

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

In the Matter of	)	
	)	
Hispanic Target Media, Inc.	)	File No.: EB-09-SD-0055
	)	NAL/Acct. No.: 201032940001
Licensee of Station KUKY(FM)	)	FRN: 0011335098
Wellton, Arizona	)	Facility ID No.: 162388

**FORFEITURE ORDER**

**Adopted: October 28, 2013**

**Released: October 29, 2013**

By the Regional Director, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to Hispanic Target Media, Inc. (HTM), licensee of Station KUKY(FM), Wellton, Arizona, for willfully and repeatedly violating Section 73.3526(b)–(c)<sup>1</sup> of the Commission’s rules (Rules) by failing to maintain and make available the Station KUKY(FM) public inspection file at its main studio.

**II. BACKGROUND**

2. On September 24, 2009, agents from the Enforcement Bureau’s San Diego Office (San Diego Office) attempted to conduct a station inspection of the Station KUKY(FM) main studio, which is located in Yuma, Arizona. The agents were greeted by the station’s general manager and began their inspection. The agents requested to view the Station KUKY(FM) public inspection file. However, the station manager did not understand the agents’ request. The station manager said that Station KUKY(FM), which began operations on May 20, 2009, had not maintained a public inspection file and no such file was available for review. When asked why no public inspection file was maintained, the station manager replied he was not aware one was required and that no such file was maintained at Station KUKY(FM).

3. On December 21, 2009, the San Diego Office issued a Notice of Apparent Liability for Forfeiture (*NAL*) in the amount of \$10,000 to HTM for failing to maintain and make available the Station KUKY(FM) public inspection file at the Station KUKY(FM) main studio.<sup>2</sup> HTM responded to the *NAL* on March 5, 2010 (*Response*).<sup>3</sup> In its *Response*, HTM requests that the forfeiture be cancelled because HTM maintained the complete Station KUKY(FM) public file at the local library and because the Station KUKY(FM) station manager was not fluent in English and, therefore, did not understand the questions being posed by the San Diego agents.<sup>4</sup>

<sup>1</sup> 47 C.F.R. § 73.3526(b)–(c).

<sup>2</sup> *Hispanic Target Media, Inc.*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 201032940001 (Enf. Bur., Western Region, San Diego Office (rel. Dec. 21, 2009) (*NAL*)).

<sup>3</sup> See Response of Hispanic Target Media, Inc. (filed Mar. 5, 2010) (on file in EB-09-SD-0055) (*Response*). HTM requested and was granted an extension of time to file its *Response* by the San Diego Office.

<sup>4</sup> See *Response* at 1–4.

### III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and the Commission's *Forfeiture Policy Statement*.<sup>7</sup> In examining HTM's *Response*, Section 503(b) of the Act requires that the Commission take into account 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 other such matters as justice may require.<sup>8</sup> We considered HTM's *Response* to the *NAL* in light of these statutory factors and find that a reduction of the forfeiture is warranted for the reasons discussed below.

5. Section 73.3526(a) of the Rules requires that all FM Broadcast stations maintain a public inspection file and Section 73.3526(b) requires that the file be located at the main studio of the station.<sup>9</sup> Section 73.3526(c) of the Rules requires that the file be available for public inspection at any time during regular business hours.<sup>10</sup> On September 24, 2009, agents from the San Diego Office attempted to inspect the file during regular business hours, but were unable to access the file at the station's main studio and were informed by the station manager, apparently erroneously, that a public inspection file was not maintained by Station KUKY(FM).

6. HTM does not dispute that the public inspection file was missing from the Station KUKY(FM) main studio. Consequently, we find that any language issues that may have existed between the San Diego agents and the Station KUKY(FM) station manager are not dispositive in this case. Had the station manager fully understood the request from the San Diego agents, he apparently would have informed the agents that the public inspection file was maintained at the local public library. We accept HTM's representations that a public inspection file for Station KUKY(FM) existed. However, the public inspection file was not maintained at the main studio nor made available at the time of inspection: violations of Section 73.3526(b)–(c) of the Rules. Citing our decision in *American Family*, HTM argues there is precedent that its good faith efforts of maintaining a complete public inspection file accessible at the local public library requires that the forfeiture be cancelled.<sup>11</sup> We disagree that the decision in *American Family* requires the cancellation of the forfeiture because in that case the forfeiture concerned only three late-filed items in a public inspection file, which was maintained at the station's main studio. In the present case, the entire file was unavailable at the Station KUKY(FM) main studio. We agree, however, that a reduction for HTM's good faith efforts is appropriate and, therefore, we reduce the forfeiture from \$10,000 to \$8,000.<sup>12</sup>

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<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> *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), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

<sup>8</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>9</sup> 47 C.F.R. § 73.3526(a)–(b).

<sup>10</sup> 47 C.F.R. § 73.3526(c).

<sup>11</sup> See *Response* at 2–4 (citing *Am. Family Ass'n*, Memorandum Opinion and Order, 18 FCC Rcd 16530 (Enf. Bur. 2003) (*American Family*)). In *American Family*, the Enforcement Bureau cancelled part of an assessed forfeiture relating to public file violations because the station was able to show that the three items missing from the file had been untimely filed by the station manager. *American Family*, 18 FCC Rcd at 16532, para. 9.

<sup>12</sup> See *Lazer Licenses, LLC*, Order on Review, 27 FCC Rcd 626 (2012) (affirming a determination to reduce, but not cancel, for good faith efforts, an assessed forfeiture where the public inspection file was complete but not available at the correct location).

7. We have examined HTM's *Response* to the *NAL* pursuant to the statutory factors above and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that HTM willfully and repeatedly violated Section 73.3526(b)–(c) of the Rules. Considering the entire record and the factors listed above, we find that a forfeiture in the amount of eight thousand dollars (\$8,000) is warranted.

#### IV. ORDERING CLAUSES

8. **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(f)(4) of the Commission's Rules, Hispanic Target Media, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for willfully and repeatedly violating Section 73.3526(b)–(c) of the Commission's Rules.<sup>13</sup>

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.<sup>14</sup> If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.<sup>15</sup> Hispanic Target Media, Inc., shall also send electronic notification on the date said payment is made to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov). The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>16</sup> 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). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

10. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>17</sup> If you have questions regarding payment procedures,

<sup>13</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 73.3526(b)–(c).

<sup>14</sup> 47 C.F.R. § 1.80.

<sup>15</sup> 47 U.S.C. § 504(a).

<sup>16</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>17</sup> See 47 C.F.R. § 1.1914.

please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

11. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class Mail and Certified Mail, Return Receipt Requested to Hispanic Target Media, Inc., 2433 E. Palo Verde St., Yuma, Arizona, 85365, and Meredith S. Senter, Jr., Esquire, Lerman Senter PLLC, 2000 K Street, N.W., Suite 600, Washington DC 20006, its counsel of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau