

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

In the Matter of)	
)	
Vision Latina Broadcasting, Inc.)	File No.: EB-FIELDSCR-13-00008837 ¹
)	NAL/Acct. Nos.: 201232540005,
Former Licensee of Station KBPO)	201232540006
Port Neches, Texas)	FRN: 0010019115
)	Facility ID No.: 68762
)	

ORDER

Adopted: June 9, 2014

Released: June 9, 2014

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Order, we find that Vision Latina Broadcasting, Inc. (Vision Latina), former licensee² of Station KBPO in Port Neches, Texas (Station), failed to make available a complete public inspection file.³ In light of Vision Latina's poor financial condition and the other factual circumstances of this case, however, we do not impose a forfeiture. Nevertheless, we warn Vision Latina that future violations may result in substantial forfeitures, regardless of its financial situation.

II. BACKGROUND

2. On December 9, 2010, agents from the Enforcement Bureau's Houston Office (Houston Office) inspected the Station's public inspection file during regular business hours and found it was missing, among other things, all issues-programming lists.⁴ The Enforcement Bureau issued a *Notice of Apparent Liability for Forfeiture and Order*⁵ to Vision Latina for its violations, among other things, of the Commission's public inspection file rules.⁶ 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."⁷ On August 25, 2011, Vision Latina submitted a certification that "[i]n coordination with [an independent inspector], 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

¹ The contents of File No. EB-10-HU-0668 have been incorporated into File No. EB-FIELDSCR-13-00008837.

² Station KBPO was assigned to Christian Ministries of the Valley, Inc. on March 27, 2013. See File No. BAL-20090521AAE. Vision Latina currently holds no broadcast licenses.

³ See 47 C.F.R. § 73.3526.

⁴ See *Vision Latina Broadcasting, Inc.*, Forfeiture Order, 27 FCC Rcd 2978 (Enf. Bur. 2012) (*forfeiture paid*).

⁵ See *Vision Latina Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 9231 (Enf. Bur. 2011) (*1st NAL*).

⁶ See 47 C.F.R. § 73.3526.

⁷ *1st NAL* at 9231.

as of the date of this response.”⁸ On October 13, 2011 agents from the Houston Office inspected the public inspection file for the Station located at its main studio. The file made available by Station staff did not contain any issues-programs lists.

3. On June 14, 2012, the Houston Office issued two *Notices of Apparent Liability for Forfeiture (NALs)*⁹ to Vision Latina for violations stemming from its incomplete public inspection file and the certification submitted in response to the *1st NAL*. In response to the *NALs*, Vision Latina asserts that it had “logs with respect to the programming aired on the Station” in the public inspection file but not in the issues program lists folder of the public inspection file.¹⁰ “While the logs did not provide a paragraph describing the details of each program, the logs did include the title of the programs, the type of programming, and the days of the week the programming was carried on the Station.”¹¹ Vision Latina also asserts that after an independent consultant reviewed the Station’s public inspection file, its principals immediately “reviewed the public [inspection] file contents, and believed that all of the information identified by the independent inspector was present in the Station’s public [inspection] file as of August 25, 2011. Only after the October 13, 2011 inspection by the Commission did Vision come to understand that the logs they had been maintaining had to be placed in the ‘Issues Programs List’ folder . . .” and had to contain a description of the programming.¹² Accordingly, Vision Latina asserts it exercised at least minimal diligence prior to submitting its certification. Finally, Vision Latina requests that the Commission reduce or cancel the forfeitures because it “simply cannot pay the proposed forfeiture[s].”¹³

III. DISCUSSION

4. The proposed forfeiture amounts in this case were assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),¹⁴ Section 1.80 of the Rules,¹⁵ and the *Forfeiture Policy Statement*.¹⁶ In examining Vision Latina’s response, Section 503(b)(2)(E) 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.¹⁷ As discussed below, we have considered Vision Latina’s response in light of these statutory factors and take the following actions.

⁸ 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*) (on file in EB-FIELDSCR-13-00008837).

⁹ *Vision Latina Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6246 (Enf. Bur. 2012) (NAL/Account No. 201232540005, negligent misrepresentation). *Vision Latina Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6258 (Enf. Bur. 2012) (NAL/Account No. 201232540006, public inspection file). A comprehensive recitation of the facts and history of this case can be found in the *NALs* and is incorporated herein by reference.

¹⁰ Letter from Gilardo Castro, President Vision Latina Broadcasting, Inc., to Lee R. Browning, Resident Agent, Houston Office, Enforcement Bureau, at 1 (July 9, 2012) (*NAL Response*) (on file in EB-FIELDSCR-13-00008837).

¹¹ *Id.*

¹² *Id.* at 1-2.

¹³ *Id.* at 2.

¹⁴ 47 U.S.C. § 503(b).

¹⁵ 47 C.F.R. § 1.80.

¹⁶ *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*).

¹⁷ 47 U.S.C. § 503(b)(2)(E).

A. Provision of Incorrect Material Factual Information to the Commission

5. Vision Latina certified on August 25, 2011 that the Station's public inspection file was complete. However, on October 13, 2012, agents from the Houston Office found no issues programs lists in the public inspection file. In the *NALs*, the Bureau concluded that had Vision Latina exercised even minimal diligence prior to submission of its certification, it would not have submitted incorrect and misleading factual information in its certification. In response to the *NALs*, Vision Latina clarified that after it hired an outside consultant to correct Station KBPO's public inspection file, its principals physically inspected and confirmed that what the outside consultant stated qualified as issues programs lists was located in the Station's public inspection file.¹⁸ Even though the outside consultant's advice was incorrect, Vision Latina asserts it believed in good faith that it was compliant and that it exercised minimal diligence by hiring an expert, relying on his advice, and double-checking that the consultant's work was performed.¹⁹ Based on this new information, we agree and conclude that Vision Latina did not negligently provide incorrect information to the Bureau.

B. Failure to Make Available a Complete Public Inspection File

6. However, we affirm the *NALs*' findings that Vision Latina willfully violated Section 73.3526 of the Rules. 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.²⁰ 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."²¹ The public inspection file must be maintained at the main studio of the station,²² and must be available for public inspection at any time during regular business hours.²³

7. As set forth in the *NALs*, on October 13, 2012, agents from the Houston Office asked to inspect the Station's public inspection file. The agents looked through the issues programs lists folder and found no issues programs lists. Station staff was unaware of the location of any issues programs lists during the inspection. Although Vision Latina claims that its daily programming logs were located in the public inspection file,²⁴ it is undisputed that on October 13, 2012, it failed to make any issues programs lists available to the agents. Moreover, had the agents observed the daily programming logs, they would have concluded that such logs did not qualify as issues programs lists. Thus, based on the evidence before us, we find that Vision Latina willfully violated Section 73.3526 of the Rules by failing to make available a complete public inspection file.

¹⁸ *NAL Response* at 1-2.

¹⁹ *Id.* at 2.

²⁰ 47 C.F.R. § 73.3526(a)(2).

²¹ 47 C.F.R. § 73.3526(e)(12).

²² 47 C.F.R. § 73.3526(b).

²³ 47 C.F.R. § 73.3526(c).

²⁴ Agents from the Houston Office looked through the contents of the entire public inspection file but are unable to recall if the issues programs logs described by Vision Latina were present on October 13, 2012.

C. Inability to Pay Claim

8. We grant Vision Latina's request that it not be required to pay the \$25,000 proposed forfeiture based on its demonstrated inability to pay. With regard to an individual's or entity's inability to pay claim, the Commission has determined that, in general, gross income or revenues are the best indicator of an ability to pay a forfeiture.²⁵ We have reviewed Vision Latina's financial documentation and find that we have sufficient basis to impose no forfeiture penalty due to demonstrated inability to pay.

9. Ability to pay a forfeiture, however, is just one of the criteria we must consider when determining the appropriate forfeiture penalty.²⁶ In cases of egregious or repeated misconduct, for example, we may decline to reduce a forfeiture despite a demonstrated inability to pay.²⁷ In this case, however, while Vision Latina failed to cure its violation of the Commission's rules, forfeiture is not appropriate here. Although "[r]eliance on inaccurate legal advice will not absolve a licensee of responsibility for a violation, [it] can serve as evidence that the licensee made an effort to assess its obligations, that its assessment was reasonable, if erroneous, and was made in good faith."²⁸ Because Vision Latina relied on the advice of an outside consultant, asserted it placed daily programming logs in the public inspection file prior to the October 13, 2012 inspection, and paid in full its prior forfeiture, we conclude that it acted in good faith and should be afforded mitigation of the forfeiture.

10. Although we do not impose a forfeiture, we nevertheless find it appropriate to admonish Vision Latina for its willful violation of Section 73.3526 of the Rules. We also remind Vision Latina of its obligation to continue to comply with the public inspection file requirements should it acquire any broadcast licenses. Future violations of the Rules may result in substantial monetary penalties, regardless of Vision Latina's financial condition.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Rules, the proposed forfeitures associated with NAL/Account Numbers 201232540005 and 201232540006 issued to Vision Latina Broadcasting, Inc. **WILL NOT BE IMPOSED** and that the finding of willful violation of Section 73.3526 of the Rules **IS AFFIRMED**.²⁹

²⁵ See *Long Distance, Inc.*, Forfeiture Order, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, Forfeiture Order, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

²⁶ 47 U.S.C. § 503(b)(2)(E).

²⁷ See, e.g., *Whisler Fleurinor*, Forfeiture Order, 28 FCC Rcd 1087 (Enf. Bur. 2013) (affirming \$25,000 forfeiture and rejecting inability to pay claim because violator was previously afforded a reduction based on inability to pay, but later committed the same violation). *Accord Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur. 2011) (holding that violator's repeated acts of malicious and intentional interference outweigh evidence concerning his ability to pay claim), *aff'd*, Memorandum Opinion and Order, 28 FCC Rcd 1170 (Enf. Bur. 2013) (further request for reconsideration pending); *Hodson Broadcasting Corp.*, Forfeiture Order, 24 FCC Rcd 13699 (Enf. Bur. 2009) (holding that permittee's continued unauthorized operation outweighed its inability to pay claim).

²⁸ *Hill Country Radio, Inc.*, Memorandum Opinion and Order and Forfeiture Order, 14 FCC Rcd 17708 (MB 1999) (considered licensee's reliance on incorrect advice of counsel as a mitigating factor when reducing proposed forfeiture) See also *Hualapai Broadcasters, Inc.*, Memorandum Opinion and Order, 77 Rad. Reg. 2d 930 (MB 1993) (considered licensee's reliance on inaccurate advice of counsel as evidence of good faith and as a mitigating factor when reducing proposed forfeiture).

²⁹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 73.3526.

12. **IT IS FURTHER ORDERED** that Vision Latina Broadcasting, Inc. **IS ADMONISHED** for willful violation of Section 73.3526 of the Rules.³⁰

13. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Vision Latina Broadcasting, Inc. at 419 Stadium Road, Port Arthur, Texas 77642 and to its counsel, Lee G. Petro, at Drinker, Biddle & Reath, LLP, 1500 K Street NW, Suite 1100, Washington, DC 20005-1209.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau

³⁰ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4); 73.3526.