



Federal Communications Commission  
Washington, D.C. 20554

March 25, 2008

**DA 08-439**  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Richard Denning,  
Vice President and General Counsel  
Cumulus Licensing LLC  
3535 Piedmont Road, 14<sup>th</sup> Floor  
Atlanta, GA 30305

Re: Cumulus Licensing LLC  
KGEE(FM), formerly KKLY(FM), Pecos, TX (Fac. ID # 76852)  
KODM(FM), formerly KUFO(FM), Odessa, TX (Fac. ID # 48435)  
KNFM(FM), Midland, TX (Fac. ID # 28202)  
KBAT(FM), formerly KGEE(FM), Monahans, TX (Fac. ID # 48433)  
KMND(AM), Midland, TX (Fac. ID # 28201)  
KRIL(AM), formerly KRIG(AM), Odessa, TX (Fac. ID # 12080)  
KZBT(FM), formerly KBAT(FM), Midland, TX (Fac. ID # 35880)

Dear Mr. Denning:

By letter dated March 7, 2005, to Cumulus Licensing LLC (“Cumulus”), licensee of the above-noted stations, the employment unit containing the stations was randomly audited for compliance with the Federal Communications Commission’s Equal Employment Opportunity (EEO) Rule, 47 C.F.R. § 73.2080. Cumulus submitted its audit response on April 6, 2005.

Our review of the Cumulus response shows that, for the April 1, 2003 –March 31, 2004 reporting period, the EEO public file report for the employment unit containing the stations failed to list the total number of interviewees and the number of interviewees referred by each of the unit’s recruitment sources for all of its nine full-time vacancies because Cumulus did not have the requisite EEO records. As a result, Cumulus’ EEO public file report and its station public inspection files did not include this required information. Our review also shows that for the April 1, 2004 – March 31, 2005 reporting period, Cumulus failed to recruit widely for four of seven full-time vacancies, instead relying on employee referrals, its stations’ on-air advertisements, or walk-ins as recruitment sources.

In light of the foregoing, we conclude that Cumulus failed to list the total number of interviewees and the number of interviewees referred by each of its recruitment sources for all of its nine full-time vacancies, in violation of Section 73.2080(c)(6)(iv).<sup>1</sup> This EEO information is required to be placed in each unit station’s public inspection file pursuant to Section 73.3526(e)(7).<sup>2</sup> In addition, Cumulus failed to maintain and file all of the EEO documentation and records required by Section 73.2080(c)(5).<sup>3</sup>

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<sup>1</sup>47 C.F.R. § 73.2080(c)(6)(iv).

<sup>2</sup> 47 C.F.R. § 73.3526(e)(7).

<sup>3</sup> 47 C.F.R. § 73.2080(c)(5).

Because of its lack of records of interviewees and referrals for nine of its 16 hires, we find that it was not possible for Cumulus 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).<sup>4</sup>

We also find that Cumulus failed to recruit widely for every full-time vacancy, as required by Section 73.2080(c)(1)(i),<sup>5</sup> instead relying on its stations' on-air advertisements, employee referrals and walk-ins as recruitment sources. The Commission has established that, although it does not require a specific number of recruitment sources, if a source or sources cannot reasonably be expected, collectively, to reach the entire community, a licensee may be found in noncompliance with the Commission's EEO rule, as here.<sup>6</sup> The Commission's policy allows recruitment from as few as one source, but the effort must be sufficiently broad.<sup>7</sup> Relying only on a licensee's own employees or its own private contacts does not constitute recruitment as contemplated under our rules, which require public outreach.<sup>8</sup> A "walk-in" may reflect the "source" of an interviewee or hiree, but relying solely on walk-ins does not reflect a recruitment effort.<sup>9</sup>

We accordingly conclude that Cumulus willfully and repeatedly violated the Commission's rules, Sections 73.2080(c)(1)(i), 73.2080(c)(5), 73.2080(c)(6)(iv) and 73.3526(e)(7), as discussed above. Further, because of Cumulus' failure to recruit properly for all of its vacancies and maintain adequate EEO records, we find that it did not adequately analyze its recruitment program on an ongoing basis to ensure that it was effective in achieving broad outreach, in violation of Section 73.2080(c)(3).

Under Section 503(b)(1) of the Communications Act of 1934, as amended (the "Act"), 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 monetary forfeiture penalty.<sup>10</sup> Because the violations here occurred during the prior license term and the stations' renewal applications have since been granted, however, the statute of limitations prohibits us from initiating a forfeiture proceeding in this case.<sup>11</sup> For this reason, we admonish Cumulus for these

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<sup>4</sup> 47 C.F.R. § 73.2080(c)(3).

<sup>5</sup> 47 C.F.R. § 73.2080(c)(1)(i).

<sup>6</sup> See 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*, MM Docket No. 98-204, Second Report and Order and Third Notice of Proposed Rulemaking, 17 FCC Rcd 24018, 24047, ¶86 (2002), *recon. pending*.

<sup>7</sup> *Id.*

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

<sup>9</sup> *Id.*

<sup>10</sup> See 47 U.S.C. § 312(f)(1). 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. 47 U.S.C. § 312(f)(1). The legislative history accompanying Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, and the Commission has so interpreted the term in the Section 503(b) context. See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982). See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) ("*Southern California Broadcasting Co.*"). "Repeated" merely means that the act was committed or omitted more than once, or lasts more than one day. See *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; see also *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) (proposing forfeiture for, *inter alia*, a cable television operator's violation of the signal leakage rules).

<sup>11</sup> See 47 U.S.C. § 503(b)(6)(A). See also FCC File Nos. BRH-20050401BIK, BRH-20050401BNV, BRH-20050401BMF, BRH-20050401BKD, BR-20050401BHZ, BRH-20050401BPM, and BR-20050401BHE.

violations. But for the running of the statute of limitations, we would have proposed a forfeiture in this case. We remind Cumulus that we expect it to take the steps necessary to ensure that its staff understands and complies with the requirements of the Commission's EEO rules and caution it that we will not hesitate to impose appropriate sanctions against it for any further violations.

Accordingly, Cumulus Licensing LLC, is hereby ADMONISHED for its willful and repeated violation of the Commission's rules, specifically Sections 73.2080(c)(1)(i), 73.2080(c)(5), 73.2080(c)(6)(iv), 73.3526(e)(7), and 73.2080(c)(3) of the Rules.

IT IS FURTHER ORDERED that Cumulus Licensing LLC, and any successor licensee of Stations KGEE(FM), Pecos, Texas; KODM(FM), Odessa, Texas; KNFM(FM), Midland, Texas; KBAT(FM), Monahans, Texas; KMND(AM), Midland, Texas; KRIL(AM), Odessa Texas; and/or KZBT(FM), Midland, Texas<sup>12</sup> shall submit to the Federal Communications Commission, Media Bureau, EEO Staff, an original and one copy of the following information on May 1, 2008; May 1, 2009; and May 3, 2010, with respect to these stations and any other station(s) in this employment unit:

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

Sincerely,

Lewis C. Pulley  
Assistant Chief, Policy Division  
Media Bureau

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<sup>12</sup> In the event of an assignment of any of the stations in this employment unit, this continuing obligation will run to the assignee with regard to each station so assigned.