



Federal Communications Commission  
Washington, D.C. 20554

March 6, 2008

DA 08-441

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Richard Hayes, Jr., Esquire  
Post Office Box 200  
Lincolntonville, Maine 04849

Re: Roser Communications Network, Inc.  
WBGK(FM), Newport Village, NY (Fac. ID # 110)  
WBUG-FM, Ft. Plain, NY (Fac. ID # 72625)  
WVTL(AM), Amsterdam, NY (Fac. ID # 72624)

Dear Mr. Hayes:

By letter dated March 7, 2005, to your client, Roser Communications Network, Inc. (“Roser”), 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. Roser submitted its audit response on May 10, 2005, including the stations’ EEO Public Inspection File Reports for the periods from March 10, 2003, through February 1, 2004 (“2004 report”) and from February 1, 2004, through February 1, 2005 (“2005 report”).<sup>1</sup>

Our review of Roser’s audit response and its reply to our supplemental inquiry<sup>2</sup> reveals that Roser failed to complete the minimum of two recruitment initiatives during the reporting periods at issue, required by 47 C.F.R. § 73.2080(c)(2). This Section requires that a station employment unit that has five to ten full-time employees and/or is located in a smaller market, such as Roser’s unit, engage in at least two recruitment initiatives during each two-year period. According to Roser’s Public Inspection File Reports, Roser intended to complete its initiative requirements by: (1) listing upper-level openings in a job bank or newsletter of a media trade group whose membership includes substantial participation of women and minorities, and by (2) providing training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination. Roser notes, however, that because it had no upper-level job openings since March 10, 2003, no openings were listed by its stations in a job bank or newsletter of a media trade group. Roser has offered no information that it had provided the training to management personnel that it claims to have intended. Roser’s only reported initiative was its co-sponsorship of a job fair on July 13, 2004.

In light of the foregoing, we conclude that Roser’s completion of only one initiative in a two-year period resulted in a failure to complete two initiatives, in violation of 47 C.F.R. § 73.2080(c)(2). Completion of two initiatives was a mandatory requirement of Roser’s EEO program. If it could not perform an initiative as originally planned, then it was obligated to perform another initiative from the

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<sup>1</sup> Roser requested and received from the Commission an extension of time to file its response no later than May 13, 2005.

<sup>2</sup> *Response to FCC Request for EEO Information* from Roser Communications Network, Inc., May 7, 2005, Attachment 3, Recruitment Initiatives. Roser submitted information for both the 2003 and 2004 reporting period in this attachment to its response.

extensive menu of 16 options listed in Section 73.2080(c)(2).<sup>3</sup> We accordingly conclude that Roser willfully and repeatedly violated the Commission's EEO rule, Section 73.2080(c)(2). Further, because of Roser's failure to complete its required initiatives, 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 and address any problems found therein, 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>4</sup> Because the violations here occurred during the prior license term and the stations' renewal applications have since been granted, the statute of limitations prohibits us from initiating a forfeiture proceeding in this case.<sup>5</sup> For this reason, we admonish Roser for these violations. But for the running of the statute of limitations, we would have initiated a forfeiture proceeding in this case. We remind Roser 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, Roser Communications Network, Inc. is hereby ADMONISHED for its willful and repeated violation of our EEO rules, specifically Sections 73.2080(c)(2) and (3) of the Rules.

IT IS FURTHER ORDERED that Roser Communications Network, Inc., and any successor licensee of any of its above-listed stations<sup>6</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;

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<sup>3</sup> *In the Matter of Viper Communications*, 20 FCC Rcd 20, 254 (2005)

<sup>4</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>5</sup> See 47 U.S.C. § 503(b)(6)(A). See also FCC File Nos. BRH-20050331BJZ, BRH-20050331BMR, BRH-20050331BMS, and BRH-20050331BMT.

<sup>6</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.

- (d) the total number of interviewees for each full-time vacancy for the preceding reporting year and the referral source for each interviewee; and.
- (e) a description of the recruitment initiatives engaged in for the reporting period.

Sincerely,

Lewis C. Pulley  
Assistant Chief, Policy Division  
Media Bureau