-up inspection at an undisclosed time. Any additional violations may be subject to more significant monetary penalties.

¹⁷ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 73.3526.

8. **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.

9. 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, Washington, D.C. 20554.¹⁸ 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. shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

10. 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.¹⁹ 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.

11. 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.

¹⁸ See 47 C.F.R. § 1.1914.

¹⁹ 47 C.F.R. §§ 1.16, 1.80(f)(3).

12. **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