

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

In re Applications of	)	
	)	
New Northwest Broadcasters LLC	)	NAL/Acct. No. 200641410082
	)	FRN: 0003799814
For Renewal of Licenses for Stations	)	
KFAT(FM), Anchorage, Alaska	)	Facility I.D. No. 221
	)	File No. BRH-20050930BNZ
KRPM(FM), Houston, Alaska	)	Facility I.D. No. 78362
	)	File No. BRH-20050930BOE
KDBZ(FM), Anchorage, Alaska	)	Facility I.D. No. 28647
	)	File No. BRH-20050930BNR

**MEMORANDUM OPINION AND ORDER AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: September 26, 2006

Released: September 27, 2006

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),¹ by the Chief, Media Bureau, pursuant to authority delegated under Section 0.283 of the Rules,² we find that New Northwest Broadcasters LLC (the “Licensee”), licensee of Stations KFAT(FM), Anchorage, Alaska; KRPM(FM), Houston, Alaska; and KDBZ(FM), Anchorage, Alaska (the “Stations”), apparently willfully and repeatedly violated Sections 73.2080(c)(1), 73.2080(c)(1)(i), 73.2080(c)(3) and 73.2080(c)(5)(iii) of the Rules by failing to comply with the Commission’s Equal Employment Opportunity (“EEO”) recruitment, recruitment source, self-assessment, and recordkeeping requirements.³ Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of twelve thousand dollars (\$12,000). For the reasons noted below, we also grant the captioned license renewal applications for the Stations, subject to the imposition of reporting conditions. These conditions will apply to the Stations, and to all other stations included in their employment unit.

¹ 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80.

² See 47 C.F.R. § 0.283.

³ See 47 C.F.R. §§ 73.2080(c)(1), 73.2080(c)(1)(i), 73.2080(c)(3) and 73.2080(c)(5)(iii).

II. BACKGROUND

2. Section 73.2080(c)(1) of the Rules requires that a broadcast licensee recruit for every full-time job vacancy in its employment unit operation. Section 73.2080(c)(1)(i) requires that it use recruitment sources for each vacancy sufficient, in the reasonable, good faith judgment of the licensee in question, to widely disseminate information concerning the vacancy. Section 73.2080(c)(3) requires that a licensee analyze its recruitment program for the unit on an ongoing basis to ensure that it is effective in achieving broad outreach to potential applicants, and address any problems found as a result of its analysis. Section 73.2080(c)(5)(iii) requires it to retain dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing vacancies regarding its unit.

3. The Media Bureau (the “Bureau”) audited the above-captioned employment unit, which includes the Stations, for compliance with Section 73.2080 of the Rules.⁴ The Bureau has before it the Licensee’s audit response,⁵ as well as its captioned license renewal applications for the Stations.

4. *EEO Audit.* Our review of the Response shows that, during the reporting periods at issue (March 10 through September 30, 2003, and October 1, 2003, through September 30, 2004), the Licensee failed to properly recruit for the unit for 8 of its 25 vacancies because it relied solely on walk-ins to fill 2 of those vacancies and solely on referrals from employees and other individuals to fill 6 vacancies.⁶ The Licensee also failed to recruit widely for 5 of its vacancies, because it instead relied solely on an Internet web site or that web site and walk-ins to fill those vacancies.⁷ This failure to appropriately recruit continued through September 2004, the last month of the period, thus revealing a continuing lack of self-assessment.

5. The Licensee reports that it also did not retain required documentation for the unit of several vacancy announcements.⁸ It explains that it has undergone significant turnover in management personnel since March 10, 2003, and that its former general managers had kept in their offices some of the missing documentation, which the Licensee cannot now locate.⁹

III. DISCUSSION

6. We conclude that the Licensee failed to recruit for every full-time vacancy for the unit, as required by Section 73.2080(c)(1), instead relying solely on walk-ins for two such vacancies. A “walk-in” may reflect the “source” of an interviewee or hiree, but relying on walk-ins does not reflect a recruitment effort. We further conclude that the Licensee failed to recruit for six vacancies, instead relying solely on referrals from employees or other individuals. Again, although such referrals may reflect the source of an interviewee or hiree, relying only on a licensee’s own employees or its own private contacts does not constitute recruitment as contemplated under our rules, which require public outreach. We also find that the Licensee failed to recruit widely for every full-time vacancy, as required

⁴ Letter from Lewis Pulley, Assistant Chief, Policy Division, Media Bureau, to New Northwest Broadcasters LLC (Mar. 7, 2005).

⁵ Letter from New Northwest Broadcasters LLC to Lewis Pulley, Assistant Chief, Policy Division, Media Bureau (Apr. 21, 2005) (the “Response”).

⁶ *Id.* at 1.

⁷ *Id.*

⁸ *Id.* at 2.

⁹ *Id.*

by Section 73.2080(c)(1)(i), instead relying solely on either one Internet web site or that web site and walk-ins as recruitment sources for five of its 25 full-time vacancies. The Commission has established that, although we do not require a specific number of recruitment sources, if a source or sources cannot reasonably be expected, collectively, to reach the entire community, the licensee may be found in noncompliance with our EEO Rule, as here.¹⁰ Our policy allows recruitment from as few as one source, but the effort must be sufficiently broad.¹¹ Further, the Commission's EEO policy requires a licensee to recruit from non-Internet sources, in addition to from the Internet, in order for its recruitment to sufficiently widely disseminate information concerning the vacancy.¹² We also find that the Licensee failed to maintain adequate recruitment documentation records for five vacancies, as required by Section 73.2080(c)(5), and to self-assess adequately, in violation of Section 73.2080(c)(3).

7. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹³ 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.¹⁴ The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹⁵ and the Commission has so interpreted the term in the Section 503(b) context.¹⁶ Section 312(f)(2) 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."¹⁷

8. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules do not establish base forfeiture amounts for EEO violations, such as a failure to recruit for vacancies or to self-assess EEO performance, but they do establish a base forfeiture amount of \$1,000 for failure to maintain required records.¹⁸ In determining the appropriate forfeiture amount, we must consider the factors enumerated in Section 503(b)(2)(D) of the Act, including "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 such other matters as justice may require."¹⁹

9. In *Emmis Television Licensee, LLC*, as the result of an EEO audit, we proposed an \$18,000 forfeiture for a licensee's violations of various EEO rules, specifically Sections 73.2080(c)(1),

¹⁰ See 47 C.F.R. § 73.2080(c)(1)(i). See also, *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, MM Docket No. 98-204, Second Report and Order and Third Notice of Proposed Rulemaking, 17 FCC Rcd 24018, 24047, ¶86 (2002), *recon. pending*.

¹¹ *Id.*

¹² See 17 FCC Rcd at 24051, ¶99, wherein we said, "...we are unable to conclude that Internet usage has become sufficiently widespread to justify allowing it to be used as the sole recruitment source."

¹³ 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. § 1.80(a)(1).

¹⁴ 47 U.S.C. § 312(f)(1).

¹⁵ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁶ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁷ 47 U.S.C. § 312(f)(2).

¹⁸ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹⁹ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100, ¶27; 47 C.F.R. § 1.80(b)(4).

73.2080 (c)(3), 73.2080 (c)(5), 73.2080(c)(6)(iv), and 73.3526(e)(7).²⁰ In that case, the licensee had failed to recruit for 11 (22%) of 51 openings, failed to retain or report any data on interviewees or referrals, and failed to self-assess adequately. Here, the Licensee failed to recruit or recruit widely for 13 (52%) of its 25 vacancies, keep adequate records for five (20%) of its 25 vacancies, and self-assess its EEO program. Accordingly, based upon the facts before us, pertinent precedent and the factors noted above, we find that the Licensee is apparently liable for a forfeiture of \$5,000 for its apparent willful and repeated violation of Section 73.2080(c)(1), \$5,000 for its apparent willful and repeated violation of Section 73.2080(c)(1)(i), \$1,000 for its apparent willful and repeated violation of Section 73.2080(c)(3), and \$1,000 for its apparent willful and repeated violation of Section 73.2080(c)(5)(iii), for a total proposed forfeiture in the amount of \$12,000.

10. *License Renewal Applications.* In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act. That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.²¹ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”²²

11. We find that the Licensee's violations of the Commission's EEO rules discussed above do not constitute “serious violations” of the Rules of such gravity that they warrant designation for evidentiary hearing. We also find no evidence of violations that, when considered together, evidence a pattern of abuse.²³ Further, we find that the Licensee served the public interest, convenience, and necessity with the Stations during their respective license terms. We will therefore grant the license renewal applications below.²⁴ We will also impose reporting conditions as set forth below, to ensure that the Licensee and any successor licensee of any of the Stations maintains an adequate EEO program. The reporting conditions will apply to the captioned Stations, and to all other stations that are part of their employment unit.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that New Northwest Broadcasters

²⁰ *Emmis Television Licensee, LLC*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 13860 (2005) (forfeiture paid).

²¹ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

²² 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²³ For example, we do not find here that the Licensee's operation of any of the Stations “was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies.” See *Heart of the Black Hills Stations*, 32 FCC 2d 196, 198, ¶6 (1971). Nor do we find on the record here that “the number, nature and extent” of the violations indicate that “the licensee cannot be relied upon to operate [its stations] in the future in accordance with the requirements of its licenses and the Commission's Rules.” *Heart of the Black Hills Stations*, 32 FCC2d at 200, ¶11. See also *Center for Study and Application of Black Economic Development*, 6 FCC Rcd 4622 (1991); *Calvary Educational Broadcasting Network, Inc.*, 7 FCC Rcd 4037 (1992).

²⁴ See 47 U.S.C. § 309(k).

LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of twelve thousand dollars (\$12,000) for its apparent willful and repeated violation of Sections 73.2080(c)(1), 73.2080(c)(1)(i), 73.2080(c)(3) and 73.2080(c)(5)(iii) of the Commission's Rules.

13. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release of this *NAL*, New Northwest Broadcasters LLC 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 proposed 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, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 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 Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554, ATTN: Lewis Pulley, Assistant Chief, Policy Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent 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 respondent'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 full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁵

18. IT IS FURTHER ORDERED that New Northwest Broadcasters LLC and any successor licensee submit to the Federal Communications Commission, Media Bureau, EEO Staff, an original and one copy of the following information on October 1, 2007; October 1, 2008; and October 1, 2009, for its entire employment unit, including KFAT(FM), Anchorage, Alaska, KRPM(FM), Houston, Alaska, KDBZ(FM), Anchorage, Alaska, and all other stations included in their employment unit:

- (a) the unit's most recent EEO public file report; and
- (b) dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing each full-time vacancy for the preceding year.

19. IT IS FURTHER ORDERED that the renewal applications of New Northwest Broadcasters LLC for the licenses of KFAT(FM), Anchorage, Alaska; KRPM(FM), Houston, Alaska; and KDBZ(FM), Anchorage, Alaska, are GRANTED.

20. IT IS FURTHER ORDERED that, pursuant to Section 73.3526(e)(10) of the Commission's Rules, New Northwest Broadcasters LLC place a copy of this *NAL* in each of its unit's station public inspection files.

²⁵ See 47 C.F.R. § 1.1914.

21. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to New Northwest Broadcasters LLC, 1011 Western Avenue, Suite 920, Seattle, Washington 98104, and to its counsel, M. Anne Swanson, Esquire, Dow Lohnes & Albertson, 1200 New Hampshire Avenue, NW, Suite 800, Washington DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg
Chief
Media Bureau