

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of)
)
Radio Communicators, Inc.)
)
For Renewal of License for) File No. BRH-960130YS
Station WINL-FM)
Linden, Alabama)
)

MEMORANDUM OPINION AND ORDER
AND NOTICE OF APPARENT LIABILITY

Adopted: November 15, 1996

Released: November 22, 1996

By the Commission:

I. INTRODUCTION

1. The Commission has before it for consideration: (i) a license renewal application for WINL-FM, Linden, Alabama (referred to as "WINL-FM" or "licensee")¹ and (ii) the licensee's response to a staff letter of inquiry.

II. DISCUSSION

2. Section 73.2080 of the Commission's Rules, 47 C.F.R. § 73.2080, requires that a broadcast licensee refrain from employment discrimination and establish and maintain an EEO program reflecting positive and continuing efforts to recruit and promote qualified women and minorities. When evaluating EEO performance, the Commission focuses on the licensee's efforts to recruit and promote qualified women and minorities and the licensee's ongoing assessment of its EEO efforts. Such an assessment enables the licensee to take corrective action if qualified women and minorities are not present in the applicant pool. The Commission also focuses on any evidence of discrimination by the licensee. See Sections 73.2080(a), (b), and (c) of the Commission's Rules, 47 C.F.R. §§ 73.2080(a), (b), and (c).

¹ The license term under review ended on April 1, 1996.

3. Review of the licensee's inquiry response reveals that the station had 19 full-time hiring opportunities, all for upper-level positions, from April 1, 1993, through April 1, 1996.² The licensee indicates that it recruited for 11 (57.9%) of its 19 vacancies and that its recruitment sources consisted of employee referrals and four general referral sources. The response reflects that it received one minority referral from each of the following sources: employee referrals, the local newspaper, and the Alabama State Employment Office.

4. WINL-FM reports that it received applications from 42 persons for its 19 full-time positions and that three (7.1%) of the 42 applicants for its 19 full-time positions were minorities. The station's records show that minorities were present in three (15.8%) of the licensee's 19 applicant pools.

5. WINL-FM also reports that it interviewed 32 applicants for its 19 full-time positions. The station's records reflect that three (9.4%) of its 32 interviewees were minorities and that minorities were present in three (15.8%) of the licensee's 19 interview pools. The licensee further reports that it hired one minority and also attempted to hire two other minorities who declined the station's offer of employment.

6. There are no substantial and material questions of fact warranting designation for hearing. See *Astroline Communications Co. v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988). Moreover, there is no evidence that the licensee engaged in employment discrimination. Therefore, renewal of the station's license is in the public interest.

7. Nevertheless, we find the licensee's overall recruitment efforts to be deficient. Our review indicates that the station failed to recruit for 42% of its full-time hiring opportunities in violation of Section 73.2080(c)(2) of the Commission's Rules. Further, minorities were present in only three applicant pools. Despite its lack of success in recruiting minorities during the

² According to the 1980 Census, Marengo County, Alabama, where the station is located, had an available labor force that was 40.8% female and 40.4% minority (38.9% Black, and 1.5% Hispanic). WINL-FM did not go on the air until June of 1991. The 1992 Annual Employment Report lists five women (56%) and no minorities among nine full-time employees, including four women (50%) among eight upper-level job employees.

The Commission has begun using 1990 labor force statistics for licensee renewal applications filed after May 31, 1993 and for 1993 and subsequent Annual Employment Reports. See Public Notice #32651 (April 12, 1993). According to the 1990 Census, Marengo County, Alabama has an available labor force that is 44.9% female and 41.9% minority (41.7% Black, 0.1% Hispanic and 0.1% American Indian). The 1993 Annual Employment Report lists five women (55.6%) and no minorities among nine full-time employees, including four women (50%) among eight upper-level job employees. The 1994 Annual Employment Report lists three women (50%) and no minorities among six full-time employees, including two women (40%) and no minorities among five upper-level job employees. The 1995 Annual Employment Report lists six women (60%) and no minorities among 10 full-time employees, including six women (60%) among 10 upper-level job employees.

license term, the licensee apparently did not conduct adequate self-assessment of its EEO program as required by Section 73.2080(c)(5) of the Commission's Rules. We believe that a continuous assessment of its recruitment efforts would have alerted the licensee to the need for modification of its recruitment efforts in order to attract a higher number of minority applicants.

8. We believe that the record in this case is similar to but more egregious than that of the licensee of WNEG-TV, Toccoa, Georgia. See Stephens County Broadcasting Company, 11 FCC Rcd 3628 (1996). In that case, the station had nine hiring opportunities and was located in a county with a 12.5% minority labor force. The licensee failed to recruit for a significant number of its vacancies and did not adequately self-assess its EEO program. Consequently, the Commission granted the renewal subject to reporting conditions and issued a Notice of Apparent Liability for \$6,000.

9. Both WINL-FM and WNEG-TV failed to recruit minorities for a significant number of vacancies, eight and five, respectively, and despite having a substantial number of hiring opportunities, 19 and nine, respectively.³ When the stations did recruit, their efforts were unsuccessful in attracting minority applicants. Nevertheless, the records do not show that either licensee adequately self-assessed during its license term. However, WINL-FM's record is more egregious than that of WNEG-TV. Although WNEG-TV failed to recruit for a greater percentage of its hires, WINL-FM had more hiring opportunities and is located in an area with a much higher minority labor force than WNEG-TV, 41.9% and 12.5%, respectively. In view of all of the foregoing factors and broadcasters' longstanding familiarity with our EEO Rule, we find that WINL-FM's rule violations warrant a forfeiture in the amount of \$8,000. Accordingly, we will grant renewal subject to reporting conditions and issue a Notice of Apparent Liability for \$8,000.

III. CONCLUSION

10. Having reviewed all matters presented, we conclude that there are no substantial and material questions of fact and that a grant of the renewal application would be consistent with Section 309(k) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(k). Further, we find no evidence of employment discrimination. Thus, because the licensee is otherwise qualified, grant of the application will serve the public interest. 47 U.S.C. § 309(d)(2). However, we will grant the renewal subject to a Notice of Apparent Liability for \$8,000 and impose reporting conditions to monitor the licensee's EEO performance.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the license renewal application for Station

³ Both stations are similarly sized in that the number of employees hired by WINL-FM and WNEG-TV ranged from 6-10 and from 13-15, respectively.

Mail -- Return Receipt Requested -- a copy of this Memorandum Opinion and Order to the licensee.

14. The reports are to be filed with the Secretary of the Commission for the attention of the Mass Media Bureau's EEO Branch, Enforcement Division.

15. With respect to the forfeiture proceeding, the licensee may take any of the actions set forth in Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, as summarized in the attachment to this Memorandum Opinion and Order. Any comments concerning the ability to pay should include those financial items set forth in the attachment.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary