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

In the Matter of	)	
	)	
Cox Radio, Inc.	)	NAL/Acct. No. MB-200941410009
	)	FRN: 0001842533
	)	
Licensee of Stations	)	Facility I.D. No. 72984
WFLC(FM), Miami, Florida	)	
	)	Facility I.D. No. 72982
WHQT(FM), Coral Gables, Florida	)	
	)	Facility I.D. No. 71418
WEDR(FM), Miami, Florida	)	
and	)	Facility I.D. No. 40408
WHDR(FM), Miami, Florida	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 29, 2009 **Released:** June 29, 2009

By the Acting 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] we find that Cox Radio, Inc. (the "Licensee"), licensee of Florida Stations WFLC(FM), Miami; WHQT(FM), Coral Gables; and WEDR(FM) and WHDR(FM), Miami (the "Stations"), apparently willfully and repeatedly violated Sections 73.2080(c)(1), 73.2080(c)(1)(i) and 73.2080(c)(3) of the Rules[2] by failing to comply with the Commission's Equal Employment Opportunity ("EEO") recruitment and self-assessment requirements. 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 nine thousand dollars ($9,000). We impose reporting conditions with regard to the Stations and any other stations that are included in the employment unit, 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. In this regard, the Rules impose, *inter alia*, the following obligations on such licensees:

- Section 73.2080(c)(1)(i): use recruitment sources for each vacancy in a manner sufficient, in the licensee's reasonable, good faith judgment, to widely disseminate information concerning the vacancy; and

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

[2] *See* 47 C.F.R. §§73.2080(c)(1), 73.2080(c)(1)(i) and 73.2080(c)(3).

- Section 73.2080(c)(3): analyze the recruitment program for the licensee's unit 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.

3. The Media Bureau audited the Licensee for its compliance with Section 73.2080 of the Rules[3] at the Stations and we have before us the Licensee's responses to the audit.[4] Our review shows that, during the reporting periods at issue (October 1, 2005, through September 30, 2006; and October 1, 2006, through September 30, 2007), the Licensee filled 25 full-time vacancies at its Stations and failed to properly recruit for one full-time vacancy because it relied solely on industry and employee referrals, in violation of Section 73.2080(c)(1). The Licensee also failed to properly recruit widely for seven vacancies because it relied solely on Internet web sites and internal postings, industry or employee referrals, or walk-ins to fill those vacancies, in violation of Section 73.2080(c)(1)(i). These failures reveal a continuing lack of self-assessment during the two-year time period, in violation of Section 73.2080(c)(3).

III. DISCUSSION

4. We conclude that the Licensee failed to properly recruit for every full-time vacancy, as required by Section 73.2080(c)(1), instead relying on industry and employee referrals to fill one full-time vacancy. Relying only on a licensee's own employees or its own private contacts does not constitute recruitment as contemplated under the Commission's rules, which require public outreach.[5]

5. We also conclude that the Licensee failed to properly recruit widely for every full-time vacancy, as required by Section 73.2080(c)(1)(i), instead relying solely on Internet web sites as a recruitment source for one vacancy; web sites, internal postings, and employee referrals for four vacancies; websites and employee referrals for one vacancy; and web sites, walk-ins, and industry/employee referrals for one vacancy. While the Commission does not require the use of a specific number of recruitment sources, if a source or sources cannot reasonably be expected, collectively, to reach the entire community, as here, a licensee may be found in noncompliance with the Commission's EEO Rule.[6] A walk-in may reflect the "source" of an interviewee or hiree, but walk-ins do not reflect a recruitment effort.[7] Internal postings do not result in sufficient public outreach to inform job seekers who are unconnected to Licensee staff that positions at the Stations are available. Further, the Commission's EEO policy requires a licensee to recruit from non-Internet sources, in addition to any sources from the Internet, in order for its recruitment to sufficiently widely disseminate information concerning the vacancy.[8] In our Second Report and Order, which was released on November 20, 2002, the Commission stated that it would continue to monitor the viability of the Internet as a recruitment source and would consider whether future circumstances warranted a change in our policy.[9] At this time, however, although

[3] Letter from Lewis Pulley, Assistant Chief, Policy Division, Media Bureau, to Cox Radio, Inc. (Apr. 2, 2008).

[4] Letter and email from Christina Burrow, Esq., to EEO Staff, Policy Division, Media Bureau (May 2, 2008 and Aug. 5, 2008, respectively).

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

[6] *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* ("Second Report and Order").

[7] *New Northwest Broadcasters LLC* at 10749.

[8] *See* 17 FCC Rcd at 24051, ¶99, wherein the Commission said, "…we are unable to conclude that Internet usage has become sufficiently widespread to justify allowing it to be used as the sole recruitment source."

[9] *Id.*

access to the Internet has increased since 2002, we are not convinced that access has become so extensive that sole reliance on Internet recruitment will achieve our requirement for broad and inclusive outreach for job openings.

6. Because of these failures, we find that the Licensee also failed to adequately analyze its recruitment program to ensure that it was effective in achieving broad outreach, in violation of Section 73.2080(c)(3).

7. 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.[10] 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.[11] 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,[12] and the Commission has so interpreted the term in the Section 503(b) context.[13] 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."[14]

8. 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 widely for vacancies or to self-assess EEO performance. Accordingly, we must look to pertinent precedent involving similar violations to determine the appropriate proposed forfeiture amount here. In determining the appropriate forfeiture amount, we may adjust the 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."[15]

9. As discussed *supra*, the Licensee failed to properly recruit for one full-time vacancy because it relied solely on industry and employee referrals to fill that vacancy, in violation of Section 73.2080(c)(1). The Licensee further failed to properly recruit widely for seven of 25 full-time vacancies because it relied on Internet websites, walk-ins, referrals, and internal postings to fill those vacancies, in violation of Section 73.2080(c)(1)(i). These failures reveal a continuing lack of self-assessment during the relevant two-year time period, in violation of Section 73.2080(c)(3). Accordingly, based upon the facts before us, the factors noted above, and pertinent precedent,[16] we find that the Licensee is apparently liable for the following forfeiture amounts for its willful and repeated violations of these Rules: $1,000 for its violation of Section 73.2080(c)(1); $6,000 for its violation of Section 73.2080(c)(1)(i); and $2,000 for its violation of Section 73.2080(c)(3), for a total proposed forfeiture in the amount of $9,000. We will

[10] 47 U.S.C. § 503(b)(1)(B). *See also* 47 C.F.R. § 1.80(a)(1).

[11] 47 U.S.C. § 312(f)(1).

[12] *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

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

[14] 47 U.S.C. § 312(f)(2).

[15] 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.

[16] In *New Northwest Broadcasters LLC*, we proposed, among other things, a $5,000 forfeiture for a licensee's violation of Section 73.2080(c)(1); a $5,000 forfeiture for the violation of Section 73.2080(c)(1)(i); and a $1,000 forfeiture for the violation of Section 73.2080(c)(3). The licensee had failed to recruit for eight of its 25 full-time vacancies by relying solely on walk-ins or referrals; failed to recruit widely for five of its 25 full-time vacancies by relying solely on an Internet website or that website and walk-ins as recruitment sources for five of its 25 vacancies; and failed to self-assess its EEO program for 18 months.

also impose reporting conditions as set forth below, to ensure that the Licensee and any successor licensee of any of the Stations maintains an adequate EEO program in compliance with the Rules. The reporting conditions will apply to the Stations, and to all other stations that are part of their employment unit.

IV. ORDERING CLAUSES

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 Cox Radio, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of nine thousand dollars ($9,000) for its apparent willful and repeated violation of Sections 73.2080(c)(1), 73.2080(c)(1)(i), 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*, Cox Radio, Inc. SHALL 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 forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

13. The response, 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 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.[17]

16. IT IS FURTHER ORDERED that Cox Radio, Inc. and any successor licensee of any or all of Stations WFLC(FM), WHQT(FM), WEDR(FM), and WHDR(FM)[18] shall submit to the Federal

[17] *See* 47 C.F.R. § 1.1914.

[18] In the event of an assignment of any of the Stations, this continuing obligation will run to the assignee with regard to each Station assigned.

Communications Commission, Media Bureau, EEO Staff, an original and one copy of a filing, sworn to by an officer of Cox Radio, Inc., containing the following information on November 1, 2010; November 1, 2011; and November 1, 2012, with respect to Stations WFLC(FM), WHQT(FM), WEDR(FM), and WHDR(FM) and all other stations in their 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;

(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) the unit's Internet links demonstrating the posting of its EEO public file report on each Station's website, if any.

17. IT IS FURTHER ORDERED that, pursuant to Section 73.3526(e)(10) of the Commission's Rules, Cox Radio, Inc. shall place a copy of this *NAL* in the public inspection files of Stations WFLC(FM), WHQT(FM), WEDR(FM), and WHDR(FM).

18. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Cox Radio, Inc., 2741 North 29th Avenue, Hollywood, Florida 33020, and to its attorney, Christina Burrow, Esquire, Dow Lohnes PLLC, 1200 New Hampshire Avenue, N.W., Suite 800, Washington D.C. 20036-6802.

FEDERAL COMMUNICATIONS COMMISSION

Robert H. Ratcliffe, Acting Chief
Media Bureau