

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

In the Matter of)	
)	
Zimmer Radio, Inc.)	NAL/Acct. No. MB-201041410032
)	FRN: 0013851787
Licensee of Stations)	
KIXQ(FM), Joplin, Missouri)	Facility I.D. No. 5269
)	
KSYN(FM), Joplin, Missouri)	Facility I.D. No. 73244
)	
KXDG(FM), Webb City, Missouri)	Facility I.D. No. 17125
)	
KJMK(FM), Webb City, Missouri)	Facility I.D. No. 71606
)	
KZRG(AM), Joplin, Missouri)	Facility I.D. No. 71605
)	
KZYM(AM), Joplin, Missouri)	Facility I.D. No. 407

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 29, 2010

Released: December 29, 2010

By the Chief, Media Bureau

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Zimmer Radio, Inc. (the “Licensee”), licensee of Stations KIXQ(FM), Joplin, Missouri; KSYN(FM), Joplin, Missouri; KXDG(FM), Webb City, Missouri; KJMK(FM), Webb City, Missouri; KZRG(AM), Joplin, Missouri; and KZYM(AM), Joplin, Missouri (the “Stations”), apparently willfully and repeatedly violated the Commission’s equal employment opportunity (“EEO”) rules¹ by failing to comply with the recruitment, self-assessment, and public file 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 eight thousand dollars (\$8,000). To prevent future violations of these requirements, we also impose reporting conditions on the Licensee and any successor licensee of any of the Stations, as well as on the licensee of any stations that become a part of the above Stations’ employment unit during the reporting conditions periods listed below.

II. BACKGROUND

2. Sections of the Rules at issue in this case include the following:

- Section 73.2080(c)(1) of the Rules requires that a broadcast licensee broadly recruit for every full-time job vacancy in its employment unit operation;
- Section 73.2080(c)(3) requires a licensee to analyze the recruitment program for its employment unit on an ongoing basis to ensure that the program is effective in

¹ See 47 C.F.R. §§73.2080(c)(1), 73.2080(c)(3), 73.2080(c)(6)(i), and 73.3526(e)(7).

achieving broad outreach to potential applicants, and to address any problems found as a result of its analysis;

- Section 73.2080(c)(6)(i) requires a licensee to list all full-time vacancies filled by the licensee's unit during the preceding year, identified by job title, in its annual EEO public file report; and
- Section 73.3526(e)(7) requires commercial licensees to include EEO-related materials in their stations' public files.

3. The Media Bureau audited the Licensee for its compliance with Section 73.2080 of the Rules² at the Stations and we have before us the Licensee's responses to the audit.³ The responses cover reporting periods from April 21, 2006, through September 30, 2006, and October 1, 2006, through September 30, 2007.⁴

III. DISCUSSION

4. Our review of the above responses reveals that during the reporting period, the Licensee filled 24 full-time vacancies at its Stations and failed to recruit publicly for six of them, relying solely on walk-ins to fill three vacancies,⁵ word-of-mouth to fill one⁶, a business referral to fill one,⁷ and an employee referral to fill one,⁸ in violation of Section 73.2080(c)(1) of the Commission's Rules. The Licensee reports that it periodically airs "generic recruitment ads that promote different careers in radio and working at Zimmer Radio, Inc." even when it does not have any current openings.⁹ According to the Licensee, most of its walk-in hires "are the result of hearing these ads on the air" because "[i]f a resumé or application shows unique talent or exceptional experience," the Licensee may hire the walk-in and "make a place for them" even though it does not have any current openings.¹⁰ Although our Rules do not prohibit word-of-mouth recruitment or hiring walk-in applicants, the Rules are designed to ensure that word-of-mouth recruitment practices are not the sole method of recruitment and that all members of the

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

³ Letter and emails from Frank Jazzo, Esquire, to EEO Staff, Policy Division, Media Bureau (May 2, 2008; July 30, 2008; February 5, 2009; and July 9, 2009).

⁴ The Licensee submitted annual EEO public file reports covering the periods from October 1, 2005, through September 30, 2006, and October 1, 2006, through September 30, 2007. The FCC granted the renewal applications for Stations KIXQ(FM), KSYN(FM), KJMK(FM), and KZYM(AM) on January 21, 2005; for Station KZRG(AM) on September 21, 2005; and for Station KXDG(FM) on April 21, 2006. See FCC File Nos. BRH-20040923AEO, BRH-20040923AEM, BRH-20040923AEU, BR-20040930AWZ, BR-20041001AOA, and BRH-20040923AER, respectively. This *NAL* does not consider any vacancies reported as filled before April 21, 2006, the last date of renewal for the station employment unit, because that activity took place during the previous license term. The violations in this case took place from November 15, 2006, through September 10, 2007, during which time Zimmer Radio, Inc., was the licensee of all six stations captioned above. See BOA-20060927AMV and BOA-20080915AEY. Zimmer Radio, Inc., is the current licensee of all six stations. See BOA-20100622ABC.

⁵ The Licensee hired three unrecruited walk-in applicants on May 30, 2007, July 31, 2007, and September 4, 2007.

⁶ The Licensee hired an unrecruited applicant through word-of-mouth referral on November 15, 2006.

⁷ The Licensee hired an unrecruited applicant referred by a business referral on September 10, 2007.

⁸ The Licensee hired an unrecruited applicant through an employee referral on January 3, 2007.

⁹ Email from Frank Jazzo, Esquire, to EEO Staff, Policy Division, Media Bureau (July 30, 2008).

¹⁰ *Id.*

public have an opportunity to compete for available jobs.¹¹ Furthermore, although we do not prohibit and would not discourage generic on-air ads about employment in broadcasting or at a licensee's stations, such ads are not job-specific and thus do not constitute public recruitment for specific openings, as required by our Rules. In addition, relying only on a licensee's own private contacts, such as employee or business referrals, does not constitute recruitment as contemplated under the Commission's Rules, which require public outreach.¹²

5. The Licensee also failed to list the job titles of seven vacancies on its 2007 EEO public file report¹³, in violation of Section 73.2080(c)(6)(i). The Licensee identified the job titles of these vacancies as "Other," a description that provides no information concerning the nature of the position and one that is clearly inadequate for purposes of our Rule, which requires a "list of all full-time vacancies filled by the station's employment unit during the preceding year, identified by job title." Accordingly, we find that it failed to place the required information in the public inspection files of the Stations for these vacancies, as required by Section 73.3526(e)(7).

6. The Licensee violated our recruitment and public file requirements repeatedly over a 10 month period. We thus find that the Licensee also failed adequately to "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," 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.¹⁴ 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.¹⁵ 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,¹⁶ and the Commission has so interpreted the term in the Section 503(b) context.¹⁷ 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."¹⁸

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 properly recruit 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

¹¹ See *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, 24052, ¶101 (2002), *recon. pending*.

¹² *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*").

¹³ The Licensee listed all six hires for which it failed to recruit, described in paragraph 4 above, as "Other" when reporting their job titles, and also listed the job title as "Other" for a hire on April 2, 2007.

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

¹⁵ 47 U.S.C. § 312(f)(1).

¹⁶ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁷ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁸ 47 U.S.C. § 312(f)(2).

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.”¹⁹

9. As discussed *supra*, the Licensee failed to properly recruit for six full-time vacancies because it relied solely on word-of-mouth, walk-ins, or referrals to fill those vacancies, in violation of Section 73.2080(c)(1). The Licensee also failed to list the job titles of seven vacancies on its 2007 EEO public file report, in violation of Sections 73.2080(c)(6)(i). This information is required to be placed in the public inspection file of each station in a unit by Section 73.3526(e)(7). 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 propose the following forfeiture amounts for the Licensee’s apparent willful and repeated violations of these Rules: \$5,000 for its violation of Section 73.2080(c)(1); \$1,000 for its violation of Section 73.2080(c)(6)(i); \$1,000 for its violation of Section 73.3526(e)(7); and \$1,000 for its violation of Section 73.2080(c)(3), for a total proposed forfeiture in the amount of \$8,000. 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 listed in this Order, and, during the periods specified below for reports to be filed, will apply to all other stations that are part of their employment unit in the future, if any.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission’s Rules, that Zimmer Radio, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of eight thousand dollars (\$8,000) for its apparent willful and repeated violation of Sections 73.2080(c)(1), 73.2080(c)(6)(i), 73.3526(e)(7), 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*, Zimmer 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

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 *New Northwest Broadcasters LLC*, we proposed, among other things, a \$5,000 forfeiture for a licensee’s violation of Section 73.2080(c)(1) 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, and failed to self-assess its EEO program. In *W.S. Communications LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, 23 FCC Rcd 18425 (2008) (*recon. pending*), we proposed, among other things, a \$1,000 forfeiture for a licensee’s violation of 73.3526(e)(7).

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.

16. IT IS FURTHER ORDERED that Zimmer Radio, Inc. and any successor licensee of any or all of Stations, KIXQ(FM), KSYN(FM), KXDG(FM), KJMK(FM), KZRG(AM), and KZYM(AM), 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 Zimmer Radio, Inc., containing the following information on November 1, 2011; November 1, 2012; and November 1, 2013, with respect to Stations KIXQ(FM), KSYN(FM), KXDG(FM), KJMK(FM), KZRG(AM), and KZYM(AM), 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 and the job title of 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

17. IT IS FURTHER ORDERED that, pursuant to Section 73.3526(e)(10) of the Commission’s Rules, Zimmer Radio, Inc. shall place a copy of this *NAL* in the public inspection files of Stations KIXQ(FM), KSYN(FM), KXDG(FM), KJMK(FM), KZRG(AM), and KZYM(AM).

18. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Zimmer Radio, Inc., 325 South Kingshighway, Suite B, Cape Girardeau, Missouri 63703, and to its attorney, Frank Jazzo, Esquire, Fletcher Heald Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake, Chief
Media Bureau