

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

In the Matter of	)	
	)	
<b>Waitt Omaha, LLC</b>	)	NAL/Acct. No. MB200741410238
	)	FRN: 0012442521
Licensee of Station KQKQ-FM	)	Facility ID No. 43238
Council Bluffs, Iowa	)	
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: February 7, 2007**

**Released: February 13, 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”),<sup>1</sup> by the Chief, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,<sup>2</sup> we find that Waitt Omaha, LLC (the “Licensee”), licensee of Station KQKQ-FM, Council Bluffs, Iowa (the “Station”), apparently willfully and repeatedly violated Sections 73.2080(c)(3), 73.2080(c)(5), 73.2080(c)(6)(iii), 73.2080(c)(6)(iv), and 73.3526(e)(7) of the Rules, by failing to comply with the self-assessment, record keeping, recruitment source information, interviewee information, and public file requirements of the Commission’s Equal Employment Opportunity (“EEO”) Rules.<sup>3</sup> 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 eight thousand dollars (\$8,000). We also impose reporting conditions with regard to the Station and any other stations that are included in the employment unit, to prevent future violations of these requirements. These requirements apply to the Licensee and to any successor licensee of any of these stations.

**II. BACKGROUND**

2. Section 73.2080(c)(3) of the Rules requires that a broadcast licensee analyze its station recruitment program 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) requires it to retain records to document that it has satisfied its EEO program requirements. Section 73.2080(c)(6)(iii) requires that it report the recruitment source that referred the hiree for each full-time vacancy during the preceding year. Section 73.2080(c)(6)(iv) requires it to report data reflecting the total number of persons interviewed for full-time vacancies during the preceding year and the total number of interviewees referred by each recruitment source utilized in connection with such vacancies. Section

<sup>1</sup> 47 U.S.C. §503(b); 47 C.F.R. § 1.80.

<sup>2</sup> See 47 C.F.R. § 0.283.

<sup>3</sup> See 47 C.F.R. §§ 73.2080(c)(3), 73.2080(c)(5), 73.2080(c)(6)(iii), 73.2080(c)(6)(iv), and 73.3526(e)(7).

73.3526(e)(7) requires a licensee to keep EEO public file report information in its station public inspection file.

3. The Media Bureau (the “Bureau”) has before it the Licensee’s license renewal application for the Station.<sup>4</sup> The Bureau has reviewed that application, including the Licensee’s EEO public file reports for the periods March 10 through October 1, 2003, and October 1, 2003, through September 30, 2004, for compliance with Section 73.2080 of the Rules. In addition, in response to Bureau staff inquiries, the Licensee submitted supplemental information.<sup>5</sup>

4. The Licensee reports that it did not retain all required documentation of its EEO efforts until it hired a new Station general manager in March 2004. Consequently, the Station’s EEO public file reports during the 2003 and 2004 reporting periods at issue (described above) failed to list the total number of interviewees and the number of interviewees referred by each of its recruitment sources for 20 (56%) of its 36 full-time vacancies. The public file reports also failed to list the recruitment source that referred each hiree for 14 (39%) of its 36 full-time vacancies. As a result, the Station’s EEO public file reports and public inspection files did not include this required information.

### III. DISCUSSION

5. We conclude that the Licensee failed to place required information in its EEO public file reports, in violation of Sections 73.2080(c)(6)(iii) and (iv). This EEO information is required to be placed in the Station’s public inspection file pursuant to Section 73.3526(e)(7). In addition, the Licensee failed to maintain and file all of the EEO documentation and records required by Section 73.2080(c)(5). Because of its lack of records of interviewees and referrals for most of its hires, 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, in violation of Section 73.2080(c)(3). It failed to address this problem for a period of 12 months, from March 2003 to March 2004, during which time 20 vacancies were filled.

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 for a forfeiture penalty.<sup>6</sup> 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.<sup>7</sup> 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,<sup>8</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>9</sup> 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.”<sup>10</sup>

<sup>4</sup> FCC File No. BRH-20040927AGK. The application remains pending before the Bureau.

<sup>5</sup> Correspondence from Waitt Omaha, LLC to EEO Staff, Policy Division, Media Bureau (August 9 and September 19, 2005).

<sup>6</sup> 47 U.S.C. § 503(b)(1)(B). *See also* 47 C.F.R. § 1.80(a)(1).

<sup>7</sup> 47 U.S.C. § 312(f)(1).

<sup>8</sup> *See* H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>9</sup> *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>10</sup> 47 U.S.C. § 312(f)(2).

7. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules do not establish a base forfeiture amount for EEO violations such as a failure to self-assess EEO performance, but do establish a base forfeiture amount of \$10,000 for violation of a public file rule.<sup>11</sup> The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules also establish base forfeiture amounts of \$3,000 for failure to file required forms or information and \$1,000 for failure to maintain required records.<sup>12</sup> 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."<sup>13</sup>

8. In this case, we find that the record is similar to, but less egregious than, that in *Emmis Television Licensee, LLC*, in which we issued, as a result of an EEO audit, an \$18,000 forfeiture for a licensee's violations of the 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).<sup>14</sup> In that case, the licensee had failed to: recruit for 11 (22%) of 51 openings; retain or report any data on interviewees or referrals; and self-assess adequately. Here, the Licensee failed to: maintain required EEO documentation and records for 20 (56%) of 36 vacancies, in violation of Section 73.2080(c)(5); include required information in its public file report, in violation of Section 73.2080(c)(6)(iii) (by failing to list the source of 14 (39%) of its 36 hires) and in violation of Section 73.2080(c)(6)(iv) (by failing to provide data regarding the numbers of persons interviewed and referred from each recruitment source); place required EEO information in its public inspection file, in violation of Section 73.3526(e)(7); and self-assess adequately, in violation of Section 73.2080(c)(3). Considering pertinent precedent and the factors noted above, we find that the Licensee is apparently liable for a forfeiture in the amount of \$4,000 for its apparent willful and repeated violation of Sections 73.3526(e)(7), 73.2080(c)(6)(iii), and 73.2080(c)(6)(iv), and in the amount of \$4,000 for its apparent willful and repeated violation of Sections 73.2080(c)(5) and 73.2080(c)(3), for a total proposed forfeiture in the amount of \$8,000. We will also impose reporting conditions as set forth below, to ensure that the Licensee and any successor licensee of Station KQKQ-FM maintains an adequate EEO program. The reporting conditions will apply to the Station, and to all other stations that are part of its employment unit.

#### 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 Waitt Omaha, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of eight thousand dollars (\$8,000) for its apparent willful and repeated violation of Sections 73.3526(e)(7), 73.2080(c)(3), 73.2080(c)(5), and 73.2080(c)(6)(iii) and (iv) of the Commission's Rules.

10. 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*, Waitt Omaha, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

<sup>11</sup> 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.

<sup>12</sup> *Id.*

<sup>13</sup> 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.

<sup>14</sup> *Emmis Television Licensee, LLC*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 13860 (2005) (forfeiture paid).

11. 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.

12. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> 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.

13. 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.

14. 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.<sup>15</sup>

15. IT IS FURTHER ORDERED that Waitt Omaha, LLC and any successor licensee of Station KQKQ-FM and/or any other station in its employment unit shall 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, with respect to Station KQKQ-FM and all other stations in its employment unit:

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

16. IT IS FURTHER ORDERED that, pursuant to Section 73.3526(e)(10) of the Commission's Rules, the Licensee shall place a copy of this *NAL* in its station public inspection files.

17. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Waitt Omaha, LLC, 1125 South 103<sup>rd</sup> Street, Suite 200, Omaha, Nebraska 68124, and to its counsel, Lawrence Bernstein, Esquire, 1818 N Street, NW, Suite 700, Washington DC 20036.

## FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai

---

<sup>15</sup> See 47 C.F.R. § 1.1914.

Chief, Media Bureau