

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

In the Matter of)	
)	
MHR License LLC	)	FRN: 0012576385
)	
Licensee of Stations)	
WGH(AM), Newport News, VA	)	NAL/Acct. No. MB-201141410034
	)	Facility I.D. No. 72103
	)	File No. BR - 20110531AHX
)	
WGH-FM, Newport News, VA	)	NAL/Acct. No. MB-201141410035
	)	Facility I.D. No. 72102
	)	File No. BRH - 20110531AJ0
)	
WVBW(FM), Suffolk, VA	)	NAL/Acct. No. MB-201141410036
	)	Facility I.D. No. 64000
	)	File No. BRH - 20110531AJQ
)	
WVHT(FM), Norfolk, VA	)	NAL/Acct. No. MB-201141410037
	)	Facility I.D. No. 71287
	)	File No. BRH - 20110531AJU
)	
WVSP-FM, Yorktown, VA	)	NAL/Acct. No. MB-201141410038
	)	Facility I.D. No. 19836
	)	File No. BRH - 20110531AJV

**MEMORANDUM OPINION AND ORDER AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: December 29, 2011

Released: December 30, 2011

By the Chief, Media Bureau

I. INTRODUCTION

1. In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (“NAL”), we find that MHR License LLC (“the Licensee”), licensee of Stations WGH(AM), Newport News, Virginia; WGH-FM, Newport News, Virginia; WVBW(FM), Suffolk, Virginia; WVHT(FM), Norfolk, Virginia; and WVSP-FM, Yorktown, Virginia (“the Stations”), apparently willfully and repeatedly violated the Commission’s equal employment opportunity (“EEO”) rules¹ by failing to comply with the 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 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. We also grant the captioned license renewal applications for Stations WGH(AM), WGH-FM, WVHT(FM) and WVSP-FM.

¹ See 47 C.F.R. §§73.2080(c)(1)(i) and 73.2080(c)(3).

II. BACKGROUND

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

3. We have before us the Licensee's captioned license renewal applications for Stations WGH(AM), WGH-FM, WVBW(FM), WVHT(FM), and WVSP-FM, and accompanying Broadcast EEO Program Report (Form 396).² We reviewed the applications and accompanying EEO public file reports for the Licensee's compliance at the Stations with Section 73.2080 of the Rules. The EEO public file reports cover the reporting periods from June 1, 2009 through May 31, 2010, and June 1, 2010 through May 31, 2011.

III. DISCUSSION

4. *EEO Review.* Our review reveals that during the reporting periods, the Licensee filled 14 full-time vacancies at its Stations and failed to properly recruit widely for five of them, instead relying solely on Internet web sites to fill two vacancies,³ and web sites, word-of-mouth referrals, and vacancy postings on its employee board to fill three vacancies,⁴ in violation of Section 73.2080(c)(1)(i) of the Commission's Rules. The Licensee's reliance on non-public sources such as word-of-mouth referrals and its own employee board, did not constitute sufficient recruitment as contemplated under the Commission's rules, which require public outreach. 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.⁵ 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 Further, the Commission's interpretation of the EEO Rule does not allow a licensee to recruit solely from Internet sources to meet the requirement to widely disseminate information concerning the vacancy.⁷

5. The Licensee violated our recruitment requirements repeatedly over a two-year reporting 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

² See FCC File No. B396-20110531AHV.

³ The Licensee hired two applicants through a web site on September 28, 2009 and September 1, 2010.

⁴ The Licensee hired three unrecruited applicants through word-of-mouth referrals, a web site, and vacancy postings on its employee board on March 24, 2010, December 1, 2010, and April 11, 2011.

⁵ See *Cox Radio, Inc., Notice of Apparent Liability*, 24 FCC Rcd 8889, 8890 (2009) (forfeiture paid) ("*Cox Radio, Inc.*").

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 See *Second Report and Order*, 17 FCC Rcd at 24051, ¶99.

applicants, and address any problems found as a result of its analysis,” in violation of Section 73.2080(c)(3).

6. 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.⁹ 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.¹⁰ 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,¹¹ and the Commission has so interpreted the term in the Section 503(b) context.¹² 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.”¹³

7. 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 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.”¹⁴

8. As discussed *supra*, the Licensee failed to properly recruit widely for five of its 14 full-time vacancies because it relied solely on Internet web sites, word-of-mouth referrals, and vacancy postings on the employee board to fill those vacancies, in violation of Section 73.2080(c)(1)(i), over a two-year period. These failures over a two-year period 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,¹⁵ we propose the following forfeiture amounts for the Licensee’s apparent willful and repeated violations of these Rules: \$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 \$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 above-captioned Stations, and to all other stations that are part of their employment unit in the future, if any.

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

⁹ *Id.*

¹⁰ 47 U.S.C. § 312(f)(1).

¹¹ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹² *See Southern California Broadcasting Co., Memorandum Opinion and Order*, 6 FCC Rcd 4387, 4388 (1991).

¹³ 47 U.S.C. § 312(f)(2).

¹⁴ 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order*, 12 FCC Rcd 17087, 17100-01, ¶27; 17113-16 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999); 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 *Cox Radio, Inc.*, we proposed a \$6,000 forfeiture for a licensee’s violation of Section 73.2080(c)(1)(i) and a \$2,000 forfeiture for the violation of Section 73.2080(c)(3). The licensee had failed to recruit widely for seven of its 25 full-time vacancies by relying on Internet web sites, referrals, internal postings, or walk-ins, and accordingly, also failed to self-assess its EEO program.

9. *License Renewal Applications.* In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act. That Section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁶ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”¹⁷

10. We find that the Licensee's violations of the Commission's EEO rules discussed above do not constitute “serious violations” of the Rules of such gravity that they warrant designation for evidentiary hearing.¹⁸ We also find no evidence of violations that, when considered together, evidence a pattern of abuse.¹⁹ Further, we find that the Licensee served the public interest, convenience, and necessity with the Stations during their respective license terms. We will therefore grant, subject to the below-stated conditions, the above-captioned license renewal applications for Stations WGH(AM), WGH-FM, WVHT(FM) and WVSP-FM.²⁰ The renewal application for Station WVBW(FM) remains pending before the Commission due to other outstanding matters.

IV. ORDERING CLAUSES

11. 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 MHR License LLC 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)(i) and 73.2080(c)(3) of the Commission's Rules.

12. 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*, MHR License LLC, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture must be made by check or similar instrument, payable to the

¹⁶ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

¹⁷ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁸ See e.g., *New Northwest Broadcasters LLC, Memorandum Opinion and Order and Notice of Apparent Liability*, 21 FCC Rcd 10748, 10751 (2006) (forfeiture paid); *Viper Communications, Memorandum Opinion and Order and Notice of Apparent Liability*, 20 FCC Rcd 20254, 20257 (2005).

¹⁹ For example, we do not find here that the Licensee's operation of either of the Stations "was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." See *Heart of the Black Hills Stations*, 32 FCC 2d 196, 198, ¶6 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [its stations] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Heart of the Black Hills Stations*, 32 FCC 2d at 200, ¶11. See also *Center for Study and Application of Black Economic Development*, 6 FCC Rcd 4622 (1991); *Calvary Educational Broadcasting Network, Inc.*, 7 FCC Rcd 4037 (1992).

²⁰ See 47 U.S.C. § 309(k).

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.

14. 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.

15. 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 MHR License LLC and any successor licensee of any or all of Stations WGH(AM), WGH-FM, WVBW(FM), WVHT(FM) and WVSP-FM, 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 MHR License LLC, containing the following information on July 2, 2012; July 1, 2013; and July 1, 2014, with respect to Stations WGH(AM), WGH-FM, WVBW(FM), WVHT(FM), and WVSP-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 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
- (e) the sources contacted by the Licensee for each of its full-time openings during the reporting year.

17. IT IS FURTHER ORDERED, pursuant to Section 309(k) of the Communications Act of 1934, as amended, that, subject to the above-stated conditions, the renewal applications for Stations WGH(AM), WGH-FM, WVHT(FM), and WVSP-FM ARE GRANTED.

18. IT IS FURTHER ORDERED that, pursuant to Section 73.3526(e)(10) of the Commission’s Rules, MHR License LLC shall place a copy of this *NAL* in the public inspection files of Stations WGH(AM), WGH-FM, WVBW(FM), WVHT(FM), and WVSP-FM.

19. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to MHR License LLC, 900 Laskin Road, Virginia Beach, Virginia 23451, and to its attorney, Erwin Krasnow, Esq., 1000 Potomac Street, N.W., Fifth floor, Washington, D.C. 20007-3501.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake, Chief
Media Bureau