

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

In the Matter of)	
)	
Opus Broadcasting Systems, Inc.	)	NAL/Acct. No. MB201041410033
	)	FRN: 0003760006
Licensee of Stations)	
)	
KROG(FM)	)	Facility I.D. No. 19553
Grant's Pass, Oregon	)	File No. BRH-20050930BJA
)	
)	
KCNA(FM),	)	Facility I.D. No. 10528
Cave Junction, Oregon	)	File No. BRH-20050930BJY
)	
)	
KRTA(AM)	)	Facility I.D. No. 19557
Medford, Oregon	)	File No. BRH-20050930BEQ
)	
)	
KEZX(AM),	)	Facility I.D. No. 23032
Medford, Oregon	)	File No. BR-20050930BFA

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 Opus Broadcasting Systems, Inc. (the “Licensee”), licensee of Stations KROG(FM), Grant’s Pass, Oregon; KCNA(FM), Cave Junction, Oregon; KRTA(AM), Medford, Oregon; and KEZX(AM), Medford, Oregon (collectively, the “Stations” and each a “Station”), apparently willfully and repeatedly violated the Commission’s equal employment opportunity (“EEO”) rules by failing to comply with the recruitment, self-assessment, record-keeping, reporting, and public file requirements.¹ 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 twenty thousand dollars (\$20,000).² 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.

¹ See 47 C.F.R. §§ 73.2080(c)(1), 73.2080(c)(1)(i), 73.2080(c)(3), 73.2080(c)(5)(v), 73.2080(c)(6)(iv), and 73.3526(e)(7).

² The licensee’s application for license renewal for the above noted stations remains pending because they are subject to FCC enforcement proceedings that are not related to EEO.

II. BACKGROUND

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

- Section 73.2080(c)(1) requires that a broadcast licensee broadly recruit for every full-time job vacancy in its employment unit operation;
- Section 73.2080(c)(1)(i) requires a licensee to 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;
- 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 achieving broad outreach to potential applicants, and to address any problems found as a result of its analysis;
- Section 73.2080(c)(5)(v) requires a licensee to retain records to document the total number of interviewees for each of its vacancies and the referral source for each interviewee;
- Section 73.2080(c)(6)(iv) requires a licensee to include in its public file report the number of interviewees and the number of interviewees referred by each recruitment source; and,
- Section 73.3526(e)(7) requires a commercial licensee to include certain EEO-related materials in its station public files, including those noted above.

3. By letter dated April 6, 2009, the Media Bureau (the "Bureau") notified the Licensee that it must amend the Broadcast License Renewal Application and Form 396 that it filed on September 30, 2005, to include public file reports for the periods October 1, 2003, through September 30, 2004, and October 1, 2004, through September 30, 2005. The Bureau also advised the Licensee that it must include public file reports for the period of October 1, 2005, through September 30, 2008. The Bureau has before it the Licensee's response to the Bureau's April 6, 2009 letter and the attached public file reports for the reporting periods of October 1, 2003, to September 30, 2004; October 1, 2004, to September 30, 2005; October 1, 2005, to September 30, 2006; October 1, 2006, through September 30, 2007; and October 1, 2007, through September 30, 2008. The Bureau also reviewed the public file report for October 1, 2008, through September 30, 2009.³

III. DISCUSSION

4. Our review of the Licensee's response and the accompanying public file reports reveals that the Licensee failed to properly recruit for 28 of its 29 full-time vacancies over the 2003-2009 time period. For six vacancies, the Licensee relied solely on "walk in /mail in"⁴ or other non-public sources, thus failing to recruit for every full-time vacancy, as required by Section 73.2080(c)(1). In addition, the Licensee relied solely on Internet websites as its only public recruitment source for seven vacancies, and

³ Letter and attachments from Dean Flock, President, Opus Broadcasting Systems, Inc., Medford, Oregon, (transmitted through James Koerner, Counsel for Opus Broadcasting Systems, Inc.) to Lewis Pulley, Assistant Chief, Policy Division, Media Bureau (May 15, 2009). The October 1, 2008, through September 30, 2009, public file report was not submitted as part of the Licensee's response, but was reviewed by Commission staff as posted on the website for KROG(FM) at www.969therogue.com.

⁴ The licensee does not define its use of the term "mail-in" in any of its correspondence with the Commission, but because the term is presented as "walk in/mail in" we assume it is meant to refer to an unsolicited resumé or employment inquiry that was received without being a response to a station recruitment source, as is the case with what is commonly known as a "walk-in."

relied solely on on-air advertisements for 15 vacancies. Therefore, we find that the Licensee violated Section 73.2080(c)(1)(i) of the Commission's Rules because it failed to use recruitment sources sufficient to disseminate information concerning the vacancies as required by the Rule.⁵

5. In addition, the Licensee failed to provide records of the number or referral sources of interviewees for its openings even after we requested this information in our inquiry letter, indicating that the Licensee has no record of the number or sources of such interviewees. We find that the Licensee's failure to retain records of the number or source of its interviewees violates Section 73.2080(c)(5)(v) of our rules, which specifically requires retention of these records.⁶ The Licensee's failure to maintain records of the number of interviewees or referral source of each interviewee also left the Licensee unable to include in its EEO public file report the total number of interviewees or the number of interviewees referred by each recruitment source, resulting in a violation of Section 73.2080(c)(6)(iv)⁷ of our rules.

6. The failure to recruit or recruit adequately continued through the 2008-2009 reporting period, the last of the reporting periods under review in this case. We find that because of the Licensee's lack of records of the number or referral source of its interviewees, it was not possible for it 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). We further find that its failure to recruit or recruit adequately for 28 of its 29 vacancies for a six-year period is further evidence that it failed to analyze the effectiveness of its recruitment program, in violation of Section 73.2080(c)(3). Finally, the Licensee's lack of required records left it unable to include information concerning the number or referral source of interviewees in its public inspection files, which it is required to do pursuant to Section 73.3526(e)(7).

7. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Communications Act of 1934, as amended (the "Act").⁸ 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. 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 to 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

⁵ *New Northwest Broadcasters LLC.*, Memorandum Opinion and Order and Notice of Apparent Liability, 21 FCC Rcd 10748, 10749 (2006) (forfeiture paid) (sole reliance on Internet sources is inadequately broad recruitment); *see also W.S. Communications, L.L.C.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 18425, 18427 (2008) (*recon. pending*) (sole reliance on on-air advertising will not normally be sufficiently broad under our rules to constitute adequate recruitment because the ads will reach only those people listening or watching at the particular time the ad airs).

⁶ 47 C.F.R. § 73.2080(c)(5)(v)

⁷ 47 C.F.R. § 73.2080(c)(6)(iv).

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).

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 violations, such as a failure to recruit for vacancies or to self-assess EEO performance. However, they do establish a base forfeiture amount of \$1,000 for failure to maintain required records. In determining the appropriate forfeiture amount, we must consider 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."¹³

9. As discussed *supra*, for its 2003-2004 through 2008-2009 EEO reporting periods – a six-year period – the Licensee failed to recruit or recruit adequately for 28 of its 29 vacancies, maintain adequate interviewee and interviewee referral source data for all of its vacancies, include all required data in its public inspection file, and self-assess its EEO program. Accordingly, based upon the facts before us, the factors noted above, and pertinent precedent,¹⁴ we propose the following forfeiture amounts for the Licensee's apparent willful and repeated violations of the Rules: \$16,000 for its violation of Sections 73.2080(c)(1) and 73.2080(c)(1)(i); \$1,000 for its violation of Section 73.2080(c)(3); \$1,000 for its violation of Section 73.2080(c)(5)(v); \$1,000 for its violation of Section 73.2080(c)(6)(iv); and \$1,000 for its violation of Section 73.3526(e)(7), for a total proposed forfeiture in the amount of \$20,000. We will also impose reporting conditions as set forth below, to ensure that the Licensee and any successor licensee of any of the above-captioned Stations maintains an adequate EEO program in compliance with the Rules. The reporting conditions will apply to the above-captioned 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 Sections 0.283 and 1.80 of the Commission's Rules, that Opus Broadcasting Systems, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of (\$20,000) for its apparent willful and repeated violation of Sections 73.2080(c)(1), 73.2080(c)(1)(i), 73.2080(c)(3), 73.2080(c)(5)(v), 73.2080(c)(6)(iv), and 73.3526(e)(7) 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 date of this *NAL*, Opus Broadcasting Systems, 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.

¹³ 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4).

¹⁴ In *Liberian Television of Dallas License Corp.*, we proposed a \$20,000 forfeiture for a licensee's violations of various EEO rules, specifically, Sections 73.2080(c)(1), 73.2080(c)(3), 73.2080(c)(5), 73.2080(c)(6), and 73.3526(e)(7). The licensee had failed to recruit adequately for 30 of 54 vacancies, maintain required EEO records, list the recruitment source of interviewees or hirees, self-assess adequately, notify all sources of openings that had requested notification, or place its public file report in its public file. *Liberian Television of Dallas License Corp.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2032 (2007) (*recon. pending*). In *Waite Omaha, LLC*, we proposed an \$8,000 forfeiture for a licensee's violations of various EEO rules, specifically Sections 73.2080(c)(3), 73.2080(c)(5), 73.2080(c)(6)(iii), 73.2080(c)(6)(iv), and 73.3526(e)(7). The licensee had failed to maintain required EEO records, list the recruitment source of hirees, provide data on the numbers of persons interviewed and referred from each recruitment source, self-assess adequately, and place required EEO information in its public inspection file. *Waite Omaha, LLC*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2661 (2007) (*recon. pending*).

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. 20554.¹⁵ 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. IT IS FURTHER ORDERED that Opus Broadcasting Systems, Inc., and any successor licensee of any of the Stations,¹⁶ KROG(FM), KCNA(FM), KRTA(AM), and KEZX(AM), SHALL SUBMIT to the Federal Communications Commission, Media Bureau, EEO Staff, an original and one copy of the following information on November 1, 2011; November 1, 2012; and November 1, 2013, with respect to those and all other stations that may be in the employment unit of the Station(s):

- (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 referral source that referred the hiree for each full-time vacancy; and
- (d) the total number of interviewees for each full-time vacancy for the preceding reporting year and the referral source for each interviewee.

16. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to James A. Koerner, Esquire, Koerner and Olender, 11913 Grey Hollow Court, North Bethesda, Maryland 20852..

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake, Chief
Media Bureau

¹⁵ See 47 C.F.R. § 1.1914.

¹⁶ 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.