

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

In re Application of

Hilton Head
Television, Inc.

File No. BRCT-911031KH

For Renewal of License of
Station WTGS(TV)
Hardeeville, South Carolina

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

Adopted: February 3, 1995; Released: February 17, 1995

By the Commission:

I. INTRODUCTION

1. The Commission has before it for consideration: (i) a license renewal application for the captioned television station; (ii) a Petition to Deny timely filed on November 1, 1991, by the North and South Carolina State Conferences of Branches of the NAACP (hereinafter "NAACP") against the captioned renewal application; (iii) the licensee's inquiry response; and (iv) a Joint Request for Approval of Settlement Agreement filed by the NAACP and the licensee of Station WTGS(TV).

II. BACKGROUND

2. The NAACP alleged that WTGS(TV) violated our Equal Employment Opportunity (EEO) rule and policies. Accordingly, it requested that we conduct an investigation of the station's employment practices pursuant to *Bilingual Bicultural Coalition on Mass Media, Inc. v. FCC*, 595 F.2d 621 (D.C. Cir. 1978) (*Bilingual*) and designate the renewal application for hearing.

III. PLEADINGS

3. *Settlement Agreement*. On February 7, 1992, the NAACP and the licensee of Station WTGS(TV) filed a Joint Request for Approval of Settlement Agreement which requests approval of the agreement, dismissal of the petition to deny, and grant of the station's license. We have reviewed the settlement agreement pursuant to 47 C.F.R. §73.3588 and *Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants and Other Participants to the Comparative Renewal Process and*

to the Prevention of Abuses of the Renewal Process, 4 FCC Rcd 4780 (1989). We find that the settlement agreement complies with the Commission's rules and policies and, therefore, the petition is dismissed.

4. However, as is our practice in all cases, we reviewed the station's EEO program and performance pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(d)(1). We find that the licensee did not undertake adequate recruitment efforts to attract minorities, particularly Blacks, the largest minority component of the relevant available labor force; failed to maintain adequate records; and failed to engage in self-assessment. We will, therefore, grant renewal subject to appropriate remedies and sanctions as discussed below.

IV. DISCUSSION

5. 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 affirmative action program reflecting positive and continuing efforts to recruit, employ and promote qualified women and minorities. When evaluating EEO performance, the Commission focuses on the licensee's efforts to recruit, employ and promote qualified minorities and women and the licensee's ongoing assessment of its EEO efforts. The Commission also focuses on any evidence of discrimination by the licensee. See Sections 73.2080(b) and (c) of the Commission's Rules, 47 C.F.R. §§73.2080(b) and (c).

6. When the renewal application indicates an absence of evidence of discrimination and a record of adequate EEO efforts, the application is granted, if otherwise appropriate. When it fails to evidence a record of adequate EEO efforts, the Commission may impose a variety of remedies and sanctions, such as reporting conditions, renewal for less than a full term, forfeiture, or a combination thereof. Further, the Commission will designate the renewal application for hearing where the facts so warrant. *Amendment of Part 73 of the Commission's Rules Concerning Equal Employment Opportunity in the Broadcast Radio and Television Services*, 2 FCC Rcd 3967 (1987) (*Broadcast EEO*); see also 4 FCC Rcd 1715 (1989) (request for clarification by the National Association of Broadcasters). See e.g., *Beaumont Branch of the NAACP and the National Black Media Coalition v. FCC*, 854 F.2d 501 (D.C. Cir. 1988); *Bilingual, supra*.

7. The licensee's renewal application and inquiry response reveal that the station filled 42 vacancies, including 35 upper-level positions, from January 1988 to November 1991.¹ In its renewal application, the licensee indicates that it contacted the following general sources and received the cited number of minority referrals: the *Savannah News* (6), the *Beaufort News* (2), the South Carolina Employment Service (2), the Savannah Georgia Employment Service (1), the Beaufort/Jasper County Career Education Center (0), Armstrong State College (0) and referrals from current employees (0). The licensee also indicates that it contacted but received no minority referrals from a minority source, Savannah State College,² and had one minority walk-in

¹ Four additional positions were filled by promotion of existing employees. All four positions were upper-level jobs: Business Manager, Promotions Manager, Engineering Technician and Switcher Technician. Two white males and two white females

were promoted into the four jobs.

² Savannah State College is a predominantly Black educational institution.

referral. In its inquiry response, the licensee provided recruitment information for 17 of its 42 hires, although it appears that these data include only the referral sources of the hires and not all sources contacted. Of these 17 hires, eight were listed as rehires, referred by employees, or were chosen from applications already on file. The referral sources of the remaining nine hires included the newspaper, a technical college, a "manager firm" and the South Carolina Job Service.

8. The licensee did not provide information concerning gender or race of applicants for 26 of 42 positions (62%).³ The licensee represented, however, that it hired minorities (one Hispanic and four Blacks) for five of these 26 positions. There is no evidence that minorities were in the applicant pools for any of the other 21 vacancies for which the licensee provided no applicant data. There were no minority applicants for five of the remaining 16 positions for which the licensee had records.

9. Based on the licensee's submission, minorities were apparently not in the applicant pool for 26⁴ of the 42 positions (62%), and Blacks apparently were not in the applicant pool for 27 of 42 positions (64%). No information is provided concerning any licensee self-assessment. Nine (seven Blacks, one Hispanic, and one Asian) were hired as part of the 42 overall positions, including six (four Blacks, one Hispanic and one Asian) as part of the 35 upper-level positions.⁵

10. There are no substantial or material questions of fact to warrant designation for hearing. *Astroline Com. Co. Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988). Moreover, there is no evidence that the licensee engaged in employment discrimination. According to the recruitment and hiring information provided by the licensee, it contacted recruitment sources, albeit sporadically, and hired minorities for overall and upper-level positions. Therefore, renewal of the license is in the public interest.

11. However, we find WTGS-TV's overall recruiting efforts deficient. Based on the record before us, the licensee did not contact minority specific sources for any of its vacancies, as required by Section 73.2080(c)(2) of our rules, 47 C.F.R. § 73.2080,⁶ and apparently failed to recruit Blacks for 27 (64%) of its 42 vacancies. The licensee also failed to maintain adequate records for meaningful self-assessment.⁷ 47 C.F.R. § 73.2080.

12. We believe that the record in the instant case is similar to, but more egregious than, that of the licensee of WGBR-AM/WEQR-FM, Goldsboro, North Carolina, in *Application of Eastern Carolina Broadcasting Company, Inc. for Renewal of Station WGBR-AM and WEQR-FM*, 4 FCC Rcd 1621 (1989) (*Goldsboro*).⁸ The licensee therein did not contact any minority recruiting sources for its 62 hires. The licensee hired four Blacks, late in the license term. WGBR-AM/WEQR-FM could not document recruitment, applicant or interview pool information for each position. Of particular concern was the fact that the number of Black employees -- the largest minority group in the relevant labor force -- declined during the license term. In that case, we concluded that the licensee failed to engage in adequate recruitment and conduct meaningful self-assessment of its EEO program, given the lack of minority referrals and hires. The stations' licenses were renewed for a short-term, subject to reporting conditions, and a \$7,000 Notice of Apparent Liability for forfeiture was issued.

13. *Goldsboro*, issued in 1989, was decided based on a former forfeiture authority, which was significantly lower.⁹ Previously, the forfeiture penalty assessed against a broadcaster could "not exceed \$2,000 for each violation or each day of a continuing violation, except that the amount assessed for any violation could not exceed a total of \$20,000." In 1989, Congress substantially increased the dollar amounts of our forfeiture authority. Pub. L. No. 100-239, 103 Stat. 2131. Pursuant to Section 503(b)(2), the forfeiture penalty assessed against a broadcaster may "not exceed \$25,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$250,000 for any single act or failure to act."

14. The record in this case indicates that the licensee recruited for only nine (21%) jobs; that minorities were present in only 16 (38%) applicant pools; that Blacks were present in only 15 (36%) applicant pools; and that no minority sources were contacted for specific vacancies. Given the substantial presence of Blacks (48.0%) in the Jasper County, South Carolina available labor force, the licensee's failure to recruit so as to attract Black applicants is particu-

³ The licensee states that "under prior management, adequate EEO records were not kept in a satisfactory manner." The licensee did not provide data regarding interviewees, as requested in our inquiry letter.

⁴ We calculated this figure by adding 21, the number of vacancies where the licensee provided no applicant data and a minority was not hired, and five, the number of vacancies where the licensee provided applicant data, which indicated no minorities were in the applicant pool.

⁵ The Jasper County, South Carolina labor force is 49.2% minority (48.0% Black and 1.2% other). The station's 1987 Annual Employment Report lists five minorities (four Blacks and one Hispanic) on an overall staff of 22 (22.7%) and on an upper-level staff of 19 (26.3%). In 1988 the station employed five Blacks on an overall staff of 26 (19.2%) and four Blacks on an upper-level staff of 21 (19.0%). In 1989, the station employed four Blacks on an overall staff of 27 (14.8%) and two Blacks on an upper-level staff of 21 (9.5%). In 1990, the station employed four Blacks on an overall staff of 25 (16.0%) and two Blacks on

an upper-level staff of 20 (10.0%). In 1991, the station employed three Blacks on an overall staff of 21 (14.3%) and one Black on an upper-level staff of 17 (5.9%).

⁶ The record does not indicate when or in what form contact was made by WTGS(TV) with the sole minority source listed in its renewal application, Savannah State College. Therefore, there is no evidence that WTGS(TV) ever contacted this source for a specific vacancy.

⁷ The licensee is reminded that under our EEO Rule, 47 C.F.R. § 73.2080, it is required to self-assess its EEO program regarding both minorities and women. Inasmuch as WTGS(TV) neglected to keep records of applicant flow and of recruitment contacts, evaluation of its efforts regarding women, as well as minorities, was affected.

⁸ Wayne County, North Carolina had a 29.0% Black labor force.

⁹ Section 503(b)(2) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b)(2), authorizes the Commission to impose monetary forfeitures on broadcast station licensees or permittees for violations of the Act or of regulations promulgated thereunder.

larly egregious.¹⁰ Further, it failed to maintain adequate records for meaningful self-assessment. The licensee provided applicant pool data for just 16 of 42 vacancies and apparently did not keep records regarding interview pools.

15. The similarities between the above-cited stations' EEO records are clear. Both licensees failed to maintain complete EEO records, which we believe better enable a licensee to self-assess the effectiveness of its recruitment efforts. In addition, both licensees failed to contact minority sources for any of their vacancies. In both cases, the number of minorities on the stations' staffs decreased significantly during the license term, evidencing a failure of the licensees to adequately self-assess their EEO programs regarding minorities. However, the EEO record of WTGS(TV) is more egregious because it had a significantly higher percentage of Blacks in its labor force (48.0%) than did WGBR-AM/WEQR-FM (29.0%). WTGS(TV)'s location in an area where the Black labor force alone constituted almost half the total available labor force should have compelled it to increase its outreach efforts to include use of minority-specific sources when vacancies occurred. Indeed, a more deliberate use of general recruitment sources may have yielded better results.¹¹ Given the facts of this case, we feel that the circumstances in this case warrant granting the renewal for a short-term subject to reporting conditions and a Notice of Apparent Liability for \$27,500.

V. CONCLUSION

16. After reviewing the record before us, we find that no hearing is warranted and that renewal of the license of WTGS-TV is appropriate. However, we will grant the renewal for a short term subject to reporting conditions and issue a Notice of Apparent Liability for \$27,500.

VI. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that the Joint Request for Approval of Settlement Agreement filed by the NAACP and the licensee of WTGS(TV) IS GRANTED, the settlement agreement IS APPROVED and the petition filed by the NAACP IS DISMISSED.

18. IT IS FURTHER ORDERED that the license renewal application filed by Hilton Head Television, Inc. for Station WTGS(TV) IS GRANTED FOR A SHORT TERM ending December 1, 1995, subject to reporting conditions as specified herein, and pursuant to Section 503 of the Communications Act of 1934, as amended, 47 U.S.C. Section 503, a NOTICE OF APPARENT LIABILITY FOR FORFEITURE in the amount of \$27,500.

19. IT IS FURTHER ORDERED that the licensee of WTGS(TV) submit to the Commission an original and one copy of the following information on August 1, 1995:

(a) For the report, please make two lists divided by full-time and part-time vacancies during the 12 months preceding the reporting date, indicating the job title and FCC job category of the position, the race or national origin, sex and the referral source of each applicant for each and the race or national origin and sex of the person hired. The lists should also note which recruitment sources were contacted;¹²

(b) A list of employees as of the July 1, 1995, payroll period by job title and FCC job category indicating full-time or part-time status (ranked from highest paid classification), date of hire, sex and race or national origin;

(c) Details concerning the station's efforts to recruit minorities for each position filled during the 12-month period specified, including identification of sources used and indicating whether any of the applicants declined actual offers of employment. In addition, the licensee may submit any relevant information with regard to the station's EEO performance and efforts thereunder.

20. IT IS FURTHER ORDERED that the Mass Media Bureau send by Certified Mail -- Return Receipt Requested -- one copy of this *Memorandum Opinion and Order and Notice of Apparent Liability* to all parties.

21. The report is to be filed with the Secretary of the Commission to the attention of the Mass Media Bureau's EEO Branch. Should the parties have any questions regarding this action, they may telephone the Mass Media Bureau's EEO Branch (202-632-7069). Regarding the forfeiture proceedings, the licensee may take any of the actions set forth in Section 1.80 of the Commission's Rules, as summarized in the attachment to this *Memorandum Opinion and Order and Notice of Apparent Liability*. Any comments relating to the ability to pay should include those financial letters set forth in the attachment.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

¹⁰ See 47 C.F.R. § 73.2080(c), *Broadcast EEO* at 3969.

¹¹ See *South Carolina Renewals*, 5 FCC Rcd 1704, 1709 n.8 (1990).

¹² Such a list might start:

(1) News Director; Officials and Managers:

Full-time		
3 Applicants:	1 White female	A.W.R.T.
	1 Black male	Urban League
	1 Black female	NAACP

Sources Contacted: Local Newspaper, A.W.R.T., Urban League, and NAACP Selected: Black male (03/15/95)