

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

In the Matter of)	
)	
Fox Television Stations, Inc.)	NAL/Acct. No. MB-200841410042
)	FRN: 0005795067
Licensee of Stations)	
)	
WTTG(TV) and)	Facility I.D. No. 22207
)	File No. BRCT-20040527AKR
)	
WDCA(TV),)	Facility I.D. No. 51567
Washington, D.C.)	File No. BRCT-20040527AKL

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 22, 2008

Released: December 30, 2008

By the Commission: Commissioners Cops and Adelstein issuing a joint statement.

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),¹ we find that Fox Television Stations, Inc. (the “Licensee”), licensee of Stations WDCA(TV) and WTTG(TV), both of Washington, D.C. (collectively, the “Stations” and each a “Station”), apparently willfully and repeatedly violated Sections 73.2080(c)(1), 73.2080(c)(1)(i), 73.2080(c)(3), 73.2080(c)(5)(v), 73.2080(c)(5)(vi), 73.2080(c)(6)(iii), 73.2080(c)(6)(iv), and 73.3526(e)(7) of the Rules, by failing to comply with the Commission’s Equal Employment Opportunity (“EEO”) recruitment, record-keeping, self-assessment, and public file requirements.² 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 twenty thousand dollars (\$20,000). We also impose reporting conditions on the Licensee and any successor licensee of either of the Stations, to prevent future violations of these requirements.

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. In this regard, the Rules impose, *inter alia*, the following respective obligations on such licensees:

- Section 73.2080(c)(1)(i): use recruitment sources for each vacancy in a manner sufficient, in the licensee’s reasonable, good faith judgment, to widely disseminate information concerning the vacancy;
- Section 73.2080(c)(3): analyze the recruitment program for the licensee’s 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;

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

² See 47 C.F.R. §§ 73.2080(c)(1), 73.2080(c)(1)(i), 73.2080(c)(3), 73.2080(c)(5)(v), 73.2080(c)(5)(vi), 73.2080(c)(6)(iii), 73.2080(c)(6)(iv), and 73.3526(e)(7).

- Section 73.2080(c)(5)(v): retain records to document the total number of interviewees for each vacancy and the referral source for each interviewee;
- Section 73.2080(c)(5)(vi): retain records to document the date each vacancy was filled and the referral source of each hiree;
- Section 73.2080(c)(6)(iii): include in the public file report the referral source of each hiree; and
- Section 73.2080(c)(6)(iv): include in the public file report the number of interviewees and the number of interviewees referred by each recruitment source.

In addition, Section 73.3526(e)(7) requires commercial licensees to include certain EEO-related materials in their station public files, including that noted above.

3. *EEO Review.* By letter dated June 7, 2006, the Media Bureau (the “Bureau”) notified the Licensee that it had been randomly selected for an audit of its EEO program.³ The Commission has before it the Licensee’s response to the audit letter.⁴ The Licensee submitted a “Recruitment Reconciliation Form” for each of the positions filled during the reporting periods at issue, June 1, 2004, through May 31, 2005, and June 1, 2005, through May 31, 2006 (“2005 report” and “2006 report,” respectively). Our review of the Licensee’s response and the accompanying “Recruitment Reconciliation Forms” reveals that the Licensee failed to properly recruit for 39 of its 90 full-time vacancies over the 2004-2006 period because it relied solely on “self-referrals,” “employee referrals,” or other non-public sources for 32 vacancies, in violation of Section 73.2080(c)(1), and relied solely on Internet websites as its only public recruitment source for seven additional vacancies, in violation of Section 73.2080(c)(1)(i).⁵ This failure to recruit adequately continued through May of 2006, the last month of the combined reporting periods, thus revealing an apparent lack of self-assessment for EEO compliance, in violation of Section 73.2080(c)(3). The Licensee also failed to maintain records to document the referral source of 17 hirees, in violation of Section 73.2080(c)(5)(vi). In addition, the Licensee failed to maintain records of the sources of 94 interviewees for 45 openings, in violation of Section 73.2080(c)(5)(v). The Licensee’s failure to maintain records of the referral source of each interviewee left the Licensee unable to report the total number of interviewees referred by each recruitment source, in violation of Section 73.2080(c)(6)(iv), and the source of each hiree, in violation of Section 73.2080(c)(6)(iii), leaving it unable to include the required records in the public inspection files for its Stations, in violation of Section 73.3526(e)(7).

III. DISCUSSION

4. Our review of the above recruitment information leads us to conclude that the Licensee failed to recruit widely in the community of the Stations for every full-time vacancy, as required by Section 73.2080(c)(1). 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 to be in non-compliance with the Commission’s

³ Letter from Lewis Pulley, Assistant Chief, Policy Division, Media Bureau, to Fox Television Stations, Inc., as licensee of WDCA(TV), Washington, D.C. (Jun. 7, 2006).

⁴ Letter from Molly Pauker, Vice President, Corporate and Legal Affairs, and attachments prepared by Carolyn Sheedy, Director of Human Resources, Fox Television Stations, Inc., Washington, D.C., to Lewis Pulley, Assistant Chief, Policy Division, Media Bureau (Jul. 5, 2006).

⁵ Pursuant to its review of the Licensee’s audit response, the Commission sought clarification from the Licensee of the meaning of the referral source designation “self-referral.” Molly Pauker, Vice President, Corporate and Legal Affairs, for Fox Television Stations, Inc., replied in an electronic message to Cheryl Kornegay, Attorney, Policy Division, Media Bureau, on February 23, 2007, that “self-referral” means that it was “not possible for WTTG/WDCA to determine from the applicant’s resumé whether he or she was referred by a third party referral source, e.g., The Washington Post.” Ms. Pauker also provided additional information about recruitment efforts and we have credited these efforts in our evaluation of the Licensee’s recruitment program.

EEO Rule.⁶ The Commission's policy allows recruitment from as few as one source, but the effort must be sufficiently broad.⁷ The Licensee's repeated reliance on non-public sources, such as internal employee referrals and "self referrals," and its reliance on its own website without use of further sources to fill full-time vacancies during the reporting periods noted above does not constitute recruitment as contemplated under the Commission's rules, which require public outreach.⁸ We find that the Licensee's inadequate recruitment efforts for 39 openings noted above did not result in sufficient public outreach to inform jobseekers who were unconnected to Licensee staff that positions at the Stations were available. In addition, the Licensee reports that the referral source of 17 hirees was a "self-referral," which the Licensee defines as meaning that the Stations were unable to determine from an applicant's resumé whether he or she was referred by a third party referral source. If the Licensee can not determine a hiree's referral source from the hiree's resumé, then it should obtain this information directly from the hiree. The Licensee distinguishes among several types of sources, including employee referrals, Licensee referrals from outside the Stations' staff, and others. Because the Licensee is apparently capable of identifying sources, when the Licensee uses "self-referral," it appears to mean that it has no record at all of the source of such hires. We find that the failure to keep and report the referral source of 17 hirees violates our EEO record-keeping rule as stated in Section 73.2080(c)(5)(vi) and reporting rule as stated in Section 73.2080(c)(6)(iii).⁹ In addition, the Licensee reports "self-referral" as the source of 94 interviewees for 45 openings, thus revealing that it has no record of the source of those interviewees, in violation of our record-keeping rule as stated in Section 73.2080(c)(5)(v) and reporting rule as stated in Section 73.2080(c)(6)(iv).¹⁰ If the Licensee can not determine an interviewee's referral source from the resumé submitted to it, then it should seek this information through some other means. We also find that because of the Licensee's lack of records of the referral source of 94 interviewees and 17 hirees, it was not possible for it to have adequately analyzed its recruitment program to ensure that it was effective in achieving broad outreach, in violation of Section 73.2080(c)(3). Finally, the Licensee did not place information that it had failed to collect in its public inspection files as it is required to do pursuant to Section 73.3526(e)(7).

5. 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.¹¹ 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.¹² 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,¹³ and the Commission has so interpreted the term in the Section 503(b) context.¹⁴ 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

⁶ See 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, 2407, ¶86 (2002), *recon. pending*.

⁷ *Id.*

⁸ *New Northwest Broadcasters LLC.*, Memorandum Opinion and Order and Notice of Apparent Liability, 21 FCC Rcd 10748, 10749 (2006) (forfeiture paid).

⁹ 47 C.F.R. §§ 73.2080(c)(5)(vi) and 73.2080(c)(6)(iii).

¹⁰ 47 C.F.R. §§ 73.2080(c)(5)(v) and 73.2080(c)(6)(iv).

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

¹² 47 U.S.C. § 312(f)(1).

¹³ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁴ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

than once or, if such commission or omission is continuous, for more than one day.”¹⁵

6. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules do not establish base forfeiture amounts for specific EEO rule violations, such as a failure to recruit widely for vacancies or to self-assess EEO performance. However, they do establish a base forfeiture amount of \$10,000 for violation of the Commission’s public file rules, of \$3,000 for failure to file required information, and of \$1,000 for failure to maintain required records.¹⁶ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering 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.”¹⁷

7. As discussed *supra*, for its 2004-2006 EEO reporting periods, the Licensee failed to recruit adequately for 39 of its 90 full-time vacancies, maintain adequate interviewee referral source data for all of its vacancies, maintain adequate hiree source data for all of its vacancies, include all required data in its public inspection file, and self-assess its EEO program. Accordingly, based upon the facts before us, the factors noted above, and pertinent precedent,¹⁸ we find that the Licensee is apparently liable for the following forfeiture amounts for its willful and repeated violations of these Rules: \$14,000 for its violation of Sections 73.2080(c)(1) and 73.2080(c)(1)(i); \$1,000 for its violation of Section 73.2080(c)(3); \$2,000 for its violation of Sections 73.2080(c)(5)(v) and 73.2080(c)(5)(vi); \$2,000 for its violation of Sections 73.2080(c)(6)(iii) and 73.2080(c)(6)(iv); and \$1,000 for its violation of Section 73.3526(e)(7), for a total proposed forfeiture in the amount of \$20,000. We will also impose reporting conditions as set forth below, to ensure that the Licensee and any successor licensee of either of the above-captioned Stations maintains an adequate EEO program in compliance with the Rules. The reporting conditions will apply to the above-captioned Stations, and to all other stations that are part of their employment unit.¹⁹

IV. ORDERING CLAUSES

8. 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 Fox Television Stations, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of twenty thousand dollars (\$20,000) for its apparent willful and repeated violation of Sections 73.2080(c)(1),

¹⁵ 47 U.S.C. § 312(f)(2).

¹⁶ 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.

¹⁷ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01, ¶27; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

¹⁸ In *Liberian Television of Dallas License Corp.*, we proposed a \$20,000 forfeiture for a licensee’s violations of various EEO rules, specifically, Sections 73.2080(c)(1), 73.2080(c)(3), 73.2080(c)(5), 73.2080(c)(6), and 73.3526(e)(7). The licensee had failed to recruit adequately for 30 of 54 vacancies, maintain required EEO records, list the recruitment source of interviewees or hirees, self-assess adequately, notify all sources of openings that had requested notification, or place its public file report in its public file. *Liberian Television of Dallas License Corp.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2032 (2007) (response pending). In *Waitt Omaha, LLC*, we proposed an \$8,000 forfeiture for a licensee’s violations of various EEO rules, specifically Sections 73.2080(c)(3), 73.2080(c)(5), 73.2080(c)(6)(iii), 73.2080(c)(6)(iv), and 73.3526(e)(7). The licensee had failed to maintain required EEO records, list the recruitment source of hirees, provide data on the numbers of persons interviewed and referred from each recruitment source, self-assess adequately, and place required EEO information in its public inspection file. *Waitt Omaha, LLC*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2661 (2007) (response pending).

¹⁹ The above-captioned renewal applications for the Stations remain pending before the Bureau.

73.2080(c)(1)(i), 73.2080(c)(3), 73.2080(c)(5)(v), 73.2080(c)(5)(vi), 73.2080(c)(6)(iii), 73.2080(c)(6)(iv), and 73.3526(e)(7) of the Commission's Rules.

9. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, Fox Television Stations, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. 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. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

11. 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.

12. 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.

13. 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. 20554.²⁰

14. IT IS FURTHER ORDERED that Fox Television Stations, Inc., and any successor licensee of either of Stations WTTG(TV) and WDCA(TV)²¹ shall submit to the Federal Communications Commission, Media Bureau, EEO Staff, an original and one copy of the following information on July 1, 2010; July 1, 2011; and July 2, 2012, with respect to those and all other stations that may be in the employment unit of the Station(s)

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

²⁰ See 47 C.F.R. § 1.1914.

²¹ In the event of an assignment of either of the Stations, this continuing obligation will run to the assignee with regard to each Station assigned.

- (d) the total number of interviewees for each full-time vacancy for the preceding reporting year and the referral source for each interviewee.

15. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Fox Television Stations, Inc., 5151 Wisconsin Avenue, N.W., Washington, D.C. 20016.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**JOINT STATEMENT OF
COMMISSIONER MICHAEL J. COPPS
AND
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Dickey Broadcasting Company, Notice of Apparent Liability for Forfeiture; Urban Radio I, LLC, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture; Puerto Rico Public Broadcasting Corporation, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture; W.S. Communications, L.L.C., Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture; Cumulus Licensing L.L.C., Notice of Apparent Liability for Forfeiture; Fox Television Stations, Inc., Notice of Apparent Liability for Forfeiture

The Commission's enforcement of Equal Employment Opportunity ("EEO") rules related to self-assessment, recordkeeping, recruitment source information, interviewee information, and public file requirements is one of the principal ways we strive to promote employment diversity and opportunities in the communications industry. While this is unquestionably the right thing to do, Sections 334 and 634 of the Communications Act specifically authorize the Commission to take steps to promote equality of employment opportunities for women and members of racial and ethnic minority groups. Our EEO rules, for example, require wide dissemination of job vacancies in order to attract all qualified employees. According to reports, from 1971 to 1997, employment of people of color in broadcasting increased from 5 to 19 percent, and from 12 to 43 percent for women during the same period.

In recent years, however, Commission enforcement of EEO rules has been inconsistent and, as one consequence, employment in broadcasting does not reflect America. As the Minority Media and Telecommunications Council has found, while the average forfeiture amount for EEO violations has increased, the Commission's EEO docket has decreased by 96 percent. Between 1994 and 1997, the Commission decided 251 cases, resulting in 86 forfeitures. Between 2004 and 2007, however, the Commission decided only 10 cases, resulting in 8 forfeitures.

Lax EEO enforcement has yielded less diversity in employment. The most recent report on employment trends in broadcasting by the Radio and Television News Directors Association/Hofstra University found that, while the minority population in the United States has risen 8.1 percent in the past 18 years, minority workforce in TV news is up 5.8 percent, and the minority workforce in radio is up by just 1 percent.

So it is clear that the Commission's recent efforts to promote employment diversity have been woefully inadequate. If we are truly committed to employment diversity, as required by law, we must get serious about restoring an effective and rational EEO enforcement program. This level of commitment is currently lacking at the FCC.

There are other, more pro-active, steps we should consider. At a minimum, we should make our process more transparent by compiling and releasing FCC Form 395 data, as well as developing annual and longitudinal employment reports. As we work with industry and advocacy groups in a cooperative manner, these initial steps should help us better understand employment trends in the communications industry and permit us to better craft more effective oversight.

Having a communications industry that reflects our nation's diversity would best serve a wide range of consumer and societal interests. It is not only a legal obligation, it is also the right thing to do.