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

In the Matter of	)	NAL/Acct. No. 0641100002
	)	FRNs: 0005001268
Applications for Renewal of License for Stations	)	0005001300
KDAY(FM), Redondo Beach, CA,	)	0009781352
KDAI (FM), Ontario, CA,	)	0004976866
KXOL(FM), Los Angeles, CA,	)	
and KLAX(FM), Los Angeles, CA	)	Facility ID Nos. 10100, 10099, 28848, 61638
	)	File Nos. BRH-20050801AZU
	)	BRH-20050801AZM
	)	BRH-20050721AAN
		BRH-20050721AAL

NOTICE OF APPARENT
LIABILITY FOR FORFEITURE

Adopted: December 19, 2005 **Released: December 20, 2005**

By the Chief, Media Bureau:

1. The Media Bureau has before it the license renewal applications of KZBA Licensing, Inc., KZAB Licensing, Inc., KLAX Licensing, Inc., and KXOL Licensing, Inc.[1] for broadcast stations KDAY(FM), Redondo Beach, California; KDAI(FM), Ontario, California; and KLAX(FM) and KXOL (FM), Los Angeles, California. The applications note that the four stations comprise an employment unit, defined in 47 C.F.R. § 73.2080 (c)(1)(i) as a station or a group of commonly owned stations in the same market that share at least one employee.[2] The Commission's review of the renewal applications included a review of the EEO public file reports attached to FCC Form 396, the Broadcast Equal Opportunity Program Report, filed by the licensees for the above stations. On an FCC Form 396, stations provide information necessary for the Commission to determine compliance with the Commission's equal employment opportunities ("EEO") rules. The EEO review revealed in this case that the employment unit

[1] The call signs of KZAB(FM) and KZBA(FM) were changed to KDAY(FM) and KDAI(FM), respectively, on December 10, 2004. The two licensees of KDAY(FM) and KDAI(FM) are subsidiaries of Spanish Broadcasting System, Inc. (SBS), which is also the parent company of the licensees of KLAX(FM) and KXOL(FM). On August 18, 2004, applications were filed with the FCC to assign then-named KZAB(FM) and KZBA(FM) from KZAB Licensing, Inc., and KZBA Licensing, Inc., respectively, to Styles Media Group, LLC ("Styles"). The applications were granted on November 18, 2004. On July 18, 2005, Styles filed applications on FCC Form 316 for the *pro forma* assignment of the licenses of KDAY(FM) and KDAI(FM) from Styles Media Group, LLC. to two subsidiaries, KDAY Licensing, LLC., and KDAI Licensing, LLC. These assignment applications were granted on July 26, 2005. None of the above assignments has been consummated at this time.

[2] On September 15, 2004, Styles began to program KZAB(FM) and KZBA(FM) (as they were called at the time) pursuant to a time brokerage agreement. Prior to this change, KZAB(FM), KZBA(FM), KLAX(FM), and KXOL(FM) comprised the same employment unit. Subsequent to the brokerage agreement, KLAX(FM) and KXOL(FM) remained together in the same employment unit but KZAB(FM) and KZBA(FM) left that unit to be brokered by Styles. In addition, when the brokerage period started, the number of full-time SBS employees at KZAB(FM) and KZBA(FM) dropped below five.

did not recruit for every full-time vacancy as required by 47 C.F.R. § 73.2080(c)(1) and failed to self-assess adequately its EEO program in violation of 47 C.F.R. 73.2080(c)(3). Accordingly, for the reasons set forth below, we issue a Notice of Apparent Liability in the amount of $20,000 to KZBA Licensing, Inc., KZAB Licensing, Inc., KLAX Licensing, Inc., and KXOL Licensing, Inc. for violation of Section 73.2080 of the Commission's rules and issue reporting conditions for three years. We also grant the renewal applications for KDAY(FM), KDAI(FM), KLAX(FM), and KXOL(FM).

2. Our review of the public file reports filed by the four stations reveals that they filled 54 full-time positions but failed to recruit for 21. For the remaining 29 positions, the stations failed to recruit adequately for 27 positions.[3] This frequent failure to recruit continued up to and including the hire of a "promotions street team" employee on July 12, 2005, only eight days before the end of the period covered by the 2005 EEO public file report, thus revealing a lack of self-assessment or correction of this type of violation through the entire license term. Inadequate recruitment continued up through the last hire of the period, also in July 2005. Consequently, the licensees failed to recruit for 39% of their openings and failed to recruit adequately for another 50% of their openings, resulting in a record of nonexistent or inadequate recruitment for 89% of their openings over a 24-month period, which was never corrected during the license term.

3. Regarding the positions with inadequate recruitment, the reports reveal that Internet sources were the only recruitment sources used for eight positions. The Commission's EEO policy requires licensees to recruit from non-Internet sources in addition to the Internet in order for a licensee's recruitment to be sufficient to widely disseminate information concerning the vacancy.[4] Other positions for which recruitment was insufficiently broad included positions that used as their sole recruitment source a college, "flyers at station events," a "group interview," one person whose background was not explained, a broadcast association, on-air ads, an accounting firm, a communications institute, one job fair, and a seminar. As we have said, 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 broadcaster may be found in noncompliance with our EEO Rule, as here.[5] Our policy allows recruitment from few sources or even one source but it must be sufficiently broad.[6] Finally, we find that the licensees' record indicates that the employment unit failed to self-assess its EEO program in violation of 47 C.F.R. § 73.2080(c)(3).

4. Section 503(b) of the Communications Act, 47 U.S.C. § 503(b), 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 Communications Act or any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.[7] In determining the appropriate forfeiture amount, we must consider the factors enumerated in Section 503(b)(2)(D) of the

[3] Our discussion of the public file reports for the periods August 1, 2003, through August 1, 2004, and August 1, 2004, through July 20, 2005, includes both reports combined because all four stations remained controlled by a common owner throughout the two-year period, even though EEO activity at KDAY(FM) and KDAI(FM) is included only in the first report, which revealed nine full-time hires. It was permissible for the licensees of the four stations to exclude KDAY(FM) and KDAI(FM) from the second report because they employed fewer than five full-time employees at those stations during the entire period of the second report and were thus not required to maintain an EEO program. *See* Section 73.2080(d).

[4] 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,* 17 FCC Rcd 24018, 24051 (2002), *recon. pending.*

[5] 17 FCC Rcd at 24047.

[6] *Id.*

[7] 47 U.S.C. § 503(b).

Communications Act of 1934, as amended, 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."[8] Based on the foregoing, it is apparent that the employment unit violated the Commission's rules because it did not recruit for every full-time vacancy as required by 47 C.F.R. § 73.2080(c)(1) and failed to self-assess adequately its EEO program in violation of 47 C.F.R. 73.2080(c)(3).

5. The Commission's guidelines for assessing forfeitures, set forth in Section 1.80(b)(4) of the rules,[9] do not specify base amounts for EEO violations, such as a failure to recruit for openings or to self-assess EEO performance.[10] However, in *Emmis Television Licensee, LLC* ("*Emmis"*), we issued an $18,000 forfeiture and three years of reporting conditions for a licensee's violations of 47 C.F.R. §§ 73.2080(c)(3), (c)(5), (c)(6)(iv), and 73.3526(e)(7) as a result of an EEO audit.[11] In *Emmis,* the licensee failed to recruit for 11 (22%) of 51 full-time vacancies, failed to keep interviewee or referral data for any hires, failed to include required information in two public file reports, and failed to self-assess adequately. In this case, the licensee failed to recruit for 21 (39%) of its 54 vacancies and failed to recruit adequately for 27 (50%) of its 54 vacancies and failed to self-assess its EEO program. It recruited adequately for only six (11%) vacancies, and either not at all or inadequately for 89% of its 54 vacancies. Although all requirements of our EEO Rule have importance for licensees in their hiring programs, a failure to recruit or recruit adequately goes to the essence of our EEO requirements and the reasons for the existence of our Rule. In adopting our EEO Rule in 2002, we stated that "our primary goal in adopting EEO program requirements is to ensure broad outreach in recruitment for broadcast … employment vacancies."[12] 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 $20,000 for the EEO violations by KZBA Licensing, Inc., KZAB Licensing, Inc., KLAX Licensing, Inc., and KXOL Licensing, Inc. We will also impose reporting conditions as set forth below to ensure that the licensee, or any successor licensee, maintains an adequate EEO program on an ongoing basis.

6. *License Renewal Applications*. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Communications 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 Communications Act or the Commission's Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.[13] 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

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[8] 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17100 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

[9] 47 C.F.R. § 1.80(b)(4).

[10] 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).

[11] *Emmis Television Licensee, LLC*, DA 05-2345 (released August 26, 2005).

[12] 17 FCC Rcd at 24043.

[13] 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). S*ee Order, Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996).

conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted."[14]

7. We find that the unit's violations of 47 C.F.R. § 73.2080(c)(1) and 47 C.F.R. 73.2080(c)(3) of the Commission's rules do not constitute "serious violations" of the Commission's rules of such gravity that they warrant designation for evidentiary hearing. Although it does not excuse the violations, the Unit through its counsel has reported to Commission staff that it believed it did not need to recruit for all openings as required by the Commission's rules because it maintains that it frequently received unsolicited employment inquiries from a diverse pool of applicants. We find no evidence of violations that, when considered together, evidence a pattern of abuse.[15] Further, we find that stations KDAY(FM), KDAI(FM), KLAX(FM), and KXOL (FM) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal applications below.[16]

8. *Ordering Clauses*. Upon review of the record, IT IS ORDERED that pursuant to Section 503(b) of the Communications Act of 1934, as amended,[17] and Sections 0.61, 0.283, and 1.80 of the Commission's rules,[18] KZBA Licensing, Inc., KZAB Licensing, Inc., KLAX Licensing, Inc., and KXOL Licensing, Inc. are hereby NOTIFIED of APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty thousand dollars ($20,000) for violating 47 C.F.R. § 73.2080(c)(1) and 47 C.F.R. 73.2080(c)(3) of the Commission's rules, as described herein.

9. 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, KZBA Licensing, Inc., KZAB Licensing, Inc., KLAX Licensing, Inc., and KXOL Licensing, Inc. 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 FCC Registration Numbers ("FRN") 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.[19]

10. The response, if any, must be mailed to Donna C. Gregg, Chief, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-C740, Washington, D.C. 20554 and MUST INCLUDE the NAL/Account number and FRNs referenced in the caption of this document.

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[14] 47 U.S.C. §§ 309(k)(2), 309(k)(3).

[15] For example, we do not find here that the licensee's station operation "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 F.C.C.2d 196, 198 (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 station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Heart of the Black Hills Stations*, 32 F.C.C.2d at 200. *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).

[16] *See* 47 U.S.C. § 309(k).

[17] 47 U.S.C. § 503(b).

[18] 47 C.F.R. §§ 0.61, 0.283, and 1.80.

[19] *See* 47 C.F.R. § 1.1914.

11. 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.

12. IT IS FURTHER ORDERED that KZBA Licensing, Inc., KZAB Licensing, Inc., KLAX Licensing, Inc., and KXOL Licensing, Inc. or, as applicable, the successor licensee(s) of KDAY(FM) and KDAI(FM), KLAX(FM), and KXOL (FM), shall submit to the Federal Communications Commission, Media Bureau, EEO Staff, an original and one copy of the following information on October 1, 2006; October 1, 2007; and October 1, 2008.

(a) The units' most recent EEO public file report due to be put in its public file by the due dates listed above.

(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.

13. IT IS FURTHER ORDERED that the renewal applications of KZBA Licensing, Inc., KZAB Licensing, Inc., KLAX Licensing, Inc., and KXOL Licensing, Inc. for stations KDAY(FM), KDAI(FM), KLAX(FM), and KXOL(FM), (File Nos. BRH-20050801AZU, BRH-20050801AZM, BRH-20050721AAN, and BRH-20050721AAL, respectively) ARE GRANTED.

14. 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 units' public inspection files.

15. Finally, IT IS ORDERED that a copy of this Notice shall be sent by First Class and Certified Mail, Return Receipt Requested, to KZBA Licensing, Inc., KZAB Licensing, Inc., KLAX Licensing, Inc., and KXOL Licensing, Inc. and its attorney of record in this proceeding, Allan G. Moskowitz, Esquire, Kaye Scholer LLP., 11^{th} Floor, 901 15^{th} Street, N.W., Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg
Chief
Media Bureau