

Federal Communications Commission

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

In the Matter of)	File No. EB-05-SD-172
)	
Cortaro Broadcasting Corporation)	NAL/Acct. No. 200632940003
Licensee of KCKY (AM), Coolidge, AZ)	
Facility ID No. 48814)	FRN: 0007276561

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 14, 2006

By the District Director, San Diego District Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Cortaro Broadcasting Corporation (“Cortaro”), the licensee of AM station KCKY, in Coolidge, Arizona, apparently willfully and repeatedly violated Section 73.3526 of the Commission’s Rules (Rules)¹ by failing to maintain a complete public inspection file. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that KCKY is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. On August 9, 2005, an agent of the Enforcement Bureau’s San Diego Office conducted an inspection of the public inspection file for KCKY at 13968 Harmony Road, Coolidge, Arizona. The agent was informed during the inspection that there was in effect a local marketing agreement between KASA Radio Hogar, Inc. and Cortaro. While examining the public inspection file, the agent observed that the KCKY public inspection file was not complete. Specifically, there were no copies of applications filed by Cortaro since 1983, no ownership report since 1990, no radio issues/programs lists since 1994, and no copies of any time brokerage agreements.

3. Because the license period for radio stations in the State of Arizona ended on October 1, 2005,³ Cortaro was required to file a renewal application for KCKY with the Commission no later than June 1, 2005, as required by Section 73.3539(a) of the Rules.⁴ A search of Commission’s records by the San Diego agent revealed Cortaro did file a timely renewal application.⁵ The search also revealed an assignment of license in 2003, and an application for a construction permit for a major modification, filed

¹ 47 C.F.R. § 73.3526.

² 47 U.S.C. § 503(b).

³ 47 C.F.R. § 73.1020(a) and (a)(13)(i).

⁴ 47 C.F.R. § 73.3539(a).

⁵ See File No. BR - 20050601CET, filed June 1, 2005 (Broadcast Renewal Application).

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on January 13, 2005, was also pending.⁶ As of the date of this NAL, the renewal application remains pending.

III. DISCUSSION

4. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully 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. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁷ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁸

5. Section 73.3526(a)(2) of the Rules requires that every licensee of an AM station licensee shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10) and paragraphs (e)(12) through (e)(14) of this section as well as paragraph (e)(16) of this section.⁹ Further, as required by Section 73.3526(b), the location of the public file shall be maintained at the station's main studio location.¹⁰

6. Section 73.3526(e)(2) of the Rules requires licensees to place in their public inspection file a copy of any application tendered to the Commission, and maintain the application in the file until final action has been taken on the application.¹¹ During the examination of the file on August 9, 2005, no copy of the 2005 KCKY renewal application, which was still pending at the time of the inspection, or the application for a construction permit, which was also pending at the time, was found. Therefore, Cortaro failed to comply with Section 73.3526(e)(2) of the Rules.¹²

7. Section 73.3526(e)(5) of the Rules requires licensees to place in their public inspection file the most recent and complete copy of the ownership report, along with any licensee statements certifying that the report is accurate.¹³ Examination of KCKY's public inspection file revealed a 1990 ownership report, but no subsequent ownership reports or certifications were found. Therefore, Cortaro failed to comply with Section 73.3526(e)(5) of the Rules.

8. Section 73.3526(e)(12) of the Rules requires AM and FM broadcast licensees to place in their public inspection file, for each calendar quarter, a list of programs that have provided the station's

⁶ See File No. BMJP-20050113AAB, filed January 13, 2005, granted August 15, 2005.

⁷ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

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."

⁹ 47 C.F.R. § 73.3526(a)(2).

¹⁰ 47 C.F.R. § 73.3526(b).

¹¹ 47 C.F.R. § 73.3526(e)(2).

¹² 47 C.F.R. § 73.3526(e)(2).

¹³ 47 C.F.R. § 73.3526(e)(5).

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most significant treatment of community issues during the preceding three month period.¹⁴ This list is known as the radio issues/programs list. Copies of the lists must be maintained in the file until final action has been taken on the station's next renewal application. KCKY's public inspection file contained no radio issues/programs lists for any year during the license period in question (from October 1, 1997 to the date of inspection). Therefore, Cortaro failed to comply with Section 73.3526(e)(12) of the Rules.

9. Section 73.3526(e)(14) of the Rules requires that a copy of every agreement or contract involving time brokerage of the licensee's station be kept in the public file, and these contracts or agreements must be maintained in the file for as long as the contract or agreement is in force.¹⁵ No copies of the local marketing agreement between KASA Radio Hogar, Inc. and Cortaro, which is a time brokerage agreement as outlined under Section 73.3613(d)(1), were found in KCKY public inspection file.¹⁶ Therefore, Cortaro failed to comply with Section 73.3526(e)(14) of the Rules.

10. In the pending KCKY renewal application, in response to Section III, Question 3, Cortaro certified that the public inspection file for KCKY had the proper documentation as required by 73.3526.¹⁷ However, as the San Diego agent's inspection revealed, Cortaro did not have a complete public inspection file. Cortaro was aware of the requirement to have a complete public inspection file, given its response on the KCKY renewal application, therefore, Cortaro's violation is willful. No evidence could be found to indicate that any of the materials missing from the public inspection file were ever in place. In particular, no evidence could be found to show that the KCKY Radio issues/programs lists were ever maintained for the duration of the license period. Therefore, Cortaro's violation is repeated. Where lapses occur in maintaining the public inspection file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.¹⁸

11. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines ("Forfeiture Policy Statement")*, and Section 1.80 of the Rules, the base forfeiture for public file violations is \$10,000.¹⁹ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.²⁰ In this case, although the public inspection file was partially complete, it did not contain several required items, in particular, multiple years of the radio issues/programs lists. We therefore conclude a forfeiture amount of \$4,000 is appropriate. Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Cortaro is apparently liable for a \$4,000 forfeiture.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications

¹⁴ 47 C.F.R. § 73.3526(e)(12).

¹⁵ 47 C.F.R. § 73.3526(e)(14).

¹⁶ 47 C.F.R. § 73.3613(d)(1).

¹⁷ See File No. BR - 20050601CET, filed June 1, 2005 (Broadcast Renewal Application).

¹⁸ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

¹⁹ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

²⁰ 47 U.S.C. § 503(b)(2)(D).

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Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Cortaro Broadcasting Corporation is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR FORFEITURE** in the amount of four thousand dollars (\$4,000) for violation of Section 73.3526 of the Commission's Rules.²¹

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice of Apparent Liability for forfeiture, Cortaro Broadcasting Corporation **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

15. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, San Diego District Office, 4542 Ruffner Street, Room 370, San Diego, California, 92111, and must include the NAL/Account No. referenced in the caption.

16. 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.

17. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.²²

18. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail to Cortaro Broadcasting Corporation.

FEDERAL COMMUNICATIONS COMMISSION

William R. Zears, Jr.
District Director
San Diego District Office
Western Region
Enforcement Bureau

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

²² See 47 C.F.R. § 1.1914.