

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

In the Matter of)	NAL/Acct. No. MB200741410237
)	
Inland Empire Broadcasting Corporation)	FRN: 0002965291
)	Facility ID No. 55240
Licensee of Station KOLA(FM))	
San Bernardino, California)	
)	
SBR Broadcasting Corporation)	
)	FRN: 0002971174
Licensee of Station KCAL-FM)	Facility ID No. 59272
Redlands, California)	
)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 7, 2007

Released: February 12, 2007

By the Chief, Media Bureau:

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 by the Chief, Media Bureau, pursuant to authority delegated under Section 0.283 of the Rules,² we find that Inland Empire Broadcasting Corporation, licensee of Station KOLA(FM), San Bernardino, California, and SBR Broadcasting Corporation, licensee of Station KCAL-FM, Redlands, California (collectively, the “Licensees” and the “Stations,” respectively),³ each apparently willfully and repeatedly violated Sections 73.2080(c)(1) and 73.2080(c)(3) of the Rules by failing to comply with the Commission’s Equal Employment Opportunity (“EEO”) recruitment and self-assessment requirements.⁴ Based upon our review of the facts and circumstances before us, we conclude that each of the Licensees is apparently liable for a monetary forfeiture in the amount of five thousand dollars (\$5,000). We also impose reporting conditions on both Licensees and any successor licensee of either or both 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. Section 73.2080(c)(3) requires that licensees

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

² See 47 C.F.R. § 0.283.

³ Inland Empire Broadcasting Corporation and SBR Broadcasting Corporation are wholly-owned subsidiaries of Anaheim Broadcasting Corporation. See FCC File No. BOA-20050726AQO. The Licensees filed a single FCC Form 396 for Stations KOLA(FM) and KCAL-FM, which comprise a single EEO employment unit.

⁴ See 47 C.F.R. §§ 73.2080(c)(1) and (c)(3).

analyze their station's recruitment program on an ongoing basis to ensure that the program is effective in achieving broad outreach to potential applicants, and address any problems found as a result of their analysis.

3. *EEO Review.* The Media Bureau (the "Bureau") has before it the Licensees' respective license renewal applications for the Stations.⁵ The Bureau has reviewed those applications for compliance with Section 73.2080 of the Rules.

4. Our review of the license renewal applications shows that, during the reporting periods at issue (August 1, 2003, through July 31, 2004, and August 1, 2004, through July 31, 2005), the Licensees each failed to recruit for four of their ten full-time vacancies, instead solely relying on referrals from advertising clients, salespeople, and other individuals to fill those vacancies.⁶ This failure to recruit appropriately continued through the two reporting periods, revealing a continuing lack of self-assessment.

III. DISCUSSION

5. We conclude that the Licensees each failed to recruit for every full-time vacancy, as required by Section 73.2080(c)(1), instead relying solely on referrals from clients or other individuals for four such vacancies. Although such referrals may reflect the source of an interviewee or hiree, relying only on a licensee's own private contacts does not constitute recruitment as contemplated under the Rules, which require public outreach.⁷ Because of the Licensees' lack of adequate recruitment, we find that they could not have adequately analyzed their recruitment program to ensure that it was effective in achieving broad outreach, in violation of Section 73.2080(c)(3).

6. 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.⁸ 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.⁹ 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,¹⁰ and the Commission has so interpreted the term in the Section 503(b) context.¹¹ 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."¹²

7. 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 for

⁵ See FCC File Nos. BRH-20050726AQW and BRH-20050729BRH, respectively. The applications remain pending before the Bureau.

⁶ See FCC File No. B396-20050726AQL, Attachment 2.

⁷ *New Northwest Broadcasters LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, 21 FCC Rcd 10748, 10749 (2006) (forfeiture paid).

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

⁹ 47 U.S.C. § 312(f)(1).

¹⁰ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹¹ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹² 47 U.S.C. § 312(f)(2).

vacancies or to self-assess EEO performance.¹³ 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.”¹⁴

8. As discussed *supra*, the Licensees each failed to recruit for four (40%) of their 10 vacancies and to self-assess their EEO program. Accordingly, based upon the facts before us, the factors noted above, and pertinent precedent,¹⁵ we find that the Licensees are apparently each liable for the following respective forfeiture amounts for their willful and repeated violations of the Rules: \$4,500 for their violation of Section 73.2080(c)(1) and \$500 for their violation of Section 73.2080(c)(3), for a total proposed forfeiture for each in the amount of \$5,000. We will also impose reporting conditions as set forth below, to ensure that the Licensees and any successor licensee of either or both of the Stations maintain adequate EEO programs, in compliance with the Rules.

IV. ORDERING CLAUSES

9. 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 Inland Empire Broadcasting Corporation is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of five thousand dollars (\$5,000) for its apparent willful and repeated violation of Sections 73.2080(c)(1) and 73.2080(c)(3) of the Commission’s Rules.

10. 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 SBR Broadcasting Corporation is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of five thousand dollars (\$5,000) for its apparent willful and repeated violation of Sections 73.2080(c)(1) and 73.2080(c)(3) of the Commission’s Rules.

11. 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*, Inland Empire Broadcasting Corporation and SBR Broadcasting Corporation SHALL EACH PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the proposed forfeitures must be made by check or similar instrument, payable to the order of the Federal Communications Commission. Each payment must include the *NAL*/Acct. No. and payor’s 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.

¹³ 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.

¹⁴ 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.

¹⁵ 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), 73.2080(c)(3), 73.2080(c)(5), 73.2080(c)(6)(iv), and 73.3526(e)(7). 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. *Emmis Television Licensee, LLC*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 13860 (2005) (forfeiture paid).

13. The responses, 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.

14. 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.

15. Requests for full payment of a 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. 20554.¹⁶

16. IT IS FURTHER ORDERED that Inland Empire Broadcasting Corporation, SBR Broadcasting Corporation, and any successor licensee of Stations KOLA(FM) and/or KCAL-FM, shall submit to the Federal Communications Commission, Media Bureau, EEO Staff, an original and one copy of the following information on September 1, 2007; September 1, 2008; and September 1, 2009:

- (a) the station’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; and
- (c) the total number of interviewees for each full-time vacancy for the preceding reporting year and the referral source for each interviewee.

17. IT IS FURTHER ORDERED that, pursuant to Section 73.3526(e)(10) of the Commission’s Rules, Inland Empire Broadcasting Corporation and SBR Broadcasting Corporation shall place a copy of this *NAL* in the KOLA(FM) and KCAL-FM public inspection files.

18. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Inland Empire Broadcasting Corporation and to SBR Broadcasting Corporation, P.O. Box 2668, Del Mar, California 92014 and to their counsel, Andrew Kersting, Esquire, Dickstein Shapiro LLP, 1825 Eye Street, NW, Washington DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai, Chief
Media Bureau

¹⁶ See 47 C.F.R. § 1.1914.