

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

|                               |   |                        |
|-------------------------------|---|------------------------|
| In re Application of          | ) |                        |
|                               | ) |                        |
| <b>THE CURATORS OF THE</b>    | ) | File No. BRED-960930WI |
| <b>UNIVERSITY OF MISSOURI</b> | ) |                        |
|                               | ) |                        |
| For Renewal of License for    | ) |                        |
| Station KWMU-FM,              | ) |                        |
| St. Louis, Missouri           | ) |                        |

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

**Adopted:** December 20, 2000;

**Released:** January 17, 2001

By the Commission:

**I. INTRODUCTION**

1. The Commission has before it for consideration: (i) the above-captioned license renewal application filed by The Curators of the University of Missouri ("the University" or "licensee") for Station KWMU-FM, St. Louis, Missouri, a noncommercial educational radio station; (ii) a Petition to Deny filed by the Rainbow-PUSH Coalition ("Rainbow"); (iii) the licensee's opposition to Rainbow's petition; (iv) Rainbow's reply to the opposition; (v) the licensee's response to a staff letter of inquiry; (vi) Rainbow's reply to the licensee's inquiry response; (vii) and other pleadings.

2. Rainbow alleges that Station KWMU-FM violated the Commission's Equal Employment Opportunity ("EEO") Rule, 47 C.F.R. § 73.2080, and policies. Accordingly, Rainbow requests that we conduct an investigation of the station's employment practices, including instances of alleged discrimination, pursuant to Bilingual Bicultural Coalition on Mass Media, Inc. v. FCC, 595 F.2d 621 (D.C. Cir. 1978), and designate the renewal application for hearing with a view towards denial of the application. In response, the licensee denies Rainbow's allegations, contends that the station is in compliance with the Commission's Rules, and requests unconditional renewal of the station's license.

3. By way of background, in Lutheran Church – Missouri Synod v. FCC, 141 F.3d 344, pet. for reh'g denied, 154 F.3d 487, pet for reh'g en banc denied, 154 F.3d 494 (D.C. Cir. 1998) ("Lutheran Church"), the United States Court of Appeals for the District of Columbia Circuit held that the EEO program requirements of the EEO Rule were unconstitutional. With respect to the non-discrimination provision of the EEO Rule, the court remanded to the Commission to determine whether it has authority to enforce a non-discrimination rule. Lutheran Church, 141 F.3d at 356-57. The Commission thereafter proposed and requested comment concerning a new broadcast EEO rule and policies. Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding, 13 FCC Rcd 23004 (1998) ("NPRM"). The Commission then issued a Report and Order adopting new and revised EEO rules and concluding that it has jurisdiction to enforce anti-discrimination requirements. Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding, 15 FCC Rcd 2329 (2000) ("Report and Order"). Accordingly, consideration of the instant allegations of employment discrimination is now appropriate. This is because the court in Lutheran Church did not invalidate the anti-discrimination provision of the EEO Rule that was in effect at the time of the alleged acts of discrimination,

and the Commission has now determined that a requirement prohibiting discrimination is within its jurisdiction. However, the rules and policies adopted by the Report and Order are prospective in nature. Washington Broadcasting Company, 14 FCC Rcd 16999, 17000 n. 1 (1999). Therefore, we will assess the allegations in light of the Rule and related precedent applicable at the time the acts of discrimination allegedly occurred.

## II. PROCEDURAL MATTERS

4. In challenging an application pursuant to Section 309(d) of the Communications Act of 1934, as amended, a petitioner must, as a threshold matter, submit "specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with [the public interest, convenience, and necessity]." 47 U.S.C. § 309(d)(1); Astroline Communications Co. v. FCC, 857 F.2d 1556 (D.C. Cir. 1988) ("Astroline"); Dubuque T.V. Limited Partnership, 4 FCC Rcd 1999 (1989). The allegations, except for those of which official notice may be taken, must be supported by an affidavit of a person with personal knowledge of the facts alleged. 47 U.S.C. § 309(d)(1).

5. Standing. In order to qualify as a party in interest, petitioners to deny seeking to represent the interests of their members must show that one or more of their members resides within the station's service area or regularly listens to or views a station and that such listening or viewing is not the result of transient contacts with the station. CHET-5 Broadcasting, L.P., 14 FCC Rcd 13041 (1999). Submitted with Rainbow's petition is a declaration under penalty of perjury from a Rainbow member, who states that he has been a resident of the St. Louis metropolitan area for over ten years, that he is a regular listener of Station KWMU-FM, and that he would be seriously aggrieved if the petition is not granted. In its Opposition, the licensee contends that Rainbow's petition should be dismissed because Rainbow failed to establish "party-in-interest" status. The licensee asserts that the petition does not state that Rainbow represents St. Louis residents and that the petition is filed on their behalf. The licensee also argues that Rainbow failed to establish proof that "a real and tangible injury" would occur to such local residents. Because there is no dispute that the declarant resides in the station's service area and is a regular listener of the station and that he is a member of Rainbow, we find that the declarant's statement meets the requirements for standing. Accordingly, we hold that Rainbow has established that it is a party in interest with respect to Station KWMU-FM's renewal application.

6. Prima Facie Case. In its petition, Rainbow states that "KWMU-FM's Program appears to comply with the EEO Rule." It nonetheless urges that, in practice, the licensee's EEO program is a "sham." Rainbow's petition is premised primarily on a civil lawsuit alleging employment discrimination on the basis of race that was brought in 1991 by Winifred Sullivan, a former part-time employee of the station, and on the declaration submitted by Arthur Solomon, Sullivan's friend.<sup>1</sup> After a court trial, the district court judge concluded that there was no racial discrimination proven by Sullivan and entered judgment in favor of the University. Sullivan did not appeal the court's judgment. Rainbow also alleges that the station discriminated against other former station employees and applicants on the basis of race. For the reasons set forth below, we find that Rainbow has not established a prima facie case under Section 309(d)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(d)(1).

## III. DISCUSSION

### A. Discrimination Allegations

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<sup>1</sup> Arthur Solomon provided a declaration in support of Rainbow's petition; he does not claim to be a victim of employment discrimination at station KWMU-FM.

7. In its petition, Rainbow alleges that Station KWMU-FM engaged in employment discrimination against several applicants and former employees. The record indicates that, in 1991, Winifred Sullivan, a former part-time employee of Station KWMU-FM, filed an employment discrimination suit against The Curators of the University of Missouri on the basis of race. In her suit, Sullivan, who is Black, alleged that she was unlawfully terminated by the licensee.<sup>2</sup> She further alleged that the licensee refused to hire her on the basis of race when she reapplied for two positions that later became available at the station. She claimed that the positions were offered to less qualified White applicants. After a court trial, the district court judge concluded that there was no racial discrimination proven by Sullivan and entered judgment in favor of the University. See Winifred Sullivan v. Curators of the University of Missouri, No. 91-1190(C)(7) (E.D. Mo. Dec. 23, 1992) ("Sullivan case"). In its findings, the court stated: "I think in the end there has been substantial evidence put on by the defense that a legitimate nondiscriminatory reason for any termination or failure to rehire has been presented." The court found that the termination of Sullivan and 18 other employees (all 18 of whom were White) "came as part of the larger restructuring occasioned by financial problems and an effort to improve the programming and the all over [*sic*] quality of the station's operation." It is undisputed that Sullivan's motion for a new trial was denied by the district court judge and that Sullivan did not appeal the court's decision.

8. According to Rainbow, however, Sullivan has a credible belief that "KWMU prevailed in that case only because of KWMU-FM's use of falsified documents and perjured testimony, and the presence of a judge predisposed against her." Rainbow argues that irrespective of how the Commission treats the matters which were before the court in the Sullivan case, "the evidence not before the Court, including evidence of events occurring well after the Court's ruling, overwhelmingly shows that KWMU-FM's policy was and continued to be one of deliberate and unlawful discrimination." Rainbow alleges that the station discriminated not only against Sullivan, but several other Black applicants and former station employees. This allegation is based on four declarations under penalty of perjury by two former station employees and two interviewees who claim to have been discriminated against on the basis of their race.

9. The first declarant, Bernard Hayes, who is Black, states that he served as news director for the station from 1987 till 1993, but later resigned to assume a position at another station. Hayes alleges that the station discriminated against him on the basis of race. He acknowledges that he testified during the Sullivan trial that the station had not discriminated against him, but that he later formed the belief that he must have been discriminated against because his position was offered to a White female after he voluntarily resigned from his position at the station. Rainbow concedes that Hayes did not file a discrimination complaint with the Equal Employment Opportunity Commission ("EEOC") and would now be barred from doing so by the applicable statute of limitations.

10. In his declaration, Chris Roberson, who is Black, alleges that the station discriminated against him on the basis of race. Roberson states that the station hired him in December 1991 for a temporary part-time position while he was still a student at the University of Missouri. After he worked at the station for about a year, he was informed that "[his] services were no longer needed." He states that, upon learning of the Sullivan trial, he "formed the belief that [the station general manager, Patricia Wentz,] had hired [him] and other African American students shortly before [the Sullivan] trial as a ploy, so that she could say in court that she had shown an interest in hiring African Americans."

11. In his declaration, Leo Cheers, who is Black, states that he applied, and was interviewed in August 1990, for a full-time position as a jazz announcer at the station. Cheers believes that the station discriminated against him on the basis of race by hiring a less qualified White applicant, who, at that time, was working as a part-time station employee. Cheers acknowledges that the station had offered him a part-time announcer position which he declined because he wanted a full-time position.

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<sup>2</sup> Sullivan submitted a declaration along with Rainbow's petition.

12. In her declaration, Tessa Abrams Marshall, who is Black, states that "it is [her] belief" that the station discriminated against her on the basis of race when she applied for a position as development director at the station in March 1990. Although she was interviewed for the position by several of the station's staff, she believed that her interview was a mere "formality," and that the station refused to hire her because it had already decided to hire another applicant, who Marshall points out was White. After the interview, she asserts that she felt "hurt and humiliated" and, consequently, decided to file a racial discrimination complaint against the station with the St. Louis office of the EEOC. She states that she did not pursue her EEOC complaint further after she was hired at a station in California.<sup>3</sup>

13. In its petition, Rainbow also alleges that Loren Madden, Rita Pope, Doug Lane, and an individual simply identified as "Rosemary" were victims of discrimination, but Rainbow did not supply affidavits from these individuals. Further, Rainbow asserts that the station took into account "customer preferences" in electing not to hire a black applicant -- whom Rainbow identifies as Rita Pope -- for the position of station business manager. Rainbow also did not submit an affidavit from Rita Pope. Rainbow further asserts that the station "hired and retained Blacks based on litigation strategy rather than merit." In addition, Rainbow claims that the station used the employment of one minority as an "internal quota" during periods of the license term, which, once attained, "cut off further efforts to recruit or employ minorities." Rainbow acknowledges that the matters raised in its petition ordinarily are referred to the EEOC, pursuant to the Memorandum of Understanding between the FCC and the EEOC, see Memorandum of Understanding Between the Federal Communications Commission and the Equal Employment Opportunity Commission, 70 FCC 2d 2320 (1978) ("Memorandum of Understanding"), and it concedes that "all of the allegations discussed [in its petition] are out of time for Title VII purposes." Despite this acknowledgment, Rainbow urges the Commission to address the discrimination allegations in its petition.

14. On January 20, 1998, Rainbow filed an additional declaration from Hayes, dated November 20, 1997, attesting that he believed the station's general manager had discriminated against a minority employee under his supervision while he was employed as a news director at the station. On January 27, 1998, the licensee filed a response, requesting that the Commission reject the filing as untimely and arguing that, in any event, the statements are hearsay, speculative, and immaterial. On August 25, 1998, Rainbow filed an additional declaration from Cheers, dated August 10, 1998, and from Sullivan and Solomon, dated August 12, 1998. The Cheers' declaration essentially repeats the allegations as described in ¶ 11, supra, and sets forth Cheers' qualifications for the applied for position. The Sullivan and Solomon declaration sets forth new "evidence" and additional issues not presented in the Sullivan case, including allegations regarding discriminatory conduct by the University toward Cheers. See ¶ 11, supra. On November 6, 1998, the licensee filed a supplemental response, claiming that "Rainbow has further abused the Commission's processes by repeatedly filing untimely and unauthorized filings," and that the additional declarations consist of "vague, unsubstantiated allegations" which lack any merit. On November 14, 1999, Sullivan and Solomon directly filed with the Commission additional declarations dated June 20, 1999, and May 29, 1999, respectively. The Sullivan declaration sets forth additional "evidence" to bolster Sullivan's claim of discrimination by the University and urges the Commission to continue investigating broadcast discrimination complaints. The Solomon declaration raises a wide range of misrepresentation and discrimination based allegations against the licensee and Patricia Bennett, KWMU-FM's general manager. By letter dated December 7, 1999, the licensee requested that the Commission strike the filing as untimely and an ex parte communication. In response, by letter dated December 17, 1999, Rainbow

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<sup>3</sup> Marshall states that, in preparation for her declaration, she contacted the St. Louis office of the EEOC and was told that they had no record of her complaint against the station.

requested that the Commission accept the filing as though Rainbow had filed it.<sup>4</sup>

15. We find that the additional filings are insufficient to support the requested issue since they do not provide any specific and substantiated facts that justify consideration. Further, by letter dated October 15, 1997, the Commission's Mass Media Bureau informed the parties that "no further pleadings from the parties will be accepted" in this case.<sup>5</sup> Moreover, the pleadings are not contemplated in our rules for the filing of petitions to deny. See 47 C.F.R. § 73.3584(b). Therefore, we will not consider these additional declarations or the replies thereto.

16. In general, individual complaints of employment discrimination do not suffice to make a prima facie case that grant of a renewal application would be inconsistent with the public interest. See Pacific and Southern Company, Inc., 11 FCC Rcd 8503, 8505-506 (1996) ("Pacific"). This is based on the Commission's policy that, ordinarily, such complaints should be resolved in the first instance by the EEOC or other government agency and/or court established to enforce non-discrimination laws. Congress intended the EEOC to be principally responsible for the resolution of individual employment discrimination disputes, and attempts on our part to resolve such disputes separately would result in duplication of efforts. Id. at 8505; CBS, Inc., 59 FCC 2d 1127, 1132 (1976). In Pacific, we indicated that the general policy does not preclude consideration of facts relating to specific instances of discrimination where surrounding circumstances raise questions about a licensee's basic qualifications. See Pacific, 11 FCC Rcd at 8505. Rainbow, in its petition, however, has not raised facts that would warrant a departure from our general policy as stated in Pacific. With respect to Rainbow's allegation that the number of minorities employed by the station indicates that the licensee violated our EEO program requirements, we need not reach this contention because we cannot in any event consider allegations insofar as they relate to the EEO program requirements held unconstitutional in Lutheran Church.

17. Additionally, we point out that Sullivan's complaint has been fully and finally litigated in accordance with Title VII of the Civil Rights Act of 1964, as amended; Sullivan opted not to appeal the district court's judgment. Consistent with our general policy, we have taken cognizance of the court's final adjudication of this matter. We will not further consider the merits of Sullivan's complaint because no finding was made that the University engaged in employment discrimination. See Town of Deerfield, New York, 992 F.2d 420, 428 (2d Cir. 1993) ("Since neither the legislative branch nor the executive branch has the power to review judgments of an Article III court, an administrative agency such as the FCC, which is a creature of the legislative and executive branches, similarly has no such power. . . . Nor may an administrative agency choose simply to ignore a federal-court judgment."). With respect to the discrimination allegations made by Hayes, Roberson, Cheers, and Marshall, in addition to other individuals which Rainbow identified but for which it did not supply affidavits, Rainbow concedes that such matters are ordinarily referred to the EEOC and that the individual discrimination complaints are untimely for Title VII purposes. If the allegations are untimely for Title VII purposes, as Rainbow concedes, it would be inconsistent with our longstanding general policy, that discrimination complaints must be pursued initially before the EEOC or other agency and/or court established to enforce non-discrimination laws, to accord parties the option to file complaints in the first instance with this agency after passage of applicable Title VII statute of limitations provisions. For the Commission to assert jurisdiction to resolve individual charges of employment discrimination as an alternative to the EEOC after the expiration of the applicable Title VII statute of limitations would have the effect of extending that statutory deadline, which we decline to do.

18. The FCC acts as a receiving agency for the EEOC for individual charges of employment

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<sup>4</sup> Rainbow states that it "lacks the resources to perform due diligence on the November 14 material."

<sup>5</sup> See letter dated October 15, 1997, from EEO Branch, Mass Media Bureau, to attorneys for Rainbow-PUSH Coalition and KWMU-FM, St. Louis, Missouri.

discrimination under Title VII. Although Rainbow acknowledges that the individual allegations are normally referred to the EEOC and are untimely for Title VII purposes, it is for the EEOC, not this agency, to determine whether such claims are in fact barred by relevant statute of limitations provisions and, if not, whether they are actionable before the EEOC. Accordingly, pursuant to the Memorandum of Understanding between the FCC and the EEOC, we are referring Rainbow's Petition to Deny and all other pleadings in this proceeding to the EEOC and, by copy of this Order, so notifying the licensee. If the individual allegations of employment discrimination in Rainbow's petition continue to be actionable, the Commission will take cognizance of any final determination of employment discrimination. Memorandum of Understanding, supra. E.g., Pacific, 11 FCC Rcd at 8505; NBC-TV, 5 FCC Rcd 2049 (1990); KSDK, Inc., 85 FCC 2d 797 (1981), recons. den., 88 FCC 2d 1443 (1992); Washington Radio, Inc., 88 FCC 2d 1200 (1982).

## B. Misrepresentation and Lack of Candor Allegations

19. Because we find that Rainbow failed to make a prima facie case in its petition to deny, further matters raised in subsequent pleadings ordinarily are not entitled to consideration. See Blue Ridge Public Television, 12 FCC Rcd 4634, 4637 n.5 (1997). In this instance, however, we deemed it appropriate to review, sua sponte, Rainbow's allegations of misrepresentation and lack of candor because they go to the truthfulness of the licensee's representations to the Commission. See Pacific, 11 FCC Rcd at 8505.

20. In its reply to the licensee's inquiry response,<sup>6</sup> Rainbow charges that the licensee misrepresented to the Commission that there was no EEO litigation against it during the license term in the original Form 396 (Broadcast Equal Employment Opportunity Program Report) that the licensee filed with the Commission. In its inquiry response, the licensee, through its Assistant Vice President for Management Services, states that it inadvertently answered "None" in response to that section of Form 396 which asks licensees to provide a description of any discrimination complaints filed against its stations. Along with its inquiry response, the licensee submitted an amendment to the Form 396 it originally filed to reflect the discrimination suit brought by Sullivan, and stated that "[t]here were no other employment discrimination complaints filed against KWMU during the license term." Rainbow contends, however, that the licensee's representation that no other complaints were filed against the station is false. According to Rainbow, based on a joint declaration by Sullivan and Solomon, there are two additional complaints that the licensee failed to document: (1) a complaint filed in 1990 with the St. Louis office of the EEOC by John Schieszer, a former part-time reporter at the station, who claimed that he was unlawfully terminated by the station on the basis of age; and (2) the complaint Tessa Abrams Marshall filed in 1990 with the St. Louis office of the EEOC. Rainbow further alleges that the licensee falsely claimed in its inquiry response that it used the St. Louis American, a minority-oriented paper, to seek job referrals for its vacancies. Rainbow asserts that, according to Sullivan and Solomon, the station did not advertise three vacancies in the St. Louis American.

21. In response, the licensee states the EEO litigation concerning the station consisted of two matters involving part-time employees, as opposed to full-time employees, that were resolved in favor of KWMU-FM; the licensee notes that these two matters were the Sullivan lawsuit and the John Schieszer complaint, which the St. Louis office of the EEOC dismissed in 1991. The licensee states that "[i]t is not surprising that these matters were overlooked since they involved part-time employees, and did not involve any adverse findings." The licensee further argues that it is not at all evident from FCC Form 396 that the Form even applies to part-time employees. The licensee maintains that it had "no motive to hide these matters since they were resolved favorably" and that its failure to report these two complaints was

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<sup>6</sup> On May 29, 1997, Commission staff sent the licensee a letter of inquiry requesting information about the licensee's EEO efforts over a three-year period -- i.e., from February 1, 1994 to February 1, 1997.

inadvertent.<sup>7</sup> With respect to the complaint that was allegedly filed by Tessa Abrams Marshall, the licensee states that it has not been able to find any record of such a complaint and is not aware of any such complaint. It also points out that Rainbow has no record from the EEOC of such a complaint. Furthermore, the licensee disputes Rainbow's claim that the station did not run advertisements in the St. Louis American concerning job openings at the station. The licensee provided bills and advertisements that were run in the St. Louis American during the inquiry period. It asserts that advertisements of job openings were placed in the St. Louis American, except for those that were filled by promoting station employees.

22. While we acknowledge the licensee's explanation for its failures to report the discrimination complaints in the first instance, we disagree with its assertion that the Form 396 is unclear as to whether the information requested with respect to discrimination complaints also applies to part-time employees. The Broadcast EEO Program Report (Form 396) requires licensees to provide a brief description of any complaint which has been filed before any body having competent jurisdiction under Federal, State, territorial or local law, alleging unlawful discrimination in the employment practices of the station including the persons involved, the date of filing, the court or agency, the file number (if any), and the disposition or current status of the matter. Form 396 does not distinguish between complaints filed by part-time and full-time employees and the licensee does not direct us to any language in the form or the Commission's Rules to suggest otherwise.

23. What is more disturbing, however, is that a Commission staff letter was sent to KWMU-FM which specifically asked the licensee to identify, in addition to the Sullivan case, "any other employment discrimination complaint(s) filed against KWMU-FM during the current license term" (emphasis added). Even with this unambiguous instruction, the licensee in its response to the staff letter acknowledged the existence only of the Sullivan case. It was not until after Rainbow brought to our attention the existence of the Schieszer complaint -- in its reply to the licensee's inquiry response -- that the licensee finally acknowledged the existence of that complaint. The licensee consequently amended its Form 396 for the second time and again asserted that its failure to report the Schieszer complaint was inadvertent.

24. We find no evidence of an intent to deceive that would support a finding of misrepresentation or lack of candor. The two discrimination complaints were favorably resolved in the licensee's favor. Evidence of an intent to deceive is necessary to support such a finding. Fox Television Stations, Inc., 10 FCC Rcd 8452, 8487 (1995); Fox River Broadcasting, Inc., 93 FCC 2d 127, 129 (1983). Nonetheless, KWMU-FM's omissions of the two complaints in its Form 396 and in response to the Commission staff letter, cannot be ignored. Full and clear disclosure of all material facts is essential to the efficient administration of the Commission's license renewal process. Section 73.1015 of the Commission's Rules, 47 C.F.R. § 73.1015, states in pertinent part that "No applicant ... shall ... in any application, pleading, or report or any other written statement submitted to the Commission, make any ... willful material omission bearing on any matter within the jurisdiction of the Commission." A "willful material omission" need not be accompanied by an intent to deceive. Abacus Broadcasting Corp., 8 FCC Rcd 5110, 5115 (Rev. Bd. 1993).<sup>8</sup>

25. We find that the licensee's Form 396 and amendment thereto omitted material facts, as described above. Further, we find that this action was willful inasmuch as the licensee's Assistant Vice President for Management Services, Dennis Cesari, certified that the information contained in the Form

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<sup>7</sup> Thereafter, the licensee again amended its Form 396 to reflect both the Sullivan case and the Schieszer complaint.

<sup>8</sup> This case concerned Section 1.17 of the Commission's Rules, 47 C.F.R. § 1.17. However, the pertinent language of the provision is the same as the pertinent language in Section 73.1015.

396 was true and correct to the best of his knowledge, information, and belief. The licensee admits that it twice failed to report all of its discrimination complaints. Although the licensee states that the omissions were "inadvertent," the licensee does not deny that it was aware of the existence of the discrimination complaints at the time the renewal application was filed. Cesari had a responsibility to ensure the accuracy of the information contained in the application before signing the certification. His failure to do so reflects a lack of concern for the accuracy of information provided to the Commission. The licensee's acknowledgement of the existence of all of its discrimination complaints over one year after the station's renewal application was filed, and only after Rainbow alerted the Commission to the existence of the complaints, further supports this conclusion. See In Re Application of National Broadcasting Co., Inc., 14 FCC Rcd 9026 (MMB 1999).

26. Accordingly, we find that a forfeiture should be assessed against the licensee for willfully omitting material facts in its Form 396 in violation of Section 73.1015 of the Commission's Rules. In The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, 12 FCC Rcd 17087 (1997), the Commission adopted guidelines for assessing forfeitures. However, these guidelines do not enumerate a base forfeiture amount for a willful material omission. Under these circumstances, the forfeiture must be assessed taking into account the relevant statutory factors in Section 503(b)(2) of the Communications Act of 1934, 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." Based on our assessment of these factors, we conclude that the licensee's violation of Section 73.1015 warrants issuance of a Notice of Apparent Liability for a forfeiture in the amount of \$8,000. We believe that the record in this case is similar to, but more egregious than, that of the licensee of WRKL(AM), New City, New York, in Application of WRKL Rockland Radio, L.L.C., 14 FCC Rcd 1042 (MMB 1999). In that case, the Commission imposed a \$5,000 Notice of Apparent Liability on the licensee for willfully omitting the existence of employment discrimination complaints filed against its station in that station's Form 396, in violation of Section 73.1015. In the case at hand, the licensee's behavior is more egregious since the licensee omitted its two complaints both in its Form 396 and in response to the Commission's staff letter. Accordingly, we will grant renewal subject to a Notice of Apparent Liability for \$8,000.

27. Regarding Rainbow's allegation that the licensee falsely claimed in its inquiry response that it used the St. Louis American, a minority-oriented newspaper, to seek job referrals for vacancies that were available at the station during the inquiry period, we also find that this allegation does not raise a substantial and material question of fact. The licensee disputes Rainbow's claim and provided copies of invoices and advertisements in support of its assertion that the St. Louis American was, in fact, used as a source of minority recruitment efforts for its vacancies. It explains that it did not use this source for positions that were filled internally through promotions.

#### IV. ORDERING CLAUSES

28. Accordingly, **IT IS ORDERED** that the petition to deny filed by the Rainbow-PUSH Coalition concerning the renewal application for Station KWMU-FM **IS DENIED**.

29. **IT IS FURTHER ORDERED** that, pursuant to Section 503 of the Communications Act of 1934, as amended, 47 U.S.C. § 503, the license renewal application filed by The Curators of the University of Missouri for Station KWMU-FM **IS GRANTED** subject to a **NOTICE OF APPARENT LIABILITY FOR FORFEITURE** in the amount of \$8,000.

30. **IT IS FURTHER ORDERED** that the discrimination allegations made by Rainbow, and all related pleadings, will be referred to the EEOC, as described in this Memorandum Opinion and Order.

31. **IT IS FURTHER ORDERED** that The Curators of the University of Missouri submit to the Commission complete details concerning any new charges or complaints of discrimination filed against the station or personnel of the station during the current license term, including a description of the complainant's allegations and the status of the case, within 30 days of such charge or complaint being filed.

32. **IT IS FURTHER ORDERED** that a copy of this Memorandum Opinion and Order be sent to Rainbow and The Curators of the University of Missouri by Certified Mail --Return Receipt Requested.

33. Regarding 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 ability to pay should include those financial items set forth in the attachment.

### FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary