

**Federal Communications Commission**

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

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

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Released: December 21, 2009

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 Hispanic Target Media, Inc. ("HTM"), licensee of station KUKY(FM), in Wellton, Arizona, apparently willfully and repeatedly violated Section 73.3526(a), (b), and (c)<sup>1</sup> of the Rules for failing to maintain a public inspection file, failing to maintain the public inspection file at the main studio of the station, and failing to make the KUKY public inspection file available for public inspection during regular business hours. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>2</sup> that Hispanic Target Media, Inc., is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

**II. BACKGROUND**

2. On September 24, 2009, San Diego agents attempted to conduct a station inspection of the 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 KUKY's public inspection file, however, the station manager did not understand the agents' request. The station manager said that KUKY, which began operations on May 20, 2009, had not maintained a public inspection file and none was available to be reviewed. When asked why no public inspection file was maintained, the station manager replied he was not aware one was required and that one had never been maintained at KUKY.

**III. DISCUSSION**

3. 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 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. The term "willful" as used in Section

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

<sup>2</sup> 47 U.S.C. § 503(b).

503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>3</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>4</sup>

4. Sections 73.3526(a) and (b) of the Rules requires that all FM Broadcast stations maintain a public inspection file and that the file be located at the main studio of the station.<sup>5</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>6</sup> On September 24, 2009, the San Diego agents attempted to inspect the file during regular business hours, but were unable to access the file. Although station KUKY was recently constructed and began operations on May 20, 2009, the licensee holds authorizations or construction permits for seven other FM Broadcast radio stations, and has one pending application for another FM Broadcast station with the Commission.<sup>7</sup> As a licensee with multiple broadcast holdings, HTM is aware of the requirement to maintain a public inspection file. Therefore, its violation was willful. Because no public inspection file was ever maintained since the beginning of KUKY’s operations, the violation has occurred on more than one day, therefore, it was repeated.

5. Pursuant to the Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, (“Forfeiture Policy Statement”), and Section 1.80 of the Rules, the base forfeiture for violations of the public file rules is \$10,000.<sup>8</sup> 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, and history of prior offenses, ability to pay, and other such matters as justice may require.<sup>9</sup> Applying the Forfeiture Policy Statement, Section 1.80, and the statutory factors to the instant case, we conclude that HTM is apparently liable for a forfeiture in the amount of \$10,000.

#### **IV. ORDERING CLAUSES**

6. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Hispanic Target Media, Inc., is hereby NOTIFIED of this APPARENT LIABILITY FOR A

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<sup>3</sup> 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).

<sup>4</sup> 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.”

<sup>5</sup> 47 C.F.R. § 73.3526(a) and (b).

<sup>6</sup> 47 C.F.R. § 73.3526(c).

<sup>7</sup> HTM holds licenses for the following FM broadcast stations: KAJP(FM), Carrizo Springs, TX; KALN(FM), Dexter, NM; KGWT(FM), George West, TX; KRIK(FM), Refugio, TX; KJJS(FM), Zapata, TX; and WAJP(FM), Perry, FL. HTM also holds a construction permit for Facility ID No. 162401, Nassawadox, TX. In addition, HTM was the successful bidder for nine allotments in FCC Auction 79.

<sup>8</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

<sup>9</sup> 47 U.S.C. § 503(b)(2)(E).

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FORFEITURE in the amount of ten thousand dollars (\$10,000) for violation of Sections 73.3526(a), (b) and (c) of the Rules.<sup>10</sup>

7. 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, Hispanic Target Media, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. 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/Account Number and FRN Number referenced above. Payment by check or money order 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. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). 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.<sup>11</sup> Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Hispanic Target Media, Inc., will also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

9. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, San Diego Office, 4542 Ruffner St. - Suite 370, San Diego, CA 92111 and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall be sent to WR-Response@fcc.gov.

10. 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.

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<sup>10</sup> 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80 and 73.3526(a), (b) and (c).

<sup>11</sup> See 47 C.F.R. § 1.1914.

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11. 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 Hispanic Target Media, Inc.

FEDERAL COMMUNICATIONS COMMISSION

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