

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In re Applications of	)	
	)	
Pinnacle Communications, Inc.	)	File Nos. BR-900802UU
	)	BRH-900802VP
For renewal of licenses for	)	
Stations KTMS/KHTY-FM	)	
Santa Barbara, California	)	

**MEMORANDUM OPINION AND ORDER**

Adopted: November 15, 1996;

Released: November 22, 1996

By the Commission:

**I. INTRODUCTION**

1. The Commission has before it for consideration; (1) its Memorandum Opinion and Order and Notices of Apparent Liability in San Luis Obispo Limited Partnership, 9 FCC Rcd 894 (1994) ("NAL"), in which the Commission, *inter alia*, issued a Notice of Apparent Liability for forfeiture in the amount of \$31,250 to Pinnacle Communications, Inc. ("Pinnacle"); (2) a petition for reconsideration of the NAL, filed on March 3, 1994, by the California State Conference of Branches of the NAACP, including its respective branches ("NAACP"); and (3) a detailed statement from Pinnacle setting forth why the forfeiture amount specified in the NAL should be reduced or rescinded. For the reasons that follow, we deny the NAACP's petition for reconsideration but grant Pinnacle's request and rescind the Notice of Apparent Liability.<sup>1</sup>

**II. NAACP'S PETITION FOR RECONSIDERATION**

2. Reconsideration is appropriate where the petitioner shows either a material error or omission or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters. See WWIZ, Inc., 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert denied*, 383 U.S. 967 (1966); 47 C.F.R. Section 1.106(c). As discussed below, the NAACP's petition does not establish that reconsideration is warranted.

3. In its petition, the NAACP does not show either a material error or omission or raise additional facts not previously known. Rather, the NAACP argues that the explanation

---

<sup>1</sup> Since the release of the NAL, the licenses of KTMS and KHTY-FM have been transferred from Pinnacle to Atmor Properties, Inc. The assignments were consummated on May 16, 1994. See File Nos. BAL-930727EB and BALH-930727EC. Thereafter, the licenses were further assigned from Atmor Properties, Inc., to Engles Enterprises, Inc. The assignments were consummated on June 1, 1996. See File Nos. BAL-960111EI and BAL-960111EJ.

provided by the licensee for not hiring, attracting and retaining minorities is evidence of a possible discriminatory intent requiring designation for hearing. We disagree. The licensee's explanation seeks to rebut the inference of discrimination which the NAACP sought to draw from statistics. See Florida State Conference of the NAACP v. FCC, 24 F.3d 271, 274 (D.C. Cir. 1994). While we found the licensee's explanation to be without merit, we concluded that the entire record raised no substantial question of employment discrimination. See NAL, 9 FCC Rcd 903-04 and n. 23.

4. The NAACP also contends that the licensee may have made a misrepresentation because, after admitting that during the year preceding the renewal applications it had erroneously included two minorities in its total hires, it failed to correct the number of total hires reported. We continue to believe that no misrepresentation occurred. In its response, Pinnacle explained why the number of hires it reported was incorrect. We noted this explanation and concluded that no substantial and material questions of fact existed. The NAACP has provided no basis for changing that conclusion.

### III. PINNACLE'S RESPONSE TO NAL

5. In the NAL we concluded that the licensee's apparent failures to comply with the Commission's EEO Rule warranted a short-term renewal subject to reporting conditions for three years<sup>2</sup> and a forfeiture in the amount of \$31,250. See 47 C.F.R. Section 73.2080. In support of its contention that the forfeiture should be reduced, the licensee submits that, as of December 31, 1993, Pinnacle's current liabilities exceeded its current assets. The licensee also notes that its current liabilities include delinquent federal taxes, penalties and interest. According to the licensee, pursuant to the Transfer and Assignment Agreement ("Agreement") it had entered into, the assumption of liabilities pursuant to the transfer of the KTMS/KHTY licenses will be \$77,000 less than current liabilities which are in excess of current assets (as noted at fn. 1, this assignment has been consummated). Finally, the licensee requests that in considering a reduction in its forfeiture, the Commission take note of the fact that as of February 28, 1994, Pinnacle's minority employment exceeded the FCC's "Rule and policy requirements."

6. According to Section 503(b)(2)(D) of the Communications Act of 1934, as amended, the licensee's ability to pay may be properly considered in mitigation of a forfeiture. Section 1.80(f)(3) of the Commission's Rules provides that "[a]ny showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." As the attachment to the NAL indicates, if the licensee is claiming financial inability to pay, it is directed to furnish data to support the claim, which must contain (but is not limited to) a profit and loss statement containing data no older than one year from the date of the response and prepared under generally accepted accounting principles.

---

<sup>2</sup> The licensee does not object to the Commission's imposition of reporting conditions. Those reporting conditions have been met and the KTMS/KHTY-FM licenses now have been renewed for a full term.

7. As noted, the licensee submitted a statement of facts and reasons why the forfeiture amount should be reduced or rescinded. In support of this statement, the licensee also submitted detailed financial documentation including a balance sheet and profit and loss statement as of the end of December 1993. At that time, however, applications for assignment of the licenses for KTMS and KHTY-FM were pending. The only information provided in the licensee's showing concerning the impact of the pending assignments on its ability to pay the forfeiture was the assertion that, as of December 31, 1993, the liabilities of Pinnacle to be assumed by the proposed assignee would be \$77,777 less than Pinnacle's current liabilities as of that date. Ordinarily, we would expect a licensee in this circumstance to update its showing to address the full impact of the sale of its stations on its ability to pay the forfeiture. However, we take cognizance of the entirety of the Agreement cited by Pinnacle, which was submitted with its assignment applications, referenced in note 1, *supra*. The Agreement reflects that Pinnacle was in default on a loan obligation of approximately \$4,000,000 to AT&T Commercial Finance Corporation, which loan had been personally guaranteed by Pinnacle principal Christian C. Larson, and that the Agreement was entered into to avoid foreclosure. The consideration to be received by Pinnacle consisted entirely of a partial assumption of its outstanding liabilities by the buyer. Thus, the Agreement provides for no cash payments to either Pinnacle or Larson. The Agreement also excludes from the assumed liabilities any debt owed by Pinnacle to Larson. In light of these factors, we find Pinnacle's showing sufficient to establish that it lacks the financial ability to pay the forfeiture assessed in the notice of apparent liability. Accordingly, we will rescind the notice of apparent liability. Other matters concerning the notice of apparent liability previously issued to Pinnacle are therefore moot.

#### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, that the petition for reconsideration filed by the NAACP **IS DENIED**.

9. **IT IS FURTHER ORDERED**, that Pinnacle's request that the forfeiture assessed against it be reduced or rescinded **IS GRANTED** and the Notice of Apparent Liability issued to Pinnacle in San Luis Obispo Limited Partnership, 9 FCC Rcd 894 (1994), **IS RESCINDED**.

10. **IT IS FURTHER ORDERED**, that the Mass Media Bureau send by Certified Mail – Return Receipt Requested – copies of this Memorandum Opinion and Order to the NAACP and to Pinnacle.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary