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

In the Matter of	)	
	)	
CMP Houston-KC, LLC	)	NAL/Acct. No. MB-200941410011
	)	FRN: 0003254562
Licensee of Stations	)	
KCMO(AM), Kansas City, MO	)	Facility I.D. No. 33391
	)	
KCMO-FM, Shawnee, MO	)	Facility I.D. No. 6385
	)	
KCFX(FM), Harrisonville, MO	)	Facility I.D. No. 27021
	)	
KCJK(FM), Garden City, MO	)	Facility I.D. No. 87565
	)	
CMP KC Licensing, LLC	)	
	)	
Licensee of Station	)	
KMJK(FM), Lexington, MO	)	Facility I.D. No. 33713

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 CMP Houston-KC, LLC ("CMP Houston"), licensee of Stations KCMO(AM), Kansas City, Missouri, KCMO-FM, Shawnee, Missouri, KCFX(FM), Harrisonville, Missouri, KCJK(FM), Garden City, Missouri, and CMP KC Licensing, LLC ("CMP KC"), licensee of Station KMJK(FM), Lexington, Missouri[2] (KCMO(AM), KCMO-FM, KCFX(FM), KCJK(FM) and KMJK(FM), collectively, the "Stations" and CMP Houston and CMP KC, collectively, the "Licensee"), apparently willfully and repeatedly violated Sections 73.2080(c)(1)(ii), 73.2080(c)(3) and Section 73.2080(c)(5) of the Commission's Rules (the "Rules")[3] by failing to comply with the Commission's Equal Employment Opportunity ("EEO") notification, recordkeeping, and self-assessment requirements. Based upon our review of the facts and circumstances before us, we conclude that CMP Houston and CMP KC are apparently jointly and severally liable for a monetary forfeiture in the amount of three thousand dollars ($3,000). We also impose reporting conditions on the Licensee and any successor licensee of any of the Stations to prevent future violations of these requirements.

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

[2] CMP Houston acquired Stations KCMO(AM), KCMO-FM, KCFX(FM) and KCJK(FM) on May 3, 2006. *See* File Nos. BAL-20051118AEP, BALH-20051118AEQ, BALH-20051118AER and BALH-20051118AEU. CMP KC acquired Station KMJK(FM) on May 5, 2006. *See* BALH-20060327AAC.

[3] *See* 47 C.F.R. §§ 73.2080(c)(1)(ii), 73.2080(c)(3), and 73.2080(c)(5).

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)(ii): provide notification of each vacancy to any organization that distributes information about employment opportunities to job seekers upon request by such organization;
- 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)(5): retain records of its EEO recruitment efforts by keeping the paperwork demonstrating that it had used all of its listed recruitment sources and advertised all of its vacancies to those sources.

3. The Media Bureau audited CMP Houston for its compliance with Section 73.2080 of the Rules[4] at the Stations and we have before us its response to the audit.[5] Our review shows that, during the reporting period at issue (May 3 through September 30, 2006), the Licensee filled 14 vacancies at its Stations. The Licensee failed to provide notification of each full-time vacancy to two organizations that had requested vacancy notification, as required by Section 73.2080(c)(1)(ii). One organization was notified only once, while the other organization was not notified at all. The Licensee also reports that it "did not retain fully detailed documentation to support the data reported on its EEO Public File Report"[6] for 13 of its 14 full-time vacancies, in violation of Section 73.2080(c)(5). These failures reveal a continuing lack of self-assessment, in violation of Section 73.2080(c)(3).

III. DISCUSSION

4. We find that the Licensee failed to provide notification of each full-time vacancy to organizations that requested vacancy notification, as required by Section 73.2080(c)(1)(ii). We also find that it did not retain adequate records of its EEO recruitment efforts in that it did not keep the paperwork demonstrating that it had used all of its listed recruitment sources and advertised all of its vacancies to those sources, as required by Section 73.2080(c)(5). Because of these failures, 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]

5. 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

[4] Letter from Lewis Pulley, Assistant Chief, Policy Division, Media Bureau, to CMP Houston-KC, LLC (Feb. 8, 2007). The audit information reviewed was based on the period May 3 through September 30, 2006.

[5] Letter from CMP Houston-KC, LLC to EEO Staff, Policy Division, Media Bureau (Mar. 26, 2007). Richard Denning responded to the Media Bureau's February 8, 2007, audit letter as the "Vice President, Secretary, and General Counsel of CMP Houston-KC, LLC and CMP KC Licensing, LLC (together, the 'CMP LLCs'), which are commonly owned and controlled through intermediate entities." He indicated that all five Stations are included in the subject employment unit. Accordingly, we will consider the employment unit to jointly be CMP Houston and CMP KC.

[6] *Id*. at "Statement Concerning Incomplete Documentation of Usage of Recruitment Sources."

[7] According to the Licensee's response, none of these violations occurred before May 5, 2006, when CMP KC acquired Station KMJK(FM).

United States for a forfeiture penalty.[8] 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.[9] 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,[10] and the Commission has so interpreted the term in the Section 503(b) context.[11] 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."[12]

6. 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 self-assess EEO performance. [13] Accordingly, we must look to pertinent precedent involving similar violations to determine the appropriate proposed forfeiture amount here. In determining the appropriate 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."[14]

7. As discussed *supra*, the Licensee failed to provide notification of each full-time vacancy to organizations requesting vacancy notification, failed to maintain complete records of its recruitment program, and failed to self-assess its EEO program. Accordingly, based upon the facts before us, the factors noted above, and pertinent precedent,[15] we find that CMP Houston and CMP KC are apparently jointly and severally liable[16] in the following respective forfeiture amounts for their willful and repeated violations of these Rules: $1,000 for their violation of Section 73.2080(c)(1)(ii); $1,000 for their violation of Section 73.2080(c)(3); and $1,000 for their violation of Section 73.2080(c)(5), for a total proposed forfeiture in the amount of $3,000. 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.

IV. ORDERING CLAUSES

8. 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 CMP Houston-KC, LLC and CMP KC Licensing, LLC are hereby NOTIFIED of their APPARENT LIABILITY FOR FORFEITURE

[8] 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(1).

[9] 47 U.S.C. § 312(f)(1).

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

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

[12] 47 U.S.C. § 312(f)(2).

[13] The Rule does establish a base forfeiture amount of $1,000 for failure to maintain required records. *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.

[14] 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.

[15] In *Liberman Television of Dallas License Corp*., we proposed, among other things, separate $1,000 forfeitures for a licensee's violations of Sections 73.2080(c)(1)(i), 73.2080(c)(3), and 73.2080(c)(5). *Liberman Television of Dallas License Corp*., Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2032 (2007) (response pending).

[16] Given the common ownership and control of CMP Houston and CMP KC and the inclusion of both their Missouri stations in the employment unit, imposition of joint and several liability is appropriate here.

in the amount of three thousand dollars ($3,000) for their apparent willful and repeated violation of Sections 73.2080(c)(1)(ii), 73.2080(c)(3), and 73.2080(c)(5) of the Commission's Rules.

9. 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*, CMP Houston-KC, LLC and CMP KC Licensing, LLC, are jointly liable for,[17] and SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. 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, DC 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.

11. 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.

12. 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.

13. 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 DC 20554.[18]

14. IT IS FURTHER ORDERED that CMP Houston-KC, LLC and CMP KC Licensing, LLC and any successor licensee for any or all of Stations KCMO(AM), KCMO-FM, KCFX(FM), KCJK(FM), and KMJK(FM)[19] shall submit to the Federal Communications Commission, Media Bureau, EEO Staff, an original and one copy of a filing, sworn to by an officer of each licensee, containing the following information on November 1, 2010; November 1, 2011; and November 1, 2012:

(a) the Stations' most recent EEO public file report;

[17] See current FCC Forms 323 of CMP Houston-KC, LLC and CMP KC Licensing, LLC (File Nos. BOS-20081106AVE and BOS-20081106AVX, respectively), at Att. 3, p. 17.

[18] *See* 47 C.F.R. § 1.1914.

[19] 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.

(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) a list of each recruitment source that requests that it be notified of openings and dated copies of those notifications sent to the requesting source(s).

15. IT IS FURTHER ORDERED that, pursuant to Section 73.3526(e)(10) of the Commission's Rules, CMP Houston-KC, LLC and CMP KC Licensing, LLC shall place copies of this *NAL* in the public inspection files of Stations KCMO(AM), KCMO-FM, KCFX(FM), KCJK(FM), and KMJK(FM).

16. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Richard Denning, Vice President, Cumulus Media Partners, LLC, CMP Houston-KC, LLC and CMP KC Licensing, LLC, 3280 Peachtree Road, N.W., Suite 2300, Atlanta, Georgia 30305 and to its counsel, Mark Lipp, Esquire, Wiley Rein LLP, 1776 K Street, N.W., Washington DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Robert H. Ratcliffe, Acting Chief
Media Bureau