

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

In the Matter of)	
)	
Entravision Holdings, L.L.C.)	NAL/Acct. No. MB-200941410010
)	FRN: 0001529627 & 0006161525
Licensee of Stations)	
KFRQ(FM), Harlingen, Texas)	Facility I.D. No. 56484
)	
KNVO-FM, Port Isabel, Texas)	Facility I.D. No. 40680
)	
KVLY(FM), Edinburg, Texas)	Facility I.D. No. 67188
)	
KKPS(FM), Brownsville, Texas)	Facility I.D. No. 56483

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 Entravision Holdings, LLC (the “Licensee”), licensee of Stations KFRQ(FM), Harlingen, Texas; KNVO-FM, Port Isabel, Texas; KVLY(FM), Edinburg, Texas; and KKPS(FM), Brownsville, Texas (the “Stations”), apparently willfully and repeatedly violated Sections 73.2080(c)(1), 73.2080(c)(1)(i), 73.2080(c)(3), and 73.2080(c)(6) of the Rules² by failing to comply with the Commission’s Equal Employment Opportunity (“EEO”) recruitment, self-assessment, and website 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 twelve thousand dollars (\$12,000). We also 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;

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), 73.2080(c)(3), and 73.2080(c)(6).

- 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; and
- Section 73.2080(c)(6): place the unit's EEO public file report on its station's website.

3. *EEO Review.* On March 25, 2008, the Media Bureau (the "Bureau") admonished the Licensee for violating Sections 73.2080(c)(1)(i) and 73.2080(c)(3) of the Rules because it failed to recruit widely for every full-time vacancy, instead relying on its corporate Internet web site, the Stations' on-air advertisements, word-of-mouth referrals, walk-ins, unsolicited job applications, or internal job postings as recruitment sources for twelve of its thirteen full-time vacancies.³ The Bureau also issued reporting conditions and noted that the statute of limitations prohibited it from initiating a forfeiture proceeding.⁴ We have before us the Licensee's submission of EEO information mandated by the reporting conditions.⁵ We also have before us the Licensee's responses to the Bureau's inquiries concerning the Stations' submission.⁶ Our review of these materials shows that, during the reporting period at issue (April 1, 2007, through March 31, 2008), the Licensee failed to properly recruit for two of its 12 full-time vacancies because it relied solely on an employee referral for one vacancy and a rehire, absent sufficient recruitment, of a former employee for another vacancy, in violation of Section 73.2080(c)(1). In addition, the Licensee failed to properly recruit widely for two other full-time vacancies because it relied solely on referrals and its company website to fill those vacancies, in violation of Section 73.2080(c)(1)(i). Finally, the Licensee failed to place its EEO public file report on the Stations' websites, as required by Section 73.2080(c)(6). The Licensee was due to post its 2008 EEO public file report on the Stations' website by April 1, 2008, yet did not do so until July 28, 2008, when requested by the Bureau.⁷ These failures reveal a continuing lack of self-assessment, in violation of Section 73.2080(c)(3).

III. DISCUSSION

4. We conclude that the Licensee violated Section 73.2080(c)(1) by failing to properly recruit for two full-time vacancies, instead relying on a former employee and an employee referral to fill those vacancies, respectively. 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.⁸

5. We also find 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 referrals and its stations' websites as recruitment sources for two vacancies. The Licensee's reliance on non-public sources such as referrals, and on its own website, without use of further sources to fill full-time vacancies did not constitute sufficient recruitment as contemplated under the Commission's rules, which require public outreach.⁹ While the Commission does not require the use of a specific number of recruitment sources, if

³ Letter to Barry Friedman, Esq., DA 08-520, released March 25, 2008 (Licensee admonished for violating Sections 73.2080(c)(1)(i) and 73.2080(c)(3) of the Rules as a result of an EEO random audit).

⁴ *Id.* at p.2.

⁵ Letter from Barry Friedman, Esq., to Marlene Dortch, Secretary, FCC (May 1, 2008).

⁶ Letters and emails from Barry Friedman, Esq., to EEO Staff, Policy Division, Media Bureau (May 21, 2008; May 30, 2008; Jul. 23, 2008; Jul. 28, 2008; and Sep. 29, 2008).

⁷ Email from Barry Friedman, Esq., to EEO Staff, Policy Division, Media Bureau (Jul. 28, 2008).

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

⁹ *Id.*

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.¹⁰ Moreover, 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.¹¹ 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.¹² At this time, however, although 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. In addition, we find that the Licensee failed to place its EEO public file report on the Stations' websites, as required by Section 73.2080(c)(6). Because of this public file violation, the failure to recruit, and insufficient recruitment, 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).

7. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any licensee that 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.¹³ 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.¹⁴ 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,¹⁵ and the Commission has so interpreted the term in the Section 503(b) context.¹⁶ 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."¹⁷

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. However, they do establish a base forfeiture amount of \$10,000 for violation of the Commission's public file rules and of \$3,000 for failure to file required information.¹⁸ 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

¹⁰ 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").

¹¹ 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."

¹² *Id.*

¹³ 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. § 1.80(a)(1).

¹⁴ 47 U.S.C. § 312(f)(1).

¹⁵ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁶ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁷ 47 U.S.C. § 312(f)(2).

¹⁸ 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.

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.”¹⁹

9. As discussed *supra*, the Licensee failed to properly recruit for two of its 12 full-time vacancies because it relied solely on an employee referral for one vacancy and a rehire, absent sufficient recruitment, of a former employee for another vacancy, in violation of Section 73.2080(c)(1). The Licensee also failed to properly recruit widely for two other full-time vacancies because it relied solely on two referrals and its website to fill those vacancies, in violation of Section 73.2080(c)(1)(i). Finally, the Licensee failed to place its EEO public file report on the Stations’ websites for 2008, as required by Section 73.2080(c)(6). These failures reveal a continuing lack of self-assessment, in violation of Section 73.2080(c)(3). Accordingly, based upon the facts before us, the factors noted above, and pertinent precedent,²⁰ we find that the Licensee is apparently liable for the following forfeiture amounts for its willful and repeated violations of these Rules: \$3,000 for its violation of Section 73.2080(c)(1); \$5,000 for its violation of Section 73.2080(c)(1)(i); \$1,000 for its violation of Section 73.2080(c)(3); \$3,000 for its violation of Section 73.2080(c)(6), for a total proposed forfeiture in the amount of \$12,000. We will 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 Entravision Holdings, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of twelve thousand dollars (\$12,000) for its apparent willful and repeated violation of Sections 73.2080(c)(1), 73.2080(c)(1)(i), 73.2080(c)(3), and 73.2080(c)(6) 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*, Entravision Holdings, LLC 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,

¹⁹ 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.

²⁰ In *Liberian Television of Dallas License Corp.*, we proposed, among other things, a \$1,000 forfeiture for a licensee’s violation of Section 73.2080(c)(6). *Liberian Television of Dallas License Corp.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2032 (2007) (response pending). In *New Northwest Broadcasters LLC*, we proposed a \$5,000 forfeiture for a licensee’s violation of Section 73.2080(c)(1)(i). The licensee had failed to recruit widely for every full-time vacancy by relying solely on an Internet website or that website and walk-in applicants as recruitment sources for five of its 25 vacancies. We also proposed a \$5,000 forfeiture for the licensee’s violation of Section 73.2080(c)(1). The licensee had failed to recruit for each of its 25 full-time vacancies by relying solely on walk-ins or referrals from employees or other individuals for eight vacancies. *New Northwest Broadcasters LLC*, *supra*. We further proposed, among other things, a \$1,000 forfeiture for violation of Section 73.2080(c)(3). The licensee had failed to self-assess its EEO program for 18 months. *Id.*

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. 20554.²¹

16. IT IS FURTHER ORDERED that Entravision Holdings, LLC and any successor licensee for any or all of Stations KFRQ(FM), Harlingen, Texas; KNVO-FM, Port Isabel, Texas; KVLV(FM), Edinburg, Texas; and KKPS(FM), Brownsville, Texas²² shall submit to the Federal Communications Commission, Media Bureau, EEO Staff, an original and one copy of the following information on May 2, 2011, May 1, 2012, and May 1, 2013,²³ with respect to Stations KFRQ(FM), Harlingen, Texas; KNVO-FM, Port Isabel, Texas; KVLV(FM), Edinburg, Texas; and KKPS(FM), Brownsville, Texas and all other stations in its 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.

17. IT IS FURTHER ORDERED that, pursuant to Section 73.3526(e)(10) of the Commission's Rules, Entravision Holdings, LLC shall place a copy of this *NAL* in the public inspection

²¹ See 47 C.F.R. § 1.1914.

²² In the event of an assignment of any of the Stations, this continuing obligation will run to the assignee with regard to each such station assigned.

²³ The reporting conditions imposed with regard to the Stations in *Letter to Barry Friedman, Esq.* continue to apply. They require reports on May 1, 2009, and May 3, 2010.

files of Stations KFRQ(FM), Harlingen, Texas; KNVO-FM, Port Isabel, Texas; KVLV(FM), Edinburg, Texas; and KKPS(FM), Brownsville, Texas.

18. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Entravision Holdings, LLC, 2425 Olympic Blvd., Suite 6000 W, Santa Monica, California 90404-4030, and to Barry Friedman, Esquire, Thompson Hine LLP, 1929 N Street, N.W., Washington D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION

Robert H. Ratcliffe, Acting Chief
Media Bureau