

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

In the Matter of	)	
	)	
<b>Cumulus Licensing LLC</b>	)	NAL/Acct. No. MB-200841410041
	)	FRN: 0002834810
Licensee of Stations	)	
	)	
WPEZ(FM), Jeffersonville, Georgia	)	Facility I.D. No. 52551
	)	
WIFN(FM) (Formerly WAYS(FM)), Macon, Georgia	)	Facility I.D. No. 68679
	)	
WDDO(AM), Macon, Georgia	)	Facility I.D. No. 52546
	)	
WAYS(AM) (Formerly WWFN(AM)), Macon, Georgia	)	Facility I.D. No. 68678
	)	
WDEN-FM, Macon, Georgia	)	Facility I.D. No. 46996
	)	
WMAC(AM), Macon, Georgia	)	Facility I.D. No. 46998
	)	
WMGB(FM), Montezuma, Georgia	)	Facility I.D. No. 88541
	)	
WLZN(FM) (Formerly WMKS (FM)), Macon, Georgia	)	Facility I.D. No. 54672
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: September 17, 2008**

**Released: December 30, 2008**

By the Commission: Commissioners Copps and Adelstein issuing a joint statement.

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),<sup>1</sup> we find that Cumulus Licensing LLC (the “Licensee”), licensee of Stations WPEZ(FM), Jeffersonville, Georgia; WIFN(FM) (formerly WAYS (FM)), Macon, Georgia; WDDO(AM), Macon, Georgia; WAYS(AM) (formerly WWFN(AM)), Macon, Georgia; WDEN-FM, Macon, Georgia; WMAC(AM), Macon, Georgia; WMGB(FM), Montezuma, Georgia; and WLZN(FM) (formerly WMKS(FM)), Macon, Georgia (collectively, the “Stations” and each a “Station”), apparently willfully and repeatedly violated Sections 73.2080(c)(2), 73.2080(c)(3), 73.2080(c)(5), 73.2080(c)(6)(iii), 73.2080(c)(6)(iv), and 73.3526(e)(7) of the Commission’s Rules<sup>2</sup> by failing to comply with the Commission’s Equal Employment Opportunity (“EEO”) record-keeping, recruitment source information, interviewee information, EEO initiative, self-assessment, and public file requirements. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a

<sup>1</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

<sup>2</sup> See 47 C.F.R. §§ 73.2080(c)(2), 73.2080(c)(3), 73.2080(c)(5), 73.2080(c)(6)(iii), 73.2080(c)(6)(iv), and 73.3526(e)(7).

monetary forfeiture in the amount of fourteen thousand dollars (\$14,000). We also impose reporting conditions on the Licensee and any successor Licensee of any of the Stations that are or may be included in the employment unit, to prevent future violations of these requirements.

## II. BACKGROUND

2. Section 73.2080(c)(1) of the Rules requires that a broadcast licensee recruit for every full-time job vacancy in its employment unit operation. In this regard, the Rules impose, *inter alia*, the following respective obligations on such licensees:

- Section 73.2080(c)(2): complete two recruitment initiatives (if in a small market) over two years;
- Section 73.2080(c)(3): analyze the recruitment program for the licensee's unit on an ongoing basis to ensure that it is effective in achieving broad outreach to potential applicants, and address any problems found as a result of its analysis;
- Section 73.2080(c)(5): retain records of its EEO efforts;
- Section 73.2080(c)(6)(iii): maintain recruitment source data; and
- Section 73.2080(c)(6)(iv): maintain interviewee data.

In addition, Section 73.3526(e)(7) requires commercial licensees to include certain EEO-related materials in their station public files, including that noted above.

3. *EEO Review.* By letter dated June 7, 2006, the Media Bureau ("the Bureau") notified the Licensee that it had been randomly selected for an audit of its EEO program.<sup>3</sup> The Commission has before it the Licensee's response to the audit.<sup>4</sup> The Licensee reports that its record-keeping in the Macon, Georgia, market was unsatisfactory in 2004 and 2005.<sup>5</sup> The Licensee states that poor record-keeping during those two years made it difficult, if not impossible, for it to accurately report on its EEO public file reports the number of individuals interviewed for full-time openings in 2004 and 2005 and how those that filled full-time positions in 2004 learned about the openings.<sup>6</sup> Our review of the Licensee's public file reports during the periods at issue (December 1, 2003, through November 30, 2004, and December 1, 2004, through November 30, 2005) ("2004 report" and "2005 report," respectively), reveals that the Licensee did not retain adequate EEO records of interviewees and referrals, as required by Section 73.2080(c)(5), and did not produce documentation of the recruitment initiatives it was required to complete, as required by Section 73.2080(c)(2). The 2004 report also fails to list any information regarding the total number of interviewees and the recruitment source for interviewees for each of the vacancies filled, in violation of Section 73.2080(c)(6)(iv). The report shows eight vacancies filled in this time period but other records produced by the Licensee in its audit response indicate that two additional hires took place, so the correct total of hires for the 2004 report appears to be 10. The 2005 report lists the recruitment source for all 11 hires in the reporting period, but does not include any information regarding the total number of interviewees and the interviewee referral sources for the positions filled, as required by Sections 73.2080(c)(6)(iv) and 73.2080(c)(6)(iii). In addition, for its hires during both reporting periods, the Licensee produced some of the job notices it sent to sources, but almost none of the notices indicated which source received the notices, thus indicating that the Licensee did not have complete copies of all job notices, as required by Section 73.2080(c)(5)(iii). The Licensee was able to provide documentation showing completion of one recruitment initiative in the 2004-2005 year but submitted no information regarding any

<sup>3</sup> Letter from Lewis Pulley, Assistant Chief, Policy Division, Media Bureau, to Cumulus Licensing, LLC (Jun. 7, 2006).

<sup>4</sup> Letter and documentation from Richard S. Denning, Vice President, Secretary and General Counsel of Cumulus Licensing LLC, to EEO Staff, Policy Division, Media Bureau (Jul. 21, 2006).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

other recruitment initiatives during the 2003-2005 period, in violation of Section 73.2080(c)(2). Also, the Licensee's deficiencies in retaining records relating to its EEO requirements reveal an apparent lack of self-assessment for EEO compliance during the 2004 and 2005 periods, in violation of Section 73.2080(c)(3). Finally, because of the Licensee's incomplete records, it was not able to include all required information in the public inspection files of each station, in violation of Sections 73.3526(e)(7) and 73.2080(c)(6).

### III. DISCUSSION

4. We conclude that the Licensee failed to maintain adequate recruitment records for all of its vacancies for its 2003-2004 and 2004-2005 reporting periods, as required by Section 73.2080(c)(5). The Licensee filled ten vacancies in its 2003-2004 reporting period, and 11 vacancies in the 2004-2005 reporting period. The Licensee reported that it had no interviewee or referral information for seven of the eight vacancies reported in the 2004 reporting period, and the record further fails to include any interviewee or referral information for two hires that were not listed on the 2004 report but were indicated elsewhere in the Licensee's audit response.<sup>7</sup> In the 2005 public file report, the Licensee provided the recruitment referral source for its 11 hires but was unable to provide information regarding the total number of job applicants interviewed and the recruitment referral source for the interviewees for those positions. Also in the 2005 report, the licensee provided information for only one recruitment initiative of the two it was required to complete in the 2003-2005 period in accordance with Section 73.2080(c)(2). The Licensee admits in its response that it is unable to document all of its supplemental recruitment initiatives for the reporting periods at issue.<sup>8</sup> Furthermore, the Licensee's records for the majority of its job notices were incomplete, failing to indicate the sources to which they were sent, as required by Section 73.2080(c)(5)(iii).

5. We find that the Licensee's 2004 and 2005 public file reports and audit response indicate that it did not retain adequate records of interviewees and referrals or job notices, as required by Section 73.2080(c)(5). We also find that the Licensee did not produce documentation of one of the two recruitment initiatives it was required to complete, as required by Section 73.2080(c)(5). Because of the Licensee's lack of records of interviewees, referrals, and job notices, and its failure to document completion of one of its two required recruitment initiatives, we find that it was not possible for it to have adequately analyzed its recruitment program to ensure that it was effective in achieving broad outreach, in violation of Section 73.2080(c)(3). Finally, we find that it failed to place all of the required information in the public inspection files of the stations, as required by Sections 73.3526(e)(7) and 73.2080(c)(6).

6. The Licensee reports that it revised its EEO program "toward the end of 2005" and now follows an EEO program that includes advertising each full-time position over the air on all eight Cumulus stations in the Macon, Georgia, market, advertising each opening on its six websites, advertising each opening in the local Macon newspaper and mailing or e-mailing information about each full-time position to every entity listed on its recruitment source list.<sup>9</sup> While these changes should result in a much improved EEO program for the Licensee's Stations, we find that the Licensee's repeated violations of our EEO rule, as noted above during the public file reporting periods of 2003-2004 and 2004-2005, warrant the assessment of a monetary forfeiture in the amount of fourteen thousand dollars (\$14,000).

7. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. 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

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<sup>7</sup> Letter and documentation from Richard S. Denning, Vice President, Secretary and General Counsel of Cumulus Licensing LLC, to EEO Staff, Policy Division, Media Bureau (Jul. 21, 2006), Response to Question 3(a).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

United States for a forfeiture penalty.<sup>10</sup> 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.<sup>11</sup> 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,<sup>12</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>13</sup> Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”<sup>14</sup>

8. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules do not establish base forfeiture amounts for specific EEO rule violations, such as a failure to recruit widely for vacancies or to self-assess EEO performance. However, they do establish a base forfeiture amount of \$10,000 for violation of the Commission’s public file rules, of \$3,000 for failure to file required information, and of \$1,000 for failure to maintain required records.<sup>15</sup> In determining the appropriate forfeiture amount, we may adjust the base 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.”<sup>16</sup>

9. As discussed *supra*, the Licensee failed to list recruitment source data on its 2003-2004 EEO public file report; list interviewee data on its 2004 and 2005 EEO public file reports; list the total number of interviewees for any of the Stations’ 10 full-time vacancies on its 2004 EEO public file report and 11 full-time hires on its 2005 report; list two of its hires on its 2004 report; list all required information on its job notices; self-assess its EEO program; and place required information in the public inspection files of the Stations. Accordingly, based upon the facts before us, the factors noted above, and pertinent precedent,<sup>17</sup> we find that the Licensee is apparently liable for the following forfeiture amounts for its willful and repeated violations of these Rules: \$4,000 for its violation of Section 73.2080(c)(2); \$2,000 for its violation of Section 73.2080(c)(3); \$4,000 for its violation of Section 73.2080(c)(5);

<sup>10</sup> 47 U.S.C. § 503(b)(1)(B). *See also* 47 C.F.R. § 1.80(a)(1).

<sup>11</sup> 47 U.S.C. § 312(f)(1).

<sup>12</sup> *See* H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>13</sup> *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>14</sup> 47 U.S.C. § 312(f)(2).

<sup>15</sup> *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

<sup>16</sup> 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01, ¶27; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

<sup>17</sup> In *Waite Omaha, LLC*, we proposed an \$8,000 forfeiture for a licensee’s violations of various EEO rules, specifically Sections 73.2080(c)(3), 73.2080(c)(5), 73.2080(c)(6)(iii), 73.2080(c)(6)(iv), and 73.3526(e)(7). The licensee had failed to maintain required EEO records, list the recruitment source of hires, provide data on the numbers of persons interviewed and referred from each recruitment source, self-assess adequately, and place required EEO information in its public inspection file. *Waite Omaha, LLC*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2661 (2007) (response pending). In the instant case, Cumulus Licensing, LLC, in addition to violating the rules violated in *Waite Omaha, LLC*, also failed to list two hires on its 2004 public file report and failed to maintain complete records of job notices sent to sources. In *Viper Communications*, we proposed an \$8,000 forfeiture for a licensee’s violation of Sections 73.2080(c)(2) and (c)(3). The licensee had failed to complete its one required initiative during the 18-month period of our review of its EEO record, or to self-assess adequately. *Viper Communications*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 20254 (2005) (forfeiture paid). In the instant case, Cumulus Licensing LLC also failed to perform one of its two required initiatives, but its violation of Section 73.2080(c)(2) is not as severe because it did perform one initiative.

\$1,000 for its violation of Section 73.2080(c)(6)(iii); \$2,000 for its violation of Section 73.2080(c)(6)(iv), and \$1,000 for its violation of Section 73.3526(e)(7), for a total proposed forfeiture in the amount of \$14,000.<sup>18</sup> We will also impose reporting conditions as set forth below, to ensure that the Licensee and any successor licensee of any of the above-captioned Stations maintains an adequate EEO program in compliance with the Rules. The reporting conditions will apply to the above-captioned Stations, and to all other stations that are part of their employment unit.

#### IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Cumulus Licensing LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of fourteen thousand dollars (\$14,000) for its apparent willful and repeated violation of Sections 73.2080(c)(2), 73.2080(c)(3), 73.2080(c)(5), 73.2080(c)(6)(iii), 73.2080(c)(6)(iv), and 73.3526(e)(7) of the Commission's Rules.

11. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release of this NAL, Cumulus Licensing LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. 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.

13. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> 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.

14. 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

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<sup>18</sup> In assessing the forfeiture amounts for the Licensee's various violations, the Commission did not consider any violations that occurred before March 26, 2004, because the Stations' renewal applications were granted on that date. See File Nos. BRH-20031208BTC, BRH-20031208BUZ, BR-20031208BVV, BR-20031208BUG, BRH-20031208BUI, BR-20031208BVT, BRH-20031208BVE, and BRH-20031208BVN; see also 47 U.S.C.

§ 503(b)(6)(A) (Commission is barred from issuing an NAL to broadcast licensees in this circumstance.) 47 C.F.R. § 73.3526(e)(7) requires EEO information to be kept in a station's public inspection file until final action has been taken on the station's next license renewal application. The renewal grant becomes final 40 days after public notice of the grant of the renewal application, unless a petition for reconsideration or application for review is timely filed or the Commission otherwise sets aside the grant. See 47 C.F.R. §§ 1.106, 1.115, 1.117.



("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.

15. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, SW, Room 1-A625, Washington D.C. 20554.<sup>19</sup>

16. IT IS FURTHER ORDERED that Cumulus Licensing LLC and any successor licensee for any or all of Stations WPEZ(FM), WIFN(FM) (formerly WAYS (FM)), WDDO(AM), WAYS(AM) (formerly WWFN(AM)), WDEN-FM, WMAC(AM), WMGB(FM), and WLZN(FM) (formerly WMKS(FM))<sup>20</sup> shall submit to the Federal Communications Commission, Media Bureau, EEO Staff, an original and one copy of the following information on January 4, 2010; January 3, 2011; and January 3, 2012, with respect to those and all other stations that may be in its employment unit:

- (a) the unit's most recent EEO public file report;
- (b) dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing each full-time vacancy for the preceding reporting year;
- (c) the recruitment source that referred the hiree for each full-time vacancy; and
- (d) the total number of interviewees for each full-time vacancy for the preceding reporting year and the referral source for each interviewee.

17. IT IS FURTHER ORDERED that, pursuant to Section 73.3526(e)(10) of the Commission's Rules, Cumulus Licensing LLC shall place a copy of this *NAL* in the public inspection files of Stations WPEZ(FM), WIFN(FM), WDDO(AM), WAYS(AM), WDEN-FM, WMAC(AM), WMGB(FM), and WLZN(FM).

18. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Cumulus Licensing LLC, c/o Richard S. Denning, Vice President, Secretary and General Counsel, 3535 Piedmont Road, Building 14, Suite 1400, Atlanta, Georgia 30305.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>19</sup> See 47 C.F.R. § 1.1914.

<sup>20</sup> In the event of an assignment of any of the Stations, this continuing obligation will run to the assignee with regard to each Station assigned.

**JOINT STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS  
AND  
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: *Dickey Broadcasting Company, Notice of Apparent Liability for Forfeiture; Urban Radio I, LLC, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture; Puerto Rico Public Broadcasting Corporation, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture; W.S. Communications, L.L.C., Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture; Cumulus Licensing L.L.C., Notice of Apparent Liability for Forfeiture; Fox Television Stations, Inc., Notice of Apparent Liability for Forfeiture*

The Commission's enforcement of Equal Employment Opportunity ("EEO") rules related to self-assessment, recordkeeping, recruitment source information, interviewee information, and public file requirements is one of the principal ways we strive to promote employment diversity and opportunities in the communications industry. While this is unquestionably the right thing to do, Sections 334 and 634 of the Communications Act specifically authorize the Commission to take steps to promote equality of employment opportunities for women and members of racial and ethnic minority groups. Our EEO rules, for example, require wide dissemination of job vacancies in order to attract all qualified employees. According to reports, from 1971 to 1997, employment of people of color in broadcasting increased from 5 to 19 percent, and from 12 to 43 percent for women during the same period.

In recent years, however, Commission enforcement of EEO rules has been inconsistent and, as one consequence, employment in broadcasting does not reflect America. As the Minority Media and Telecommunications Council has found, while the average forfeiture amount for EEO violations has increased, the Commission's EEO docket has decreased by 96 percent. Between 1994 and 1997, the Commission decided 251 cases, resulting in 86 forfeitures. Between 2004 and 2007, however, the Commission decided only 10 cases, resulting in 8 forfeitures.

Lax EEO enforcement has yielded less diversity in employment. The most recent report on employment trends in broadcasting by the Radio and Television News Directors Association/Hofstra University found that, while the minority population in the United States has risen 8.1 percent in the past 18 years, minority workforce in TV news is up 5.8 percent, and the minority workforce in radio is up by just 1 percent.

So it is clear that the Commission's recent efforts to promote employment diversity have been woefully inadequate. If we are truly committed to employment diversity, as required by law, we must get serious about restoring an effective and rational EEO enforcement program. This level of commitment is currently lacking at the FCC.

There are other, more pro-active, steps we should consider. At a minimum, we should make our process more transparent by compiling and releasing FCC Form 395 data, as well as developing annual and longitudinal employment reports. As we work with industry and advocacy groups in a cooperative manner, these initial steps should help us better understand employment trends in the communications industry and permit us to better craft more effective oversight.

Having a communications industry that reflects our nation's diversity would best serve a wide range of consumer and societal interests. It is not only a legal obligation, it is also the right thing to do.