

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

In the matter of
Emmis Television License, LLC
Licensee of KGMB(TV), Honolulu HI
KHON-TV, Honolulu, HI
Facility ID Nos. 36917 & 4144
NAL/Acct. No. 0541100001
FRN: 0011294410 & 0011294444

NOTICE OF APPARENT
LIABILITY FOR FORFEITURE

Adopted: August 24, 2005

Released: August 26, 2005

By the Acting Chief, Media Bureau:

1. On March 7, 2005, the above employment unit was audited for compliance with the Federal Communications Commission's Equal Employment Opportunity (EEO) rule, 47 C.F.R. § 73.2080. The unit submitted its audit response on April 29, 2005.

2. Our review shows that during the reporting periods at issue (March 10, 2003, through October 1, 2003, and October 1, 2003, through September 30, 2004), the unit failed to recruit for 11 of its 51 vacancies, as required by 47 C.F.R. § 73.2080(c)(1), and did not claim exigent circumstances for any of the vacancies for which it failed to recruit. The unit used one to 34 referral sources to recruit for its other vacancies.

3. The unit reports that it "did not retain sufficient documentation to record the number of interviewees produced by the stations' recruitment sources" and "did not retain fully detailed documentation to support the data on its EEO public file reports," as required by 47 C.F.R. § 73.2080(c)(5). Consequently, the unit's EEO public file reports failed to list the total number of interviewees for all of its full-time vacancies and the number of interviewees referred by each of its recruitment sources, as required by 47 C.F.R. § 73.2080(c)(6)(iv).

4. We conclude that the unit failed to recruit for every full-time vacancy as required by 47 C.F.R. § 73.2080(c)(1). The unit also failed to maintain information and records as required by 47 C.F.R. § 73.2080(c)(5). In addition, the unit's EEO public file reports failed to list the total number of interviewees for full-time vacancies and the number of interviewees referred by each recruitment source, in violation of 47 C.F.R. § 73.2080(c)(6)(iv). This information is required to be placed in the unit's public inspection file pursuant to 47 C.F.R. § 73.3526(e)(7). Finally, because of its lack of records of interviewees and referrals, we find that it was not possible for the licensee to have adequately analyzed its recruitment program to ensure that it was effective in achieving broad outreach and it failed to address this problem for a period of 18 months, in violation of § 73.2080(c)(3).

5. Section 503(b) of the Communications Act, 47 U.S.C. § 503(b), and Section 1.80(a) of the Commission's rules, 47 C.F.R. § 1.80 (a), state that any person who willfully or repeatedly fails to comply with the provisions of the Communications Act or the Commission's rules shall be liable for a

forfeiture penalty. As noted above, during the time period of March 10, 2003, through September 30, 2004, it is apparent that the unit willfully and repeatedly violated the Federal Communications Commission's Equal Employment Opportunity public inspection file rule, 47 C.F.R. § 73.3526(e)(7), and the Commission's Equal Employment Opportunity rule on required recruitment, recordkeeping, public file report information, and self-assessment, 47 C.F.R. § § 73.2080(c)(1), (c)(5), (c)(6), and (c)(3), respectively.

6. Section 1.80(b)(1) of the Commission's rules, 47 C.F.R. § 1.80(b)(1), limits the forfeiture penalty for a broadcast station to \$32,500 for each violation or each day of a continuing violation, with a limit of \$325,000 for a continuing violation for any single act or failure to act described in paragraph 1.80(a) of the Commission's rules, 47 C.F.R. § 1.80(a). The Commission's guidelines for assessing forfeitures, set forth in 47 C.F.R. § 1.80(b)(4), do not specify base amounts for EEO violations, such as a failure to recruit for openings or to self-assess EEO performance, but do suggest a base forfeiture amount of \$10,000 for violations of the Commission's public file rules, \$3,000 for failure to file required information, and \$1,000 for failure to maintain required records. Considering the totality of the circumstances in this case, we believe that the apparent violations warrant issuance of a Notice of Apparent Liability in the amount of \$18,000. The licensee failed to recruit for 22% of its vacancies, failed to keep adequate interviewee and referral records for all of its 51 vacancies, failed to include required information in both of its public file reports, and failed to self-assess adequately. We will also impose reporting conditions as set forth below to ensure that the licensee maintains an adequate EEO program.

7. Upon review of the record, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Sections 0.61, 0.283, and 1.80 of the Commission's rules, 47 C.F.R. §§ 0.61, 0.283, and 1.80, Emmis Television License, LLC, is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of eighteen thousand dollars (\$18,000) for willfully and repeatedly violating the Federal Communications Commission's Equal Employment Opportunity public inspection file rule, 47 C.F.R. § 73.3526(e)(7), and the Commission's Equal Employment Opportunity rule on required recruitment, recordkeeping, public file report information, and self-assessment, 47 C.F.R. § § 73.2080(c)(1), (c)(5), (c)(6), and (c)(3), as described herein.

8. IT IS FURTHER ORDERED that pursuant to Section 1.80 of the Commission's rules, within thirty days of the release of this NOTICE OF APPARENT LIABILITY, Emmis Television License, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. 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 Forfeiture Collection Section, Finance Branch, 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. Requests for full payment under the installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, SW, Washington D.C. 20554.¹

9. IT IS FURTHER ORDERED that the licensee and any subsequent assignee submit to the Federal Communications Commission, Media Bureau, EEO Staff, an original and one copy of the following information on November 1, 2005; November 1, 2006; and November 1, 2007:

¹ See 47 C.F.R. § 1.1914.

- (a) The unit's most recent EEO public file report.
- (b) The total number of interviewees for each full-time vacancy for the preceding year and the referral source for each interviewee.
- (c) Dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing each full-time vacancy for the preceding year.

10. IT IS FURTHER ORDERED that pursuant to Section 73.3526(e)(10) of the Commission's rules, the licensee place a copy of this Notice in its unit's public inspection files.

11. Finally, IT IS ORDERED that a copy of this Notice shall be sent by First Class and Certified Mail, Return Receipt Requested, to the licensee and its attorney of record.

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg
Acting Chief
Media Bureau