

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

In the Matter of)
)
Full Channel TV, Inc.) NAL/Acct. No. MB-201241410026
Bristol, Rhode Island) FRN: 0003596293
) Employment Unit I.D. No. 12275

MEMORANDUM OPINION AND ORDER AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 11, 2012

Released: April 11, 2012

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 Full Channel TV, Inc. (“Full Channel”), multi-channel video programming distributor (“MVPD”) of Employment Unit 12275, Bristol, Rhode Island (the “Unit”), apparently willfully and repeatedly violated the Commission’s equal employment opportunity (“EEO”) Rules, by failing to comply with the Commission’s EEO public file, recruitment, self-assessment, and public inspection file requirements.¹ Based upon our review of the facts and circumstances before us, we conclude that Full Channel is apparently liable for a monetary forfeiture in the amount of eleven thousand dollars (\$11,000). To prevent future violations of these requirements, we also impose reporting conditions on the Unit and any successor owner of the Unit. We also adjudge the Unit not certified for compliance with our EEO Rules for the year 2011.

II. BACKGROUND

2. Sections of the Rules at issue in this case include the following:
- Section 76.75(b)(1)(i) of the Rules requires that an MVPD employment unit use recruitment sources for each vacancy in a manner sufficient, in its reasonable, good faith judgment, to widely disseminate information concerning the vacancy;
 - Section 76.75(f) of the Rules requires that an MVPD distributor analyze its recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach, and address any problems found as a result of its analysis;
 - Section 76.1702(a) requires a unit to compile and maintain annual EEO public file reports;
 - Section 76.1702(b) requires a unit to make its EEO public file reports available for public inspection and place its EEO program information on its website, if it has one; and

¹ See 47 C.F.R. §§ 76.75(b)(1)(i), 76.75(f), 76.1702(b), and 76.1702(a).

- Section 76.77(b) requires the Commission to determine, based on information submitted on a unit's EEO program annual report, whether the unit is in compliance with the Commission's EEO rules. If the unit is found to be in compliance, the Commission is required to send a Certificate of Compliance to the unit; if it is found to not be in compliance, the Commission must notify the unit that it is not so certified for the year in question.

3. The Bureau audited the Unit for its compliance with the Commission's MVPD EEO Rules.² The Unit submitted its response on January 18, 2012, for the reporting period of October 1, 2010 through September 30, 2011.³

III. DISCUSSION

4. Our review reveals that during the reporting period, the Unit filled three full-time vacancies and failed to recruit widely for all three vacancies. Specifically, the Unit hired one employee on October 4, 2010, using a vacancy announcement that was posted only on the Unit's own website. It hired another employee on January 31, 2011, using a vacancy announcement that was posted on only one external website (Craigslist). Finally, it hired a third employee on April 11, 2011, using an announcement again posted only on its own website. Such limited dissemination of these vacancy announcements appears to violate Section 76.75(b)(1)(i) of the Rules. 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 unit may be found in noncompliance with the Commission's EEO Rule.⁴ Further, the Commission's interpretation of the EEO Rule does not allow a unit to recruit solely from Internet sources to meet the requirement to widely disseminate information concerning vacancies.⁵

5. Our review also shows that the Unit failed to compile and maintain an EEO public file report for the reporting period ending in 2011, in apparent violation of Section 76.1702(a). As a result, the Unit failed to make its EEO public file reports available for public inspection in apparent violation of Section 76.1702(b).

6. Section 76.75(f) requires a unit to "analyze its recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach, and address any problems found as a result of its analysis."⁶ The Unit argues that its "recruitment program is discussed at the managers meeting" and that "it meets our needs in finding qualified candidates."⁷ The Unit further argues that its "EEO policy and employment practices are reviewed by the president of the corporation."⁸ We find such general assertions

² Letter from Lewis Pulley, Assistant Chief, Policy Division, Media Bureau, to Full Channel TV, Inc. (November 15, 2011).

³ Letter from Linda Jane Maaia, President/CEO, Full Channel, Inc., to EEO Staff, Policy Division, Media Bureau (January 18, 2012).

⁴ See 47 C.F.R. § 76.75(b)(1). 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").

⁵ See *Second Report and Order*, 17 FCC Rcd at 24051, ¶99.

⁶ See 47 C.F.R. § 76.75(f).

⁷ Letter from Linda Jane Maaia, President/CEO, Full Channel, Inc., to EEO Staff, Policy Division, Media Bureau (January 18, 2012).

⁸ *Id.*

unavailing given the failure to compile the required EEO records, to post or otherwise make them publicly available and the ongoing failure to widely recruit, as our rules require. Because of these failures, including the Unit's lack of an EEO public file report, we find that it was not possible for the Unit to have adequately analyzed its recruitment program on an ongoing basis to ensure that it was effective in achieving broad outreach or address any problems found as a result of its analysis, in apparent violation of Section 76.75(f).

7. Finally, the Unit failed to place its EEO program information on its website, in apparent violation of Section 76.1702(b). The Unit argued that it "does not maintain its own website" and that "Full Channel TV, Inc. EEO policy is on the corporate website" so that its website is actually a corporate website and not a unit website subject to the posting requirement under Section 76.1702(b).⁹ We find this argument unpersuasive. It is clear that the website at issue operates as the Unit's website. For example, the Unit utilized this website for recruitment purposes and cannot reasonably contend that it did not consider the website to be an integral component of its employment activities.

8. In light of the one-year statute of limitations on the Commission's authority to issue NALs for MVPD EEO violations, two of the Unit's recruiting failures – the hires on October 4, 2010 and on January 31, 2011 – cannot be redressed through monetary forfeiture proceedings.¹⁰ We therefore admonish the Unit for failing to recruit widely for these two vacancies. With respect to the third hire, however, which occurred on April 11, 2011 – within the past 12 months – and for which the Unit also failed to recruit widely, we issue this NAL. Further, we issue this NAL for the Unit's other EEO violations, cited above, which also occurred within the past 12 months.¹¹ This NAL is issued pursuant to Section 503(b)(1)(B) of the Communications Act of 1934, as amended (the "Act").¹² 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.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

⁹ Letter from Linda Jane Maaia, President/CEO, Full Channel, Inc., to EEO Staff, Policy Division, Media Bureau (January 18, 2012).

¹⁰ Section 503(b)(6)(B) of the Act limits the time period within which the Commission can initiate a forfeiture proceeding against non-broadcast entities to only those violations that occur within one year prior to the issuance date of a notice of apparent liability for forfeiture.

¹¹ See 47 U.S.C. § 503(b)(6). The Unit failed to compile and maintain an EEO public file report for the reporting period ending in 2011, in apparent violation of Section 76.1702(a). As a result, the Unit failed to make its EEO public file reports available for public inspection and place its EEO program information on its website, in apparent violation of Section 76.1702(b). The Unit was required to meet these obligations by September 30, 2011, but as of February 12, 2012, had still not done so. Telephone call from FCC staff to Janet Unangst, Comptroller, Full Channel TV, Inc. on February 12, 2012.

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

¹³ *Id.*

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).

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

9. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules do not establish a base forfeiture amount for EEO violations such as a failure to self-assess EEO performance, place required information on a website, or perform adequate EEO recruitment.¹⁸ However, they do establish a base forfeiture amount of \$3,000 for failure to file required information and of \$10,000 for failure to comply with the public inspection file rule.¹⁹ 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.”²⁰

10. Based upon the facts before us, as discussed above, pertinent precedent²¹ and the factors noted above, we find that the Unit is apparently liable for the following forfeiture amounts for its willful and repeated violations of the Rules: \$5,000 for its violation of Section 76.75(b)(1)(i); \$1,000 for its violation of Section 76.75(f); \$4,000 for its violation of Section 76.1702(b), which requires a unit to make its EEO public file reports available for public inspection and place its EEO program information on its website;²² and \$1,000 for its violation of Section 76.1702(a), for a total proposed forfeiture in the amount of \$11,000. The one-year statute of limitations bars us from assessing a forfeiture for the Unit’s failure to recruit widely for two vacancies, and we will issue an admonishment accordingly. The forfeiture amount does, however, consider the Unit’s status of having recruited inadequately twice prior to the April 2011 hire and the NAL amount is adjusted upward accordingly. The \$1,000 forfeiture we propose for the public file violation is consistent with recent precedent in broadcast EEO cases and we will follow that precedent here.²³ We intend, however, to revisit whether the relatively small amount of this forfeiture remains appropriate for use in future cases, absent substantial mitigating factors. We will also adjudge the Unit not certified and impose reporting conditions as set forth below to ensure that the Unit, and any successor owner, maintains an adequate EEO program in compliance with the Rules.

¹⁷ 47 U.S.C. § 312(f)(2).

¹⁸ 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.

¹⁹ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17113-15.

²⁰ 47 C.F.R. § 1.80(b)(4).

²¹ In *Liberian Television of Dallas License Corp.*, we proposed, among other things, a \$4,000 forfeiture for a licensee’s violation of Section 73.2080(c)(1)(i), a \$1,000 forfeiture for violation of Section 73.2080(c)(3), a \$1,000 forfeiture for violation of Section 73.2080(c)(6), and a \$1,000 forfeiture for violation of Section 73.3526(e)(7). *Liberian Television of Dallas License Corp.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2032 (2007) (recon. pending). The licensee had failed to recruit widely for six of 54 vacancies (11%) by relying solely on Internet websites or websites and referrals; failed to self-assess its EEO program; failed to place its EEO public file report in its public inspection file; and failed to place EEO information in its public inspection file, respectively. Here, the Unit’s recruitment failures are egregious because it failed to recruit widely for all three of its vacancies (100%), in addition to its self-assessment and public file violations.

²² In *Entravision Holdings, L.L.C.*, we proposed, among other things, a \$3,000 forfeiture for a Licensee’s violation of Section 73.2080(c)(6). *Entravision Holdings, L.L.C.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 8894 (2009) (recon. pending). The Licensee had failed to place one of its EEO public file reports on its website.

²³ *Id.*

IV. ORDERING CLAUSES

11. Accordingly, we find that Full Channel TV, Inc.'s employment unit No. 12275 is adjudged NOT CERTIFIED for compliance with our EEO rules for 2011, in accordance with 47 C.F.R. § 76.77(b). Also, Full Channel TV, Inc. is hereby ADMONISHED for its willful and repeated violation of Section 76.75(b)(1)(i) of the Rules.

12. IT IS FURTHER 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 Full Channel TV, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of eleven thousand dollars (\$11,000) for its apparent willful and repeated violation of Sections 76.75(b)(1)(i), 76.1702(b), 76.1702(a), and 76.75(f) of the Commission's Rules.

13. 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*, Full Channel TV, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. 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, 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.

15. 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.

16. 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.

17. IT IS FURTHER ORDERED that the Unit and any successor owner, 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 the Unit, containing the following information on November 1, 2012; November 1, 2013; and November 3, 2014:

(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, the job title of each full-time vacancy filled, and the date each full-time vacancy was filled;

(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 for each full-time opening during the reporting year.

18. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Linda Jane Maaia, President/CEO, Full Channel, Inc., 57 Everett Street, Warren, Rhode Island 02885.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake, Chief
Media Bureau