

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

In the Matter of)	
)	
IHM Licenses, LLC)	File No.: EB-IHD-19-00029572
)	NAL/Acct. No.: 202132080022
Licensee of Station WBGG-FM, Fort Lauderdale, FL)	FRN: 0014042816

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 1, 2022

Released: March 1, 2022

By the Acting Chief, Enforcement Bureau:

I. INTRODUCTION

1. The Federal Communications Commission (FCC or Commission) rules require licensees to fully and accurately disclose material contest terms and conduct contests substantially as announced and advertised. In this Notice of Apparent Liability For Forfeiture (NAL), we find that IHM Licenses, LLC (Licensee),¹ licensee of WBGG-FM (Station), Fort Lauderdale, Florida, apparently violated the Commission's rules when it failed to allow a prospective participant to enter a contest for reasons at odds with the written rules for the contest, thereby not conducting the contest substantially as announced or advertised. Further, Licensee apparently failed to maintain the contest's rules on the Station's website for at least 30 days after the end of the contest. We therefore propose a penalty of \$20,000 against Licensee for its apparent violation of the Commission's rules.²

II. BACKGROUND

2. *Legal Background.* Section 73.1216 of the Commission's rules (Contest Rule) requires a licensee to "fully and accurately disclose the material terms" of a contest it broadcasts or advertises, and to conduct the contest "substantially as announced and advertised."³ In 2015, the Commission updated section 73.1216 to permit broadcast licensees to disclose material contest terms either by broadcasting

¹ During the pendency of this case, the Station license was assigned, *pro forma*, from Clear Channel Broadcasting Licenses, Inc. to IHM Licenses, LLC (Licensee). Assignment of Authorization, File No. BALH-20201019ADX (filed Oct. 19, 2020) (Assignment Authorization), <https://enterpriseefiling.fcc.gov/dataentry/views/public/assignmentDraftCopy?displayType=html&appKey=aa132496ea75450b9bf7c1b6063ebeb7&id=aa132496ea75450b9bf7c1b6063ebeb7&goBack=N>.

² Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, 72 Stat. 384 (codified as amended at 15 U.S.C. §§ 631 *et seq.* (2010))) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

³ 47 CFR § 73.1216(a); *Amendment of Section 73.1216 of the Commission's Rules*, Report and Order, 30 FCC Rcd 10468, 10468-69, para. 3 (updating rule to permit broadcasters to comply with contest disclosure requirements by either broadcasting material contest terms or making them available in writing on a publicly available Internet website but also affirming the Rule's core principles) (2015 *Section 73.1216 Report and Order*); *see, e.g., Boonville Broadcasting Company, Licensee of Station WEJK(FM), Boonville, Indiana*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 2845 (EB 2014) (deeming radio licensee liable for failure to conduct a contest substantially as announced and fully and accurately disclose its material terms) (forfeiture paid).

those terms or making them available in writing on a publicly accessible internet website, and required that the licensee maintain material contest terms on the website for at least thirty days after the contest has concluded.⁴ At the same time, the Commission affirmed the core principles of section 73.1216, including the requirement that contests be conducted substantially as announced and advertised.⁵ Material terms include any eligibility restrictions and means of selecting winners.⁶ In applying the Commission's rule, any ambiguities in contest rule disclosures will be construed against the licensee.⁷ In this regard, the Enforcement Bureau (Bureau) has found a failure to disclose material terms when the contest rules were ambiguous and open to various interpretations.⁸ Contest broadcast announcements are considered "false, misleading, or deceptive" if the net impression of the announcement has a tendency to mislead the public.⁹ Moreover, there is a violation of the Contest Rule when station personnel misapply a station's contest rules resulting in the wrongful exclusion of contestants.¹⁰

3. *Factual Background.* The Bureau received a complaint alleging that the Licensee violated the Contest Rule by excluding the complainant (Complainant) from participating in the Station's "You Can't Win" contest due to a Station employee's erroneous determination of eligibility.¹¹ Specifically, the Complainant attempted to participate in the "You Can't Win" contest on May 30, 2019.¹² Prior to his attempted participation in the contest, Complainant won a separate Station-run contest, the "Southwest Flyaway Fridays" contest, on March 1, 2019.¹³ Station personnel, screening participant callers for "You Can't Win", purportedly applied a 90-day lockout on prior winners, even though the "You Can't Win" contest's written rules only excluded persons who had won in the prior 30 days.¹⁴

⁴ 47 CFR §§ 73.1216(a), 73.1216(c)(3); *2015 Section 73.1216 Report and Order*, 30 FCC Rcd at 10468-69, paras. 1, 3.

⁵ *Id.*

⁶ *Clear Channel Communications, Inc., et al.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 343, 345, para. 5 (EB 2012) (citing 47 CFR § 73.1216, nn.1(b)-2).

⁷ *See, e.g., 2015 Section 73.1216 Report and Order*, 30 FCC Rcd 10468, 10478 ("[t]o the extent that there are any ambiguities in contest disclosures that generate inconsistency, we place broadcasters on notice that the Commission will construe such ambiguities against the licensee"). Any ambiguities created by employees' communicated interpretation of the licensee's rule are also attributed to the licensee, *see Amendment of Part 73 of the Commission's Rules Relating to Licensee-Conducted Contests*, 53 FCC 2d 934, 935, para. 29 (1975) ("[i]f due to inadequate licensee supervision, station employees do not conduct a contest properly, the licensee will be held accountable").

⁸ *See, e.g., Journal Broadcast Corp.*, Forfeiture Order, 28 FCC Rcd 2259, 2262-63, para. 7 (failure to disclose material terms and the means of selection of winners in ambiguous and lacking announcement) (EB 2013).

⁹ *Capstar TX Limited Partnership*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 10636, 10639, n. 18 (EB 2005) (citing *WMJX, Inc.*, Decision, 85 FCC 2d 251, 270-72 (FCC 1981) (licensees will be held accountable for broadcasting ambiguous contest rules that tend to mislead the public)).

¹⁰ *See, e.g., Entercom Wichita License, LLC*, Forfeiture Order, 24 FCC Rcd 1270, 1273-74, para. 9 (EB 2009) (station failed to broadcast any material terms of the contest in contravention of corporate policy and "even Station personnel were unclear as to how winners were selected"); *Clear Channel Broadcasting Licenses, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 4072, 4074-75, para. 9, 13 (EB 2006) (personnel excluded multiple entries from consideration contrary to contest rules) (forfeiture paid).

¹¹ Complaint No. 3335206 (June 18, 2019) (on file in EB-IHD-19-00029572) (Complaint).

¹² Complaint. The alleged violation occurred during the Station's current license term, which expired on February 1, 2020. The Station's license renewal application remains pending. *See* 47 U.S.C. § 503(b)(6)(A).

¹³ Letter from Kathryn C. Dickerson, Wiley Rein LLP, Counsel to Licensee and parent company iHeartMedia, Inc., to Anya Baez, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Feb. 18, 2020) (on file in EB-IHD-19-00029572) (LOI Response) at 2.

¹⁴ Complaint.

4. In response to the Bureau's Letter of Inquiry (LOI),¹⁵ Licensee admitted that "as a result of human error, it appears that the Station did not conduct a contest ["You Can't Win"] in strict compliance with the written rules for that contest."¹⁶ In this regard, the Licensee's employee "applied the incorrect past winner eligibility exclusion to Complainant."¹⁷ Further, Licensee admits that it failed to maintain the "You Can't Win" contest's rules on its website for at least 30 days after the end of the contest, instead taking them down the day the contest ended.¹⁸ Licensee contends that the violation was not "material because [Complainant] was otherwise ineligible to participate,"¹⁹ and that the Complainant would have been ineligible even if the screener followed the correct 30-day exclusion.²⁰ Licensee acknowledges that the contest's rules stipulate that "[a]ny person who has won a prize (or whose household has won a prize) in any promotion sponsored by Sponsor in the thirty (30) days prior to this Sweepstakes *start date* is not eligible to win a prize in this Sweepstakes" (*emphasis added*).²¹ Licensee asserts further, however, that this contest rule provision also excludes any person who wins another prize at any time while the contest is ongoing.²² The "You Can't Win" contest's start date was January 7, 2019, and therefore, Licensee contends that "any individual who won another contest conducted by the Station on or *after* December 8, 2018 was ineligible to win the 'You Can't Win' contest."²³ Here, Complainant won the separate "Southwest Flyaway Fridays" contest on March 1, 2019, and Licensee therefore deemed the Complainant ineligible to win a prize in the "You Can't Win" contest.²⁴

5. After having been excluded, Complainant immediately consulted the Licensee's published contest rules and notified the Station's screener of the apparent error,²⁵ but the screener did not change his determination.²⁶ The following day, on May 31, 2019, Complainant corresponded with the Station's parent company, and was advised that its customer care representative would forward this information to the proper corporate official to "look into [the matter] further,"²⁷ but ultimately the Licensee did not resolve the matter.²⁸

¹⁵ Letter of Inquiry from Christopher J. Sova, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Clear Channel Broadcasting Licenses, Inc. (Jan. 10, 2020) (on file in EB-IHD-19-00029572) (LOI).

¹⁶ LOI Response at 1.

¹⁷ *Id.* at 2 (employee "believed he was properly excluding Complainant from entering the Contest based on a 90-day past winner eligibility exclusion period").

¹⁸ *Id.* at 6.

¹⁹ *Id.* at 1.

²⁰ *Id.* at 1-2.

²¹ *Id.* at Exhibit E.

²² *Id.* at 2.

²³ *Id.*

²⁴ *Id.*

²⁵ Complaint.

²⁶ LOI Response at 7.

²⁷ *Id.* at 7-8.

²⁸ *Id.* at Exhibit L.

III. DISCUSSION

A. Licensee Apparently Violated the Contest Rule

6. We find that Licensee failed to conduct its contest “fairly and substantially as represented to the public,” in apparent violation of section 73.1216.²⁹ In particular, Licensee’s application of its contest rules regarding participant eligibility was inconsistent with the written “You Can’t Win” contest rules. Complainant did not win a prize in the 30 days prior to this sweepstakes start date, the period from December 8, 2018, to January 7, 2019, but rather, won a separate Station contest on March 1, 2019, almost two months *after* the start date of the “You Can’t Win” contest. In defending its conduct, Licensee asserts that its “You Can’t Win” contest rules excluded anyone who had won a different Station contest between 30 days before the start of the “You Can’t Win” contest until the “You Can’t Win” contest ended. However, this interpretation is not supported by the plain language of the rules for the “You Can’t Win” contest, which excludes only persons who had won a Station contest within 30 days prior to the start of the “You Can’t Win” contest and says nothing about the exclusionary period “beginning” the thirty days prior to the Sweepstakes start date or lasting until the end of the contest.³⁰

7. As noted above, even if there was an ambiguity in the “You Can’t Win” contest’s rules, Commission precedent makes clear that ambiguous rules are to be construed against the interests of the promoter of the contest.³¹ Undermining Licensee’s argument further is that, according to Licensee, the Station’s standard protocol since 2002 had been to have its contest screeners ask callers whether they had won a Station contest in the past 90 calendar days.³² Thus, the Station apparently did not ask contestants whether they won another Station contest *before the start date* of the “You Can’t Win” Contest, as would have been required in order to determine eligibility for the “You Can’t Win” contest per its rules. There was a clear conflict between the eligibility standards Licensee claims were proscribed in the published “You Can’t Win” contest rules and the representations the Station made to callers under its standard protocol.

8. Further, even if we accept, *arguendo*, Licensee’s assertion that the Complainant was ineligible to participate in the contest, that would not render the allegations raised in the Complaint “immaterial,” as Licensee contends.³³ A complaining party does not need to be a qualified contestant in order to have standing to complain about the manner in which a station contest is conducted. Such complaints alert the Commission to potential licensee misconduct, enabling it to investigate whether such

²⁹ *Public Notice Concerning Failure of Broadcast Licensees to Conduct Contests Fairly*, Public Notice, 45 FCC 2d 1056, 1056 (1974).

³⁰ *See, supra*, note 21.

³¹ *2015 Section 73.1216 Report and Order*, 30 FCC Rcd 10468, 10478 (the Commission will construe any ambiguities in contest disclosures against the licensee).

³² LOI Response at 1.

³³ LOI Response at 1, 2 (conceding that the Station did not conduct a contest in strict compliance with the written rules for that contest, but stating that the “error, however, does not appear to be material because [Complainant] was otherwise ineligible to participate in the contest at issue). The Complainant has standing as a regular listener of the Station, evidenced by his participation in multiple Station contests. In the broadcast regulatory context, standing is generally obtained if the petitioner is “a resident of the station’s service area or regular listener of the station.” *See, e.g., Entercom License, LLC*, Hearing Designation Order, 31 FCC Rcd 12196, 12205, para. 22 (FCC 2016) (citing *Chapin Enterprises, LLC*, Memorandum Opinion and Order, 29 FCC Rcd 4250 (MB 2014); *CHET-5 Broadcasting, L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 13041, 13042 (1999) (“[W]e will accord party-in-interest status to a petitioner who demonstrates either residence in the station’s service area or that the petitioner listens to or views the station regularly, and that such listening or viewing is not the result of transient contacts with the station”); *Office of Communications of the United Church of Christ v. FCC*, 359 F.2d 994, 1000-1006, 123 U.S. App. D.C. 328 (D.C. Cir. 1966) (expanding standing from traditional categories of electrical interference or economic injury to station listeners)).

licensee has operated its station consistent with the public interest.³⁴ In the instant case, the Bureau's investigation of the Complainant's allegations uncovered that the Licensee failed to conduct the "You Can't Win" contest substantially in accordance with the contest's rules, and that the Licensee failed to maintain the 'You Can't Win' Contest's rules on its website for at least 30 days after the end of the Contest, in violation of the Contest Rule.³⁵

B. Proposed Forfeiture

9. Section 503(b) of the Communications Act of 1934, as amended (Act),³⁶ authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission."³⁷ 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.³⁸ Licensee's improper contestant exclusion in contravention of the rules, as well as its failure to maintain the Contest's rules on its website for at least 30 days after the end of the Contest, were, under the law, willful, regardless of whether those acts or omissions were inadvertent, unintentional, the result of human error, or a miscommunication.³⁹ Based upon the record before us, we find that Licensee's apparent violation of section 73.1216 was willful.

10. Section 503(b)(2)(A) of the Act authorizes the Commission to assess a forfeiture against the Licensee of up to \$55,052 per violation or for each day of a continuing violation, up to a statutory maximum of \$550,531 for a single act or failure to act.⁴⁰ In exercising our forfeiture authority, we consider 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, substantial economic gain, and such

³⁴ See *CBS Radio Inc. of Philadelphia*, Memorandum Opinion and Order, 24 FCC Rcd 10993, 10994-95, para. 4 (EB 2009) (all members of the public have standing to file licensee-conducted contest complaints because "consumer participation assists the Commission in ensuring that all licensees are in full compliance with applicable rules and properly discharging their statutory duty to operate in the public interest"), *aff'd*, Order, 24 FCC Rcd 12047, 12053, para. 14 (EB 2009).

³⁵ *2015 Section 73.1216 Report and Order*, 30 FCC Rcd 10468, 10475-76, paras. 2, 16 ("We believe that requiring broadcasters to maintain contest terms online for a reasonable period of time after a contest winner has been selected is necessary to ensure that contest information is readily available not only to potential contest participants, but also to actual contestants or others who wish to consult or confirm the rules after the contest has ended.").

³⁶ 47 U.S.C. § 151 *et seq.*

³⁷ 47 U.S.C. § 503(b).

³⁸ 47 U.S.C. § 312(f)(1). 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, and the Commission has so interpreted the term in the section 503(b) context. H.R. Rep. No. 97-765, at 51 (1982), as reprinted in 1982 U.S.C.C.A.N. 2261, 2294-95 ("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"); see, e.g., *Southern California Broadcast Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992).

³⁹ *CBS Radio Holdings, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 10099, 10103, para. 9 (EB-IHD 2012) (inadvertence does not prevent a licensee-conducted contest rule violation from being found willful or preclude liability) (forfeiture paid); *Farnell O'Quinn*, Memorandum Opinion and Order, 19 FCC Rcd 17428, 17429-30, para. 6 (EB 2004) (the term "willful" in section 503(b) of the Act does not require a finding that the rule violation was intentional or that the violator was aware that it was committing a rule violation).

⁴⁰ 47 U.S.C. § 503(b)(2)(A); 47 CFR § 1.80(b)(1); see *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 87 Fed. Reg. 396 (Jan. 5, 2022).

other matters as justice may require.⁴¹ In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.⁴² Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.⁴³

11. Section 1.80 of the Commission's rules sets a base forfeiture of \$4,000 for each "violation of requirements pertaining to broadcasting of lotteries or contests."⁴⁴ In this matter, we first apply the \$4,000 base forfeiture to Licensee's apparent violation of section 73.1216 based on its failure to conduct the Contest over the Station substantially as announced, because it did not select contest participants as advertised. We have discretion, however, to make adjustments to the base forfeiture, taking into account the particular facts of each individual case.⁴⁵

12. In this case, given the totality of the circumstances, and consistent with the *1997 Forfeiture Policy Statement*, we conclude that an upward adjustment is warranted. This adjustment is based upon the statutory factors, including the nature and circumstances of the violation. Section 503(b) of the Act requires the Commission to consider "with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁴⁶ In this instance, the Licensee is the pro forma assignee of an affiliate⁴⁷ with a history of violating the Contest Rule.⁴⁸ The Licensee also failed to maintain the 'You Can't Win' Contest's rules on its website for at least 30 days after the end of the Contest. Thus, the factors under section 503 of the Act and section 1.80 of the Commission's rules support an upward adjustment to the base forfeiture amount.⁴⁹

⁴¹ 47 U.S.C. § 503(b)(2)(E).

⁴² 47 CFR § 1.80(b)(10), Note to paragraph (b)(10).

⁴³ *Id.*

⁴⁴ 47 CFR § 1.80.

⁴⁵ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17098–99, para. 22 (1997) (noting that "[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act") (*1997 Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

⁴⁶ 47 U.S.C. § 503(b)(2)(E).

⁴⁷ During the pendency of this case, the Station license was assigned, *pro forma*, from Clear Channel Broadcasting Licenses, Inc. to IHM Licenses, LLC (Licensee), *see* Assignment Authorization.

⁴⁸ *See, e.g., Clear Channel Broadcasting Licenses, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 4072, 4074-75, para. 9, 13 (EB 2006) (forfeiture paid) (licensee excluded multiple entries from consideration and took remedial action before our investigation); *Clear Channel Broadcast Licenses, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 6808, 6811, para. 9 (EB-IHD 2006) (forfeiture paid) (fined \$6,000 for promoting a false contest, including upward adjustment based in part on licensee's history of prior violations), *see, e.g., Capstar TX Limited Partnership*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 10636 (EB 2005) (forfeiture paid); *Citicasters, Co.*, Notice of Apparent Liability, 15 FCC Rcd 16612, 16613-14 (EB 2000) (forfeiture paid); *Clear Channel Broadcasting Licenses, Inc.*, Notice of Apparent Liability, 15 FCC Rcd 2734, 2735 (EB 2000) (forfeiture paid); *Clear Channel Communications, Inc., Ultimate Parent Company of AM FM Broadcasting Licenses, LLC, Citicasters Licenses, Inc., Capstar TX LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 343, 347-48, para. 9 (EB-IHD 2012) (cautioning the imposition of even higher forfeitures if such misconduct persists, *see, e.g., AMFM Broadcasting*, 24 FCC Rcd 1529 (EB 2009) (imposing a forfeiture for failure to conduct a contest as announced and advertised) (forfeiture paid)).

⁴⁹ *See South Central Communications Corporation, Licensee of Stations WIKY-FM, Evansville, Indiana; WABX(FM), Evansville, Indiana; WLFW(FM), Chandler, Indiana; & WSTO(FM), Owensboro, Kentucky*, Notice of

(continued)

13. In applying the applicable statutory factors, we must also consider whether any factors support a downward adjustment of the proposed forfeiture. Even assuming, *arguendo*, that Licensee's actions were inadvertent, negligent, or the result of human error, under pertinent Commission precedent, such factors are neither exculpatory nor mitigating, and do not support any downward adjustment.⁵⁰ Furthermore, the Complainant's reliance on the Licensee's published contest rules and immediate notification to the Station regarding its apparent rule application error, should have alerted Licensee to its failure to maintain the contest rules on its website, and keep it available for public inspection. Therefore, after applying and balancing the factors specified in the *1997 Forfeiture Policy Statement*, section 1.80 of the Commission's rules, and the statutory factors, we find that Licensee is apparently liable for a forfeiture of \$20,000.⁵¹

IV. CONCLUSION

14. We have determined that Licensee apparently willfully violated sections 73.1216(a) and 73.1216(c)(3) of the Commission's rules. Upon consideration of the facts of the case, and the factors specified in the *1997 Forfeiture Policy Statement*, section 1.80 of the Commission's rules, and the statutory factors, we find that Licensee is apparently liable for a forfeiture of \$20,000.

V. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act⁵² and sections 0.111, 0.311 and 1.80 of the Commission's rules,⁵³ IHM Licenses, LLC, **IS HEREBY NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Twenty Thousand Dollars (\$20,000) for willful violation of section 73.1216 of the Commission's rules.⁵⁴

16. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,⁵⁵ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, IHM Licenses, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 19 below.

17. IHM Licenses, LLC shall send electronic notification of payment to Anya Baez,

Apparent Liability for Forfeiture, 29 FCC Rcd 2855 (EB 2014) (upward adjustment imposed for delaying award by over a year and failing to remedy violations until after the Bureau opened an investigation) (forfeiture paid).

⁵⁰ See *Unipoint Technologies, Inc. d/b/a Comfi.com d/b/a Masterbell.com d/b/a Pushline.com a/k/a Communications Fidelity*, Forfeiture Order, 29 FCC Rcd 1633, 1640, para. 21 (2014) ("It is immaterial whether [the licensee's] violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight."), *default judgment entered, United States v. Unipoint Technologies, Inc.*, No. 14-12020-LTS, 2016 WL 8902575, at *1-2 (D. Mass. Apr. 27, 2016); *Texas Soaring Association, Inc. Midlothian, Texas*, Forfeiture Order, 28 FCC Rcd 10740, 10743-44, para. 7 (EB 2013) ("Even if administrative oversight, inadvertence, or a lack of familiarity with the Rules may have contributed to the violation, they do not . . . mitigate liability arising therefrom") (footnotes omitted) (forfeiture paid); *Cascade Access, L.L.C.*, Forfeiture Order, 28 FCC Rcd 141, 145, para. 9 (EB 2013) (rejecting argument that the unintentional nature of the violation justifies mitigation of the forfeiture amount), *recons. denied*, Memorandum Opinion and Order, 30 FCC Rcd 14018 (EB 2015) (forfeiture paid); *América Móvil, S.A.B. de C.V. Parent of Puerto Rico Telephone Company, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8672, 8676, para. 11 (EB 2011) ("it is well established that administrative oversight or inadvertence is not a mitigating factor warranting a downward adjustment of a forfeiture.") (forfeiture paid).

⁵¹ See *Clear Channel Communications, Inc.*, 27 FCC Rcd at 347-48, para. 9 (\$22,000 forfeiture, cautioning the imposition of higher forfeitures if such misconduct persists) (forfeiture paid).

⁵² 47 U.S.C. § 503(b).

⁵³ 47 CFR §§ 0.111, 0.311, 1.80.

⁵⁴ 47 CFR § 73.1216.

⁵⁵ 47 CFR § 1.80.

Enforcement Bureau, Federal Communications Commission, at Anya.Baez@fcc.gov on the date that said payment is made. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account, or by wire transfer using the Commission's FRN Management and Financial system.⁵⁶ The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:⁵⁷

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated.⁵⁸ Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN). For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99-dollar limitation on credit card transactions.
- Payment by ACH must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

18. Any request for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554. Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

19. 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

⁵⁶ Payments made using CORES do not require the submission of an FCC Form 159.

⁵⁷ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

⁵⁸ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

to sections 1.80(f)(3) and 1.16 of the Commission's rules.⁵⁹ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Investigations and Hearings Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Christopher J. Sova at Christopher.Sova@fcc.gov, Kenneth M. Scheibel, Jr. at Kenneth.Scheibel@fcc.gov, and Anya Baez at Anya.Baez@fcc.gov. The electronic copy shall be produced in a format that allows the Commission to access and use it, together with instructions and all other materials necessary to use or interpret the data, including record layouts, data dictionaries, and a description of the data's source. All responses, accompanying documentation, affidavits, and attachments, including recordings, exceeding 5MB must be sent to the Commission's secure online file system by e-mailing such documents as attachments to: WBG00dav0w4puhp9dkq@u.box.com, consistent with the following parameters:

- Upload documents and supporting documentation as e-mail attachments only. Only the attachments will be uploaded to the secure folder. **E-mails and any accompanying text used for the purpose of uploading attachments, will NOT be uploaded to the secure folder.**
- Each e-mail upload of documents and supporting documentation must not exceed 50MB. Multiple e-mails may be necessary to upload attached files that exceed a total of 50MB.
- Copies of e-mails containing text that are responsive to this Notice of Apparent Liability for Forfeiture must be uploaded separately as .PDF or .ZIP file attachments.
- Both designated Commission staff and the sender will receive a notification e-mail that files were uploaded successfully.
- If you need help or have questions about how to provide electronic copies of the response or any accompanying documents or recordings, please contact Anya Baez at Anya.Baez@fcc.gov or 202-418-1879 **no later than two business days prior to the response due date to ensure timely transmission of the response.**

20. 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; 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.

⁵⁹ 47 CFR §§ 1.80(f)(3), 1.16.

21. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested to IHM Licenses, LLC, 7136 S. Yale Avenue, Suite 501, Tulsa, OK 74136, and to Kathryne C. Dickerson, Wiley Rein LLP, Counsel to IHM Licenses, LLC and parent company iHeartMedia, Inc., 2050 M Street NW, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Acting Chief
Enforcement Bureau