

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

In the Matter of
Rocking M Media, LLC
Licensee of Stations
KXXX(AM), Colby, KS
Facility ID Number: 37125;
KRDQ(FM), Colby, KS
Facility ID Number: 37124;
KGNO(AM), Dodge City, KS
Facility ID Number: 37130;
KZRD(FM), Dodge City, KS
Facility ID Number: 13010;
KAHE(FM), Dodge City, KS
Facility ID Number: 37131; and
KERP(FM), Ingalls, KS
Facility ID Number: 82681.
Melia Communications, Inc.
Licensee of Stations
KWGB(FM), Colby KS
Facility ID Number 81915;
KKCI(FM), Goodland, KS
Facility ID Number 18076;
KLOE(AM), Goodland KS; and
Facility ID Number 18077.

File No.: EB-IHD-21-00033064
NAL Acct. No.: 202432080001
FRN: 0024062317
File No. EB-IHD-21-00033065
NAL Acct. No.: 202432080002
FRN: 0003771250

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 16, 2023

Released: October 16, 2023

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. We propose in this Notice of Apparent Liability for Forfeiture (NAL) a forfeiture penalty of \$25,000 against Rocking M Media, LLC (Rocking M) and Melia Communications, Inc. (Melia) (collectively, the Licensees), for failure to comply with sections 73.2080(c)(1), 73.2080(c)(1)(i), 73.2080(c)(3), 73.2080(c)(5), 73.2080(c)(6), and 73.3526(e)(7) of the Federal Communication Commission's (FCC or Commission) equal employment opportunity (EEO) rules.1

2. The Commission's EEO rules prohibit broadcasters from discriminating in hiring on the basis of race, color, religion, national origin, or gender and require most broadcasters to conduct and document broad recruitment efforts to ensure that all qualified individuals have an opportunity to apply for and be considered as job applicants. Here, we find that Rocking M (licensee of KXXX(AM), Colby,

1 See 47 CFR §§ 73.2080(c)(1), 73.2080(c)(1)(i), 73.2080(c)(3), 73.2080(c)(5), 73.2080(c)(6), 73.3526(e)(7).

Kansas; KRDQ(FM), Colby, Kansas; KGNO(AM), Dodge City, Kansas; KZRD(FM), Dodge City, Kansas; KAHE(FM), Dodge City, Kansas; KERP (FM), Ingalls Kansas); and Melia (licensee of KWGB(FM), Colby, Kansas; KKCI(FM), Goodland, Kansas; and KLOE(AM), Goodland, Kansas) (collectively, the Stations), apparently violated the Commission’s EEO rules by failing to: (i) upload their annual EEO Public File Reports in the Stations’ online public inspection files; (ii) upload their EEO Public File Reports to the Stations’ websites; (iii) broadly recruit for certain vacancies; (iv) analyze their EEO program; and (v) maintain their recruitment records. Therefore, we propose a penalty of \$25,000 against the Licensees for their apparent violation of these rules.

## II. BACKGROUND

### A. Legal Framework

3. Section 73.2080(c)(1) of the Commission’s rules requires a licensee to recruit for every full-time job vacancy in its employment operation unit.<sup>2</sup> Section 73.2080(c)(1)(i) further requires a licensee to use recruitment sources for each full-time vacancy sufficient in its reasonable, good faith judgment “to widely disseminate information concerning the vacancy.”<sup>3</sup> In addition, section 73.2080(c)(3) requires a licensee to analyze its EEO recruitment program for its employment 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.<sup>4</sup> Section 73.2080(c)(5) requires a licensee to retain records to document that it has complied with section 73.2080(c)(1) and (c)(2).<sup>5</sup>

4. Section 73.2080(c)(6) of the Commission’s rules requires a licensee to place its station’s EEO Public File Report in its public inspection file and on its website, if it has one, on an annual basis.<sup>6</sup> A station’s EEO Public File Report must include information concerning: (i) its full-time vacancies over the prior year; (ii) the recruitment sources utilized to fill full-time vacancies; (iii) the recruitment source that referred the hiree for each such full-time vacancy; (iv) data reflecting the total number of persons interviewed for each of those full-time vacancies and the total number of interviewees referred by each recruitment source in connection with those vacancies; and (v) a list and brief description of its recruitment initiatives during the prior year.<sup>7</sup> Moreover, section 73.3526(e)(7) of the Commission’s rules requires that a licensee place required information, including EEO files such as its EEO Public File Report, in its station’s public inspection file.<sup>8</sup>

### B. Factual Background

5. The Licensees’ Stations are organized into two Station Employment Units (SEUs).<sup>9</sup> The Dodge City/Ingalls SEU includes KAHE(FM), Dodge City, Kansas; KGNO(AM), Dodge City, Kansas; KZRD(FM), Dodge City, Kansas, and KERP(FM), Ingalls, Kansas.<sup>10</sup> The Colby/Goodland SEU includes KXXX(AM), Colby, Kansas; KRDQ(FM), Colby, Kansas; KKCI(FM), Goodland, Kansas; KWGB(FM), Colby, Kansas; and KLOE(AM), Goodland, Kansas.<sup>11</sup>

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<sup>2</sup> *Id.* § 73.2080(c)(1).

<sup>3</sup> *Id.* § 73.2080(c)(1)(i).

<sup>4</sup> *Id.* § 73.2080(c)(3).

<sup>5</sup> *Id.* § 73.2080(c)(5).

<sup>6</sup> *Id.* § 73.2080(c)(6).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* § 73.3526(e)(7).

<sup>9</sup> Commission regulations define a “station employment unit” as “a station or a group of commonly owned stations in the same market that share at least one employee.” *Id.* § 73.2080(e)(2).

<sup>10</sup> EEO Program Report (Form 396), FCC File No. 0000151577 (July 2, 2021).

<sup>11</sup> EEO Program Report (Form 396), FCC File No. 0000151890 (July 7, 2021).

6. Rocking M, a Kansas limited liability company,<sup>12</sup> and Melia, a Kansas corporation,<sup>13</sup> are small, family-run businesses managed by their principals, Monte M. Miller and Doris D. Miller.<sup>14</sup> Christopher D. Miller owns a member interest in Rocking M and was the CEO of Rocking M until 2019 when he stepped down due to financial management concerns.<sup>15</sup> Because of significant operational challenges,<sup>16</sup> the Licensees experienced a sharp drop in the number of employees, whereby in late 2021, the Colby/Goodland SEU had only one full-time employee, and the Dodge City/Ingalls SEU had fewer than five full-time employees.<sup>17</sup>

7. A review of the evidence shows that the Licensees failed to place the EEO Public File Reports for the Dodge City/Ingalls SEU, covering February 1, 2019, through January 31, 2020 (“2020 Dodge City/Ingalls Report”), and February 1, 2020, through January 31, 2021 (“2021 Dodge City/Ingalls Report”), as well as the EEO Public File Report for the Colby/Goodland SEU, covering February 1, 2019, through January 31, 2020 (“2020 Colby/Goodland Report”), in the respective SEUs’ online public inspection files in a timely manner.<sup>18</sup> In response to a Letter of Inquiry (LOI) issued by the Enforcement Bureau’s (the Bureau) Investigations and Hearings Division, the Licensees acknowledged the untimely placement and attributed the delay to “inadvertence.”<sup>19</sup> In their Supplemental LOI Response, the Licensees further explain that the late placement of the EEO Public File Reports was also due to significant disruptions in their operations.<sup>20</sup> Our review also shows that neither SEU timely placed their EEO Public File Reports on their Stations’ websites. In response to the Bureau’s inquiries, counsel for the Licensees stated that delays in uploading to the stations’ websites were inadvertent.<sup>21</sup>

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<sup>12</sup> See Letter from Christopher D. Imlay, Counsel, Rocking M Media, LLC and Melia Communications, Inc., to Christopher J. Sova, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, Response to Question 1 (Nov. 17, 2022) (on file in EB-IHD-21-0033064 and EB-IHD-21-00033065) (November 17, 2022 LOI Response).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*, Responses to Questions 1 and 5. Monty and Doris Miller are husband and wife. *Id.*, Response to Question 1.

<sup>15</sup> *Id.*, Response to Question 5.

<sup>16</sup> See November 17, 2022 LOI Response, Responses to Questions 6 and 7; Letter from Christopher D. Imlay, Counsel, Rocking M Media, LLC and Melia Communications, Inc., to Pamela Gallant, Assistant Bureau Chief, Investigations and Hearings Division, FCC Enforcement Bureau, at 12-13 (Jan. 23, 2023) (on file in EB-IHD-21-0033064 and EB-IHD-21-00033065) (“January 23, 2023 LOI Response”) (describing how Monte and Doris Miller took over the management of Rocking M and Melia after Christopher Miller was forced to step down and the dramatic loss of revenue caused by the Covid-19 pandemic).

<sup>17</sup> November 17, 2022 LOI Response, Responses to Questions 13 and 14; January 23, 2023 LOI Response at 13.

<sup>18</sup> All of the EEO Public File Reports uploaded by the Dodge City/Ingalls SEU and the Colby/Goodland SEU incorrectly stated that the EEO Public File Reports covered the time periods between January 1, 2019 — December 31, 2019, and January 1, 2020 — December 31, 2020. Pursuant to 47 CFR § 73.2080(c)(6), the correct reporting periods were February 1, 2019 — January 31, 2020, and February 1, 2020 — January 31, 2021.

<sup>19</sup> See November 17, 2022 LOI Response, Responses to Questions 6 and 7; January 23, 2023 LOI Response at 13. The license renewal application filing date assigned to Kansas broadcast stations falls on February 1 on an every eight-year cycle. See 47 CFR § 73.1020 (establishing 8 year renewal periods for radio broadcast services). Stations must upload their EEO Public File Report annually on the anniversary of the license renewal application filing date. See 47 CFR § 73.2080(c)(6). Our review determined that the Licensees did not upload the 2020 and 2021 EEO Public File Reports for the Dodge City/Ingalls SEU until June 29, 2021, and the 2020 EEO Public File Report for the Colby/Goodland SEU was not uploaded until January 12, 2021. See January 23, 2023 LOI Response at 13.

<sup>20</sup> See January 23, 2023 LOI Response at 12 (describing termination of former CEO and financial distress caused by Covid-19 pandemic).

<sup>21</sup> See E-mail from Christopher D. Imlay, Counsel, Rocking M Media, LLC and Melia Communications, Inc., to Kimber Ziser, EEO Specialist, Investigations and Hearings Division, FCC Enforcement Bureau (July 7, 2021, 14:30

8. Additionally, the Licensees failed to recruit, and to recruit adequately, for two of five vacancies in the Colby/Goodland SEU. An Assistant Office Manager vacancy, which was filled on June 1, 2020, was advertised solely through on-air advertisements on the Licensees' own stations in the Colby/Goodland SEU, and a Farm Broadcaster vacancy was filled on July 16, 2020, solely based upon "an internal recommendation from the departing Farm Broadcaster."<sup>22</sup> Finally, the Licensees failed to produce any records documenting recruitment efforts as claimed on the EEO Public File Reports from February 2019 through January 2021.<sup>23</sup>

### III. DISCUSSION

#### A. Rocking M and Melia Apparently Violated the EEO Rules

9. We find that the Licensees apparently willfully and repeatedly violated sections 73.2080(c)(1), 73.2080(c)(1)(i), 73.2080(c)(3), 73.2080(c)(5), 73.2080(c)(6), and 73.3526(e)(7) of the Commission's rules. The Licensees apparently violated section 73.2080(c)(6) by: (1) failing to upload the 2020 and 2021 Dodge City/Ingalls Reports and the 2020 Colby/Goodland Report in the Stations' public inspection files in a timely manner; and (2) failing to upload the 2020 and 2021 EEO Public File Reports for both the Dodge City/Ingalls and Colby/Goodland SEUs on the Stations' websites in a timely manner. The Licensees apparently violated section 73.2080(c)(1) by failing to recruit and instead relying solely on an internal recommendation for one vacancy. In addition, the Licensees apparently violated section 73.2080(c)(1)(i) by failing to use recruitment sources that widely disseminated information about another vacancy and instead advertising the position solely through on-air advertisements on their stations in the Colby/Goodland SEU. The Licensees did not retain any documentation to reflect their recruitment efforts in apparent violation of section 73.2080(c)(5). These failures, in apparent violation of section 73.2080(c)(3), reveal a continuing lack of EEO assessment.

#### 1. The Licensees Did Not Timely Upload Their EEO Public File Reports To Their Stations' Online Public Inspection Files and Websites

10. The Licensees apparently violated section 73.2080(c)(6) of the Commission's rules in two separate ways: (1) by failing to timely upload the 2020 and 2021 Dodge City/Ingalls Reports and the 2020 Colby/Goodland Report in the Stations' online public inspection files; and (2) by failing to upload the 2020 and 2021 EEO Public File Reports for both SEUs to the Stations' websites in a timely manner.<sup>24</sup> The EEO Public File Report must be added to a station's online public inspection file and a station's website, if it has one, annually on or before the anniversary of the date that the station's license renewal application was due.<sup>25</sup> In this case, the Licensees were required to upload their Stations' 2020 EEO Public File Reports to their online public inspection files and websites by February 1, 2020, and similarly place their 2021 EEO Public File Reports by February 1, 2021. However, the Licensees did not place the 2020 and 2021 EEO Public File Reports for the Dodge City/Ingalls SEU in their Stations' public inspection files until June 29, 2021, making the 2020 EEO Public File Report almost 17 months late and

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EDT), Exhibit 1, November 17, 2022 LOI Response (July 7, 2021 Email); E-mail from Christopher D. Imlay, Counsel, Rocking M Media, LLC and Melia Communications, Inc., to Kimber Ziser, EEO Specialist, Investigations and Hearings Division, FCC Enforcement Bureau (July 2, 2021, 16:17 EDT), Exhibit 1, November 17, 2022 LOI Response (July 2, 2021 E-mail).

<sup>22</sup> See January 23, 2023 LOI Response, *supra* note 16, Response to Question 12. We note that section 73.2080(c)(1)(i) does not require broad recruitment if exigent circumstances exist, but the Licensees stated that there were no exigent circumstances in filling the Assistant Office Manager and Farm Broadcaster vacancies. *Id.*

<sup>23</sup> See January 23, 2023 LOI Response, *supra* note 16, Responses to Questions 9, 10, 11, and 12 (stating that there were "no known documents" responsive to the requests for production).

<sup>24</sup> 47 CFR § 73.2080(c)(6). While both section 73.3526(e)(7) and section 73.2080(c)(6) require the EEO Public File Report to be placed in a station's public inspection file, section 73.2080(c)(6) also requires the EEO Public File Report to be placed on a station's website, if it has one.

<sup>25</sup> 47 CFR § 73.2080(c)(6).

the 2021 EEO Public File Report almost five months late. Further, the 2020 EEO Public File Report for the Colby/Goodland SEU was not placed until January 12, 2021, which made that report almost one year late.<sup>26</sup> Further, the Licensees' Stations had websites and failed to upload the 2020 and 2021 EEO Public File Reports for both the Dodge City/Ingalls and Colby/Goodland SEUs to those websites in a timely manner.<sup>27</sup> In their LOI Responses, the Licensees acknowledge the untimely placement of their EEO Public File Reports.<sup>28</sup>

11. In their Supplemental LOI Response, the Licensees contend that the untimely placement of their EEO Public File Reports was "due to a combination of circumstances," involving "unusual disruptions in their operations."<sup>29</sup> Because of the departure of Rocking M's CEO in 2019<sup>30</sup> and the Covid-19 pandemic, the Licensees state they suffered a dramatic loss of revenue and financial hardship. While the principals focused on the financial viability of the stations, the Licensees relied on a new, less experienced operations manager to comply with the reporting requirements of the Commission's EEO rules, and there was some confusion as to the proper procedures for placing the EEO Public File Reports in the Stations' public inspection files.<sup>31</sup> The Licensees maintain that after they were made aware of their errors, they placed the EEO Public File Reports in the Stations' public inspection files in January and June 2021.<sup>32</sup>

12. Despite the attempts to correct these apparent violations, where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, or the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.<sup>33</sup>

13. We further find that by failing to upload the EEO Public File Reports to their online public inspection files as described above in a timely manner, the Licensees apparently violated section 73.3526(e)(7) of the Commission's rules, which requires licensees of commercial stations to keep certain information, including EEO information such as the EEO Public File Report, in their stations' public inspection files.<sup>34</sup>

## **2. The Licensees Failed to Recruit, and Recruit Adequately, for Every Full-Time Job Vacancy**

14. The Licensees apparently violated section 73.2080(c)(1) and (c)(1)(i) by failing to recruit, and failing to recruit adequately, for all of their full-time vacancies for the February 1, 2019 - January 31, 2021 timeframe. The Licensees filled five full-time vacancies in the Colby/Goodland SEU and

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<sup>26</sup> See January 23, 2023 LOI Response, *supra* note 16, at 13.

<sup>27</sup> Although we were unable to confirm an exact date as to when the Licensees placed their EEO Public File Reports on their Stations' websites, counsel for the Licensees stated that the Stations' management was "in the process of uploading the 2020-2021 EEO Annual Public File Report . . . to the stations' websites" as of July 2021. November 17, 2022 LOI Response, *supra* note 12, Response to Question 5; July 7, 2021 E-mail; July 2, 2021 E-mail, *supra* note 21.

<sup>28</sup> See November 17, 2022 LOI Response, *supra* note 12, Responses to Question 6 and 7; January 23, 2023 LOI Response, *supra* note 16, at 12.

<sup>29</sup> January 23, 2023 LOI Response, *supra* note 16, at 12.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 12 (stating that the Licensees did not understand that Annual Public File Reports would have to be separately uploaded to the filed EEO Program Report).

<sup>32</sup> *Id.* at 12-13.

<sup>33</sup> See *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709 (MMB 1999).

<sup>34</sup> 47 CFR § 73.3526(e)(7). See also *Emmis Television License, LLC*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 13860 (MB 2005) (forfeiture paid) (licensee violated both the EEO rules and consequently, the public inspection file rules because it failed to place required EEO information in its stations' public inspection files).

apparently failed to recruit properly for two positions. For a Farm Broadcaster vacancy, the Licensees relied solely on an “internal recommendation” from a departing employee,<sup>35</sup> which does not constitute recruitment under section 73.2080(c)(1). Relying on a licensee’s own private contacts, such as employee or client referrals, is not recruitment as contemplated under the Commission’s rules because recruitment requires public outreach.<sup>36</sup> For an Assistant Office Manager vacancy, the Licensees relied solely on on-air advertisements placed on their own stations, and thus failed to recruit adequately as required by section 73.2080(c)(1)(i).<sup>37</sup> The Commission has determined that broadcasters must “develop and use for each vacancy a recruitment source or list of recruitment sources . . . sufficient to ensure wide dissemination of information about the opening.”<sup>38</sup> While the Commission does not require the use of a specific number of recruitment sources collectively, if a source or sources cannot reasonably be expected, “to reach the entire community,” a licensee may still be found in noncompliance with the Commission’s EEO Rule.<sup>39</sup> On-air advertisements alone are insufficient as they will only reach those listening to the stations at a particular time and would unlikely reach the entire community.<sup>40</sup>

### **3. The Licensees Failed to Retain Records to Document Their Compliance with the Commission’s EEO Rules**

15. The Licensees failed to retain records to document their compliance with section 73.2080(c)(1)<sup>41</sup> and (2),<sup>42</sup> as required by section 73.2080(c)(5) of the Commission’s rules. In response to requests for production of documents in the LOI, the Licensees did not produce any documents reflecting advertisements of their full-time job vacancies during the reporting period and stated that “[n]o such documents are believed to exist” with respect to documents reflecting performance of recruitment initiatives.<sup>43</sup> The Licensees have provided no explanation as to why they were unable to produce any documents requested in the LOI.

### **4. The Licensees Did Not Analyze Their EEO Program**

16. By virtue of the deficiencies discussed above, we further find that the Licensees apparently violated section 73.2080(c)(3) of the Commission’s rules by failing to analyze the Stations’ EEO program. Section 73.2080(c)(3) requires a licensee to analyze its station’s EEO recruitment

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<sup>35</sup> January 23, 2023 LOI Response, *supra* note 16, Response to Question 12.

<sup>36</sup> See *Davidson Media Station*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 15532 (MB 2014) (forfeiture paid) (licensees failed to recruit publicly when they relied solely on walk-ins for one vacancy and client/employee referrals for two others in violation of section 73.2080(c)(1)); *New Northwest Broadcasters LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, 21 FCC Rcd 10748, 10749 (MB 2006) (forfeiture paid) (licensee failed to recruit when it relied solely on referrals and other individuals).

<sup>37</sup> January 23, 2023 LOI Response, *supra* note 16, Response to Question 12.

<sup>38</sup> *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 Rule Making, 17 FCC Rcd 24018, 24047 (2002) (*EEO Report and Order*).

<sup>39</sup> *Id.*

<sup>40</sup> See *Applications for Renewal of License for Stations KDAY (FM), et al.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 2130, 2131 (MB 2005) (forfeiture paid) (finding that stations’ use of “on-air ads” as sole recruitment for positions was “insufficiently broad.”).

<sup>41</sup> 47 CFR § 73.2080(c)(1) requires a SEU to recruit for every full-time job vacancy, including using recruitment sources for each vacancy that will widely disseminate information about the vacancy.

<sup>42</sup> *Id.* § 73.2080(c)(2) requires a SEU complete two recruitment initiatives (if it has five to 10 full-time employees and/or is located in a small market) over a two-year period. The Licensees state that during the reporting periods in 2020 and 2021, both SEUs had less than ten full-time employees and were located in a smaller market. November 17, 2022 LOI Response, *supra* note 12, Responses to Questions 13 and 14.

<sup>43</sup> See January 23, 2023 LOI Response, *supra* note 16, Responses to Questions 9, 10, 11, and 12.

program on an ongoing basis to ensure that it is effective in achieving broad outreach to potential applicants, and to address any problems found as a result of such analysis.<sup>44</sup> Given the aforementioned noncompliance with the Commission's EEO rules, including the failure to recruit, and failure to recruit adequately, for all full-time vacancies, the failure to upload their annual reports in a timely manner, and the failure to retain their records, the Licensees did not "routinely analyze the adequacy of their various EEO program elements in achieving broad outreach to all segments of the community."<sup>45</sup>

## B. Proposed Forfeiture

17. Section 503(b) of the Communications Act of 1934, as amended (Act), authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission[.]"<sup>46</sup> Here, section 503(b)(2)(A) of the Act authorizes the Commission to assess a forfeiture against the Licensees of up to \$59,316 for each day of a continuing violation, up to a statutory maximum of \$593,170 for a single act or failure to act.<sup>47</sup> In exercising our forfeiture authority, we must consider 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."<sup>48</sup> In addition, the Commission has established forfeiture guidelines that establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.<sup>49</sup> Under these guidelines, the Commission and its staff may issue a higher or lower forfeiture based on certain criteria.<sup>50</sup>

18. *Failure to Upload EEO Public File Report to Public Inspection Files and Websites in a Timely Manner.* The Licensees apparently violated section 73.2080(c)(6) of the Commission's rules by failing to upload the Dodge City/Ingalls SEU's 2020 and 2021 EEO Public File Reports and the Colby/Goodland SEU's 2020 EEO Public File Report to their public inspection files in a timely manner. Further, the Licensees failed to upload the 2020 and 2021 EEO Public File Reports of both SEUs to the Stations' websites in a timely manner. Section 1.80(b) of the Commission's rules sets a base forfeiture of \$10,000 for each violation of public file rules.<sup>51</sup> We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.<sup>52</sup> Based on the facts before us, and the factors noted above, we propose a \$15,000 forfeiture for the Licensees' apparent violations of

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<sup>44</sup> 47 CFR § 73.2080(c)(3).

<sup>45</sup> *EEO Report and Order*, *supra* note 38, at 24067.

<sup>46</sup> 47 U.S.C. § 503(b).

<sup>47</sup> See 47 U.S.C. § 503(b)(2)(A); 47 CFR § 1.80(b)(1). See *Amendment of Section 1.80(b) of the Comm'n's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 22-1356, 2022 WL 18023008 (EB Dec. 23, 2022); see also *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 88 Fed. Reg. 783 (Jan. 5, 2023) (setting January 15, 2023, as the effective date for the increases).

<sup>48</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>49</sup> 47 CFR § 1.80(b)(11), Note to paragraph (b)(11), Table 1.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* § 1.80(b)(11), Table 1. Although the Commission's forfeiture guidelines do not establish a base forfeiture for the separate website posting requirement of section 73.2080(c)(6), section 1.80(b) of the Commission's rules sets a base forfeiture of \$3,000 for failure to file required information, which we find to be analogous. See *Cumulus Licensing LLC*, Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 3461, n.30 (2022) ("2022 *Cumulus NAL*").

<sup>52</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17098-99, para. 22 (1997) (noting that "[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act"), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

section 73.2080(c)(6) for failing to upload and maintain their EEO Public File Reports in their Stations' public inspection files and websites in a timely manner.<sup>53</sup>

19. *Failure to Recruit and Failure to Recruit Adequately.* The Licensees apparently violated section 73.2080(c)(1) and (c)(1)(i) by failing to recruit, and failing to recruit adequately, for two of five full-time job vacancies in the Colby/Goodland SEU. Under Commission precedent, we propose a \$4,000 forfeiture.<sup>54</sup>

20. *Failure to Retain Records.* The Commission's forfeiture guidelines suggest a base forfeiture amount of \$1,000 for failure to maintain records, a violation of section 73.2080(c)(5) of the Commission's rules.<sup>55</sup> Here, because the Licensees were unable to produce any records that documented their recruitment efforts during the 2020 and 2021 reporting periods, we propose a forfeiture of \$4,000.<sup>56</sup>

21. *Failure to Analyze.* The Commission's forfeiture guidelines do not establish a base forfeiture for failure to analyze EEO performance in accordance with section 73.2080(c)(3). Based on Commission precedent,<sup>57</sup> we propose a forfeiture of \$2,000 against the Licensees for failing to analyze their Stations' EEO programs adequately in apparent violation of section 73.2080(c)(3).

22. *Public Inspection File Rule Violation.* Section 73.3526(e)(7) of the Commission's rules requires that a licensee place required information, including EEO files such as its EEO Public File Report, in its station's public inspection file.<sup>58</sup> We note that the Licensees' failure to keep required EEO information in its Stations' public inspection files therefore also apparently violates section 73.3526(e)(7) of the Commission's rules. While we decline to issue a separate forfeiture for the apparent violation of section 73.3526(e)(7) in this case, the Commission has previously done so,<sup>59</sup> and we reserve the right to do so when considering future such violations.

#### IV. CONCLUSION

23. For the reasons set forth above, we find that the Licensees apparently willfully and repeatedly violated sections 73.2080(c)(1), 73.2080(c)(1)(i), 73.2080(c)(3), 73.2080(c)(5), 73.2080(c)(6), and 73.3526(e)(7) of the Commission's rules<sup>60</sup> by failing to upload their annual EEO Public File Reports in the Stations' online public inspection files and to the Stations' websites, broadly recruit for certain vacancies, analyze their EEO program, and maintain their recruitment records. As such, the Licensees are apparently liable for a forfeiture of \$25,000.<sup>61</sup>

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<sup>53</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>54</sup> See *Inland Empire Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2656 (MB 2007) (\$4,500 for failing to recruit 40% of vacancies) (forfeiture paid).

<sup>55</sup> 47 CFR § 1.80(b)(11), Table 1.

<sup>56</sup> 47 CFR § 1.80(b)(11), Table 3. Cf. *Cumulus Licensing, LLC*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 10285 (MB 2017) (\$2,000 total forfeiture proposed for one SEU's failure to maintain records for two years (\$1,000 for each reporting period)) (forfeiture paid).

<sup>57</sup> See *2022 Cumulus NAL*, 37 FCC Rcd 3461, para. 16 (citing *Cumulus Licensing LLC*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 10285, 10288 (MB, 2017); *Cumulus Licensing L.L.C.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 18433, 18436 (MB, 2008)).

<sup>58</sup> 47 CFR § 73.3526(e)(7).

<sup>59</sup> See *Cumulus Licensing LLC*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 18433, 18436-37 (MB 2008) (forfeiture paid).

<sup>60</sup> 47 CFR §§ 73.2080(c)(3), (c)(1)(i), (c)(3), (c)(5), (c)(6), 73.3526(e)(7).

<sup>61</sup> Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, 72 Stat. 384 (codified as amended at 15 U.S.C. §§ 631 *et seq.* (2010))) may avail itself of rights set forth in that Act, including



**V. ORDERING CLAUSES**

24. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 CFR § 1.80, Rocking M Media, LLC and Melia Communications, Inc. are hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for willful and repeated violations of section 73.2080(c)(1), (c)(1)(i), (c)(3), (c)(5), and (c)(6) of the Commission's rules, 47 CFR § 73.2080(c)(1)(i), (c)(3), (c)(5), (c)(6).

25. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Rocking M Media, LLC and Melia Communications, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 28 below.

26. In order for Rocking M Media, LLC and Melia Communications, Inc. to pay the proposed forfeiture, Rocking M Media, LLC and Melia Communications, Inc. shall notify Patrick McGrath, at [Patrick.McGrath@fcc.gov](mailto:Patrick.McGrath@fcc.gov), Elizabeth Goldin at [Elizabeth.Goldin@fcc.gov](mailto:Elizabeth.Goldin@fcc.gov), and Jin Lee at [Jin.Lee@fcc.gov](mailto:Jin.Lee@fcc.gov) of its intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. Upon payment, Rocking M Media, LLC and Melia Communications, Inc. shall send electronic notification of payment to Patrick McGrath, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, at [Patrick.McGrath@fcc.gov](mailto:Patrick.McGrath@fcc.gov) with a copy to [Elizabeth.Goldin@fcc.gov](mailto:Elizabeth.Goldin@fcc.gov) and [Jin.Lee@fcc.gov](mailto:Jin.Lee@fcc.gov) on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/cores/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:<sup>62</sup>

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov) on the same business day the wire transfer is initiated.<sup>63</sup> Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN). For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill

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rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

<sup>62</sup> For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

<sup>63</sup> FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99-dollar limitation on credit card transactions.

- Payment by ACH must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

27. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554. See 47 CFR § 1.1914. Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

28. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission’s rules. See 47 CFR §§ 1.16, 1.80(g)(3). The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau –Investigations and Hearings Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Patrick McGrath at [Patrick.McGrath@fcc.gov](mailto:Patrick.McGrath@fcc.gov), Elizabeth Goldin at [Elizabeth.Goldin@fcc.gov](mailto:Elizabeth.Goldin@fcc.gov) and Jin Lee at [Jin.Lee@fcc.gov](mailto:Jin.Lee@fcc.gov).

29. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. See 47 U.S.C. § 503(b)(2)(E). Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we retain the discretion to decline reducing or canceling the forfeiture if other prongs of section 503(b)(2)(E) of the Act support that result.<sup>64</sup>

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<sup>64</sup> See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18–21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860–62, paras. 21–25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678–79, paras. 44–45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903–904, paras. 32–33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

30. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Christopher D. Imlay, Esq., Booth, Freret & Imlay, LLC, 14356 Cape May Road, Silver Spring, MD 20904-6011; Rocking M Media, LLC, c/o Monte M. Miller, 131 Santa Fe Avenue, Suite 3, Salina, KS 67401; Melia Communications, Inc., c/o Monte M. Miller, 131 Santa Fe Avenue, Suite 3, Salina, KS 67401, and by e-mail to [chris.imlay@gmail.com](mailto:chris.imlay@gmail.com).

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal  
Chief  
Enforcement Bureau