

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

In the Matter of)	
)	
Dickey Broadcasting Company)	NAL/Acct. No. MB-200841410013
)	FRN: 0004205357
Licensee of Stations)	
WALR(AM), Atlanta, Georgia)	Facility I.D. No. 1098
)	
WCNN(AM), North Atlanta, Georgia)	Facility I.D. No. 56389
)	
WFOM(AM), Marietta, Georgia)	Facility I.D. No. 72066

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 8, 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”),¹ we find that Dickey Broadcasting Company (the “Licensee”), licensee of Stations WALR(AM), Atlanta, Georgia, WCNN(AM), North Atlanta, Georgia, and WFOM(AM), Marietta, Georgia (the “Stations”), apparently willfully and repeatedly violated Sections 73.2080(c)(3), 73.2080(c)(5), 73.2080(c)(6)(iv) and 73.3526(e)(7) of the Commission’s Rules (the “Rules”)² by failing to comply with the Commission’s Equal Employment Opportunity (“EEO”) self-assessment, record keeping, interviewee information 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 monetary forfeiture in the amount of seven thousand dollars (\$7,000). We also impose reporting conditions on the Licensee and any successor licensee of any of the Stations 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)(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; 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 the materials noted above.

¹ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

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

3. The Media Bureau audited the Licensee for its compliance with Section 73.2080 of the Rules³ at the Stations and we have before us the Licensee's response to the audit.⁴ The Licensee explains that it did not keep adequate records of its EEO recruitment efforts but that its future EEO public file reports will show that it has corrected this deficiency. Our review shows that, during the reporting periods at issue (December 1, 2004, through November 30, 2005, and December 1, 2005, through November 30, 2006), the Licensee filled 12 and nine vacancies, respectively, at its Stations. The Licensee did not retain adequate EEO records of its interviewees and referrals, however, as required by Section 73.2080(c)(5). In addition, the Stations' 2005 and 2006 EEO public file reports failed to list the total number of interviewees for all full-time vacancies and the number of interviewees referred by each of the Stations' recruitment sources, as required by Section 73.2080(c)(6)(iv). This information is required to be placed in the public inspection file of each station in the unit by Section 73.3526(e)(7). These failures, which continued over a period of two years, reveal a continuing lack of self-assessment, in violation of Section 73.2080(c)(3).

III. DISCUSSION

4. We conclude that the Licensee failed to maintain adequate recruitment records for its 21 vacancies filled during its 2005 and 2006 reporting periods, as required by Section 73.2080(c)(5). Further, the Stations' 2005 and 2006 EEO public file reports failed to list the total number of interviewees for all Station full-time vacancies and the total number of interviewees referred by each of the Stations' recruitment sources, as required by Section 73.2080(c)(6)(iv). Because of the Licensee's lack of records of interviewees and referrals, 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 required information in its public inspection file, in violation of Section 73.3526(e)(7).

5. 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 United States for a forfeiture penalty.⁵ 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.⁶ 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,⁷ and the Commission has so interpreted the term in the Section 503(b) context.⁸ 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."⁹

6. 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 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

³ Letter from Lewis Pulley, Assistant Chief, Policy Division, Media Bureau, to Dickey Broadcasting Company (Jun. 12, 2007).

⁴ Letter from Dickey Broadcasting Company to EEO Staff, Policy Division, Media Bureau (Aug. 13, 2007).

⁵ 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(1).

⁶ 47 U.S.C. § 312(f)(1).

⁷ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

⁸ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

⁹ 47 U.S.C. § 312(f)(2).

to maintain required records.¹⁰ 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.”¹¹

7. As discussed *supra*, the Licensee failed to maintain adequate EEO records for all of its vacancies for the 2005 and 2006 reporting periods; list interviewee data on its 2005 and 2006 EEO public file reports; 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,¹² we find that the Licensee is apparently liable for the following respective forfeiture amounts for its willful and repeated violations of these Rules: \$2,000 for its violation of Section 73.2080(c)(3); \$2,000 for its violation of Section 73.2080(c)(5); \$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 \$7,000. We will also impose reporting conditions as set forth below, to ensure that the Licensee and any successor licensee of any of the Stations maintains an adequate EEO program in compliance with the Rules.

IV. ORDERING CLAUSES

8. 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 Dickey Broadcasting Company is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of seven thousand dollars (\$7,000) for its apparent willful and repeated violation Sections 73.2080(c)(3), 73.2080(c)(5), 73.2080(c)(6)(iv), and 73.3526(e)(7) of the Commission’s Rules.

9. 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*, Dickey Broadcasting Company SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. 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

¹⁰ 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.

¹¹ 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.

¹² 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 to *NAL* pending).

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.

11. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554, ATTN: Lewis Pulley, Assistant Chief, Policy Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the respondent’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. 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, S.W., Room 1-A625, Washington D.C. 20554.¹³

14. IT IS FURTHER ORDERED that Dickey Broadcasting Company and any successor licensee for any or all of Stations WALR(AM), WCNN(AM), and WFOM(AM)¹⁴ 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:

- (a) the Stations’ 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.

15. IT IS FURTHER ORDERED that, pursuant to Section 73.3526(e)(10) of the Commission’s Rules, Dickey Broadcasting Company place a copy of this *NAL* in the public inspection files of Stations WALR(AM), WCNN(AM), and WFOM(AM).

16. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Dickey Broadcasting Company, 3535 Piedmont Road, Building 14, Suite 1200, Atlanta, Georgia 30305 and to its counsel, David O’Connor, Esquire, Holland & Knight, 2099 Pennsylvania Ave., N.W., Suite 100, Washington D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹³ See 47 C.F.R. § 1.1914.

¹⁴ 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.