



Federal Communications Commission
Washington, D.C. 20554

March 6, 2008

DA 08-440

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Donald Seehafer, President
Seehafer Broadcasting Corporation
P.O. Box 778
1110 East Wausau Avenue
Wausau, Wisconsin 54402

Re: WXCO(AM), Wausau, WI (Fac. ID # 59611)

Dear Mr. Seehafer:

We have completed our review of the response of Seehafer Broadcasting Corporation ("Seehafer") to the October 7, 2004 random audit letter sent to it in connection with its above-noted station, in accordance with the provisions of 47 C.F.R. § 73.2080(f)(4) of the Commission's Equal Employment Opportunity (EEO) rules.

The EEO public file reports attached to the response listed two full-time hires by Seehafer between March 10 and July 31, 2003 ("2003 period"), and three full-time hires between August 1, 2003, and July 31, 2004 ("2004 period"). The only recruitment source used by Seehafer for four openings was a website, allaccess.com.

In its response, Seehafer argues that it operated under "unusual" recruiting procedures from March 10, 2003, to the filing of its Form 396 on July 30, 2004. It reports that, during that time, it filed an application to assign its license with the Commission in April 2003. Seehafer maintains that the pending sale (which was ultimately abandoned) made it difficult for the station to retain employees or attract new ones within the market. Seehafer states that the uncertainty of the situation made it difficult for it to plan or prepare for its hiring needs. It indicates that it hired new full-time employees when absolutely necessary, and on relatively short notice. Seehafer maintains that it is aware of its recruiting obligations and will make every effort to meet them.

We conclude that WXCO failed to recruit widely recruit for four of the five vacancies it filled in the reporting periods of 2003 and 2004 as required by Section 73.2080(c)(1), which requires public outreach. In addition, use of a website, without an additional non-Internet source, does not constitute adequate recruitment under the same Section, as discussed in para. 99 of *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, MM Docket 98-204, Second Report and Order and Third Notice of Proposed Rulemaking, 17 FCC Rcd 24018, 24051 (2002), *recon. pending*. Furthermore, Seehafer's failure to have corrected these recruiting deficiencies during the 2003 and 2004 reporting periods constitutes a violation of 47 C.F.R. § 73.2080(c)(3) of our rules, which requires licensees to

analyze their recruitment programs to ensure that they are effective in achieving broad outreach. We accordingly conclude that Seehafer willfully and repeatedly violated the Commission's EEO rule, Sections 73.2080(c)(1)(i) and (c)(3).

We take note of the pending sale of the station during these reporting periods and Seehafer's acknowledgement of shortcomings in its EEO compliance and its stated intention to correct them. We understand that the pending sale of the station may, as Seehafer claims, have created a degree of uncertainty, but such circumstances do not excuse a licensee's abandonment of its recruiting responsibilities pursuant to our EEO rules when it employed a sufficient number of full-time employees to be obligated to comply with the recruitment provisions of those rules.

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.¹ However, because the violations here occurred during the prior license term and the station's renewal application has since been granted, the statute of limitations prohibits us from initiating a forfeiture proceeding in this case.² For this reason, we admonish Seehafer for these violations. But for the running of the statute of limitations, we would have initiated a forfeiture proceeding in this case. We remind Seehafer 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 that we will not hesitate to impose appropriate sanctions against it for any further violations.³

Accordingly, for the reasons noted above and pursuant to 47 C.F.R. § 73.2080(g), Seehafer Broadcasting Company is hereby ADMONISHED for its willful and repeated

¹See 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, 97th 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).

²See 47 U.S.C. § 503(b)(6)(A). See also FCC File No. BR-20040730AEP.

³Seehafer advises that, because it currently employs fewer than five full-time employees, the recruitment portions of our EEO rule do not currently apply to WXCO(AM). Under the circumstances of this case, we would normally impose reporting conditions on the licensee. However, because those reports typically require information about a licensee's recruitment program, in light of the number of Seehafer's employees, will forego requiring reporting conditions here.

violation of our EEO rules, specifically Sections 73.2080(c)(1)(i) and 73.2080(c)(3) of the rules. We warn Seehafer Broadcasting Company that it should take utmost care to ensure that it fully adheres to the requirements of our EEO rule.

Sincerely,

Lewis C. Pulley
Assistant Chief, Policy Division
Media Bureau