

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

In re Application of	)	
	)	
CV Radio Associates, L.P. <sup>1</sup>	)	File No. BR-960603C4
	)	
For Renewal of License for	)	
Station WKNR(AM)	)	
Cleveland, Ohio	)	

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

Adopted: September 2, 1997

Released: September 10, 1997

By the Commission:

**I. INTRODUCTION**

1. The Commission has before it for consideration: (i) the license renewal application filed by CV Radio Associates, L.P. ("licensee") for Station WKNR(AM), Cleveland, Ohio;<sup>2</sup> (ii) a Petition to Deny-timely filed on September 3, 1996, by the National Rainbow Coalition, now known as the Rainbow-PUSH Coalition ("Rainbow"); (iii) the licensee's opposition to the petition; (iv) Rainbow's reply to the licensee's opposition; (v) the licensee's response to a staff letter of inquiry; and (vi) Rainbow's reply to the licensee's inquiry response.

2. Rainbow alleges that WKNR(AM) has violated our Equal Employment Opportunity ("EEO") Rule and policies. It therefore requests that we investigate the station's employment practices pursuant to Bilingual Bicultural Coalition on Mass Media v. FCC, 595 F.2d 621 (D.C. Cir. 1978) ("Bilingual") and designate the renewal application for hearing. The licensee denies Rainbow's allegations and requests that its renewal application be granted unconditionally.

**II. BACKGROUND**

3. In challenging an application pursuant to Section 309(d) of the Communications Act of 1934, 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. Ltd. Partnership v. FCC, 857 F.2d 1556 (D.C. Cir. 1988) ("Astroline"). The allegations, except for those of which official notice may be taken, must be supported by the affidavit of a person with personal knowledge of the facts alleged. 47 U.S.C. § 309(d)(1).

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<sup>1</sup> On April 16, 1997, the Commission approved the pro forma transfer of control of the license for WKNR(AM) from CV Radio Associates, L.P. to Rainbow Media Holdings, Inc. (File No. BTC-970328EB). This transfer was consummated on April 23, 1997. For convenience and in view of the pro forma nature of the transfer, we will refer to the licensee herein as CV Radio Associates, L.P..

<sup>2</sup> The license term under review expired October 1, 1996.

4. Rainbow's allegations are derived from the licensee's EEO program and annual employment reports. The licensee contends that Rainbow has failed to make a prima facie case that grant of its renewal application would be inconsistent with the public interest. We found, however, as a threshold matter, that Rainbow made a prima facie case that unconditional renewal would have been inconsistent with the public interest and requested additional information from the licensee. We now find, after reviewing the entire record, that renewal of the license for WKNR(AM) is warranted, with appropriate remedies and sanctions.

### III. 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 EEO program reflecting positive and continuing efforts to recruit and promote qualified women and minorities. When evaluating EEO performance, the Commission focuses on the licensee's efforts to recruit and promote qualified women and minorities and the licensee's ongoing assessment of its EEO efforts. Such an assessment enables the licensee to take corrective action if qualified women and minorities are not present in the applicant and interview pools. The Commission also focuses on any evidence of discrimination by the licensee. See Section 73.2080(a), (b), and (c) of the Commission's Rules, 47 C.F.R. § 73.2080(a), (b), and (c).

6. A review of the licensee's 1996 EEO Program Report, opposition, and inquiry response reveals that WKNR(AM) filled 31 full-time vacancies (23 upper-level) during the period from October 1, 1993, to October 1, 1996. The record indicates that the licensee recruited for 29 of the 31 vacancies.<sup>3</sup> The licensee used one to four recruitment sources for most of the 29 vacancies for which it actively recruited. The recruitment sources utilized collectively include seven local newspapers (two of which are identified as anticipated sources of minority applicants), six trade publications, three educational institutions (two of which are identified as anticipated sources of minority applicants), a "job tips" sheet, on-air ads, employee referrals, and client referrals. Recruitment sources identified by the licensee as anticipated sources of minority applicants were used for only five vacancies (one upper-level). These sources did not produce any minority applicants. Further, the licensee's inquiry response indicates that (43.5%) of the licensee's 23 upper-level hires were either employee or client referrals and that the only applicants/interviewees for four of those ten upper-level vacancies were employee referrals. Employee referrals resulted in only two minority applicants (one upper-level).

7. The station had 30 applicant/interview pools (23 upper-level) because one pool was used to fill two lower-level vacancies.<sup>4</sup> The licensee's recruitment efforts generated 75 females (46.6%) and 22 minorities (13.7%) out of 161 applicants/interviewees overall and 21 females (20.6%) and seven minorities (6.9%) out of 102 upper-level applicants/interviewees. Females were included in 20 (66.7%) of 30 applicant/interview pools overall and 14 (60.9%) of 23 upper-level applicant/interview pools. Minorities were included in eleven (36.7%) of 30 applicant/interview pools overall and six (26.1%) of 23 upper-level applicant/interview pools. The licensee reports that it hired 13 women (six for upper-level

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<sup>3</sup> The licensee indicates that no recruitment was conducted for two upper-level positions because the positions were filled by rehiring former employees of WKNR(AM). However, our EEO Rule requires that licensees recruit minorities and females whenever vacancies occur. See 47 C.F.R. § 73.2080(c). The fact that the individuals hired were former employees of WKNR(AM) did not relieve the licensee of its obligation under the EEO Rule to recruit for these positions. See Enterprise Media of Toledo, L.P., 12 FCC Rcd 3920, 3924 (1997).

<sup>4</sup> The 30 applicant/interview pools include the two positions for which the licensee did not recruit.

positions) and four minorities (three for upper-level positions) and that it extended an upper-level job offer to one minority who declined the offer.<sup>5</sup>

8. In its petition to deny, Rainbow asserts that the licensee's EEO program "failed to acknowledge the obvious, extreme and consistent underrepresentation of minority employees" at WKNR(AM). It also asserts that the licensee's EEO program failed to propose any remedial steps. Instead, Rainbow says, the program provided a "feeble excuse" -- that "[t]he limited public transportation available to our suburban community is a hardship for many candidates." Rainbow contends that this is absurd because the station is located in Broadview Heights, only ten miles from Cleveland.

9. The licensee argues in response that Rainbow is wrong to characterize WKNR(AM)'s EEO program as exhibiting "extreme and consistent underrepresentation of minority employees." In support of this argument, the licensee notes that the station's minority and female employment statistics are in most instances greater than 50% of parity with the local minority and female workforce. Additionally, the licensee contends that it has maintained a meaningful EEO program. The licensee states that when WKNR(AM) places employment advertisements with media, some of the advertisements are placed in newspapers with significant minority readership. It also states that WKNR(AM) broadcasts some employment opportunity announcements and recruits at schools with significant minority representation. Moreover, the licensee maintains that it has self-assessed its EEO efforts on an ongoing basis. In monitoring the station's EEO efforts, the licensee observes, WKNR(AM)'s general manager noticed that the station has experienced considerable difficulty in attracting applicants -- whatever their race and gender -- from Cleveland, which is home to the highest concentration of minorities in WKNR(AM)'s service area; the general manager concluded that this difficulty may be related to the lack of extensive public transportation between Cleveland and Broadview Heights, where the station is located. It was for this reason, the licensee explains, that WKNR(AM) indicated in its EEO Program Report that "[t]he limited public transportation available to our suburban community is a hardship for many candidates."

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<sup>5</sup> According to the 1980 Census, the Cleveland, Ohio Metropolitan Statistical Area ("MSA"), in which WKNR(AM) was located until 1992, had a labor force that was 42.3% female and 17.8% minority (15.8% Black, 1.2% Hispanic, 0.7% Asian/Pacific Islander, and 0.1% American Indian). The licensee took control of WKNR(AM) on June 29, 1990. The station's 1991 Annual Employment Report lists seven women (35.0%) and one Black (5.0%) on an overall staff of 20, including four women (23.5%) on an upper-level staff of 17. The station's 1992 report shows 11 women (30.6%) and four Blacks (11.1%) on an overall staff of 36, including eight women (25.0%) and three Blacks (9.4%) among 32 upper-level employees.

The Commission uses 1990 labor force statistics for license renewal applications filed after May 31, 1993, and for 1993 and subsequent Annual Employment Reports. See Public Notice # 32651 (April 12, 1993). In 1992, the Cleveland MSA was combined with the Lorain-Elyria, Ohio MSA by the Office of Management and Budget pursuant to its Revised Standards for Defining Metropolitan Areas in the 1990's, 55 Fed. Reg. 12154 (March 30, 1990). According to 1990 Census data, the Cleveland-Lorain-Elyria MSA has a labor force that is 46.1% female and 17.3% minority (14.2% Black, 1.8% Hispanic, 1.1% Asian/Pacific Islander, and 0.2% American Indian). The station's 1993 Annual Employment Report lists seven females (18.9%), two Blacks (5.4%), and one Hispanic (2.7%) on an overall staff of 37, including three women (9.4%), one Black (3.1%), and one Hispanic (3.1%) on an upper-level staff of 32. In the 1994 report, eight women (24.2%), two Blacks (6.1%), and one Hispanic (3.0%) are listed on an overall staff of 33, including four women (14.3%), one Black (3.6%), and one Hispanic (3.6%) among 28 upper-level employees. In the 1995 report, nine women (30.0%) and two Blacks (6.7%) are listed on an overall staff of 30, including four women (16.7%) and one Black (4.2%) among 24 upper-level employees. The 1996 report shows nine women (30.0%), one Black (3.3%), and one Hispanic (3.3%) among 30 employees, including three women (13.0%), one Black (4.3%), and one Hispanic (4.3%) among 23 upper-level employees.

In the licensee's opinion, Rainbow's argument that this is a "feeble excuse" and "absurd" is unfair and unwarranted.

10. In its reply to the licensee's opposition, Rainbow notes that the licensee relied on the defense that it is difficult to recruit applicants from Cleveland because of the ten-mile distance. Rainbow avers that it is impossible to test that claim without knowing how many of the station's employees live in Cleveland.

11. In addition, Rainbow argues that the licensee's inquiry response shows that the licensee "conducted no self-assessment, entirely disregarded its EEO responsibilities during the Bilingual reporting period, and practiced intentional discrimination through the recruitment process." Rainbow points out that the highest paid minority on WKNR(AM)'s staff ranks 14th in pay among the station's 32 full-time employees. In Rainbow's view, "[s]uch a pay distribution pattern had to be the result of a systemic, long term failure" of the station's EEO program. Moreover, Rainbow notes that the licensee used a minority-specific recruitment source for only one of its upper-level vacancies and that this source did not yield any minority applicants. It further states that no minorities were included in the interview pools for 17 of 21 upper-level positions and that only two minorities were hired during the three-year reporting period.<sup>6</sup> According to Rainbow, "[t]his is a textbook case of word-of-mouth recruitment through the 'old boy network.' Trade papers and tip sheets, friends of members of a nearly all-White staff, advertising clients and listeners to the station's mostly-White audience have been engaged as the job recruitment sources of choice -- to the exclusion of any potential sources of minority applicants." Citing Walton Broadcasting, Inc., 78 FCC 2d 857, recon. denied, 83 FCC 2d 440 (1980) ("Walton") and various other cases, Rainbow concludes that the licensee's "essentially exclusive use of word-of-mouth recruitment" requires the Commission to find that the licensee recruited "with deliberate discriminatory intent."

12. Our review of the record before us leads us to conclude that there are no substantial and material questions of fact warranting designation for hearing and that grant of the application would be consistent with Section 309(k) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(k). Moreover, we find no evidence that the licensee engaged in employment discrimination. The licensee attracted, interviewed, and hired minorities. Therefore, finding the licensee to be otherwise qualified, renewal of the license for WKNR(AM) is in the public interest. 47 U.S.C. § 309(d)(2); Astroline.

13. We conclude that no further consideration is required with respect to Rainbow's assertion that the licensee's EEO program "failed to acknowledge the obvious, extreme and consistent underrepresentation of minority employees" at WKNR(AM). Our primary focus in analyzing a licensee's EEO record is on the licensee's recruitment and self-assessment efforts. Our EEO Rule does not require licensees to hire or employ a specific number of minority employees. See Channel 5 Public Broadcasting, Inc., 10 FCC Rcd 10388, 10389 (1995); see also Amendment of Part 73 of the Commission's Rules Concerning Equal Employment Opportunity in the Broadcast Radio and Television Services, 2 FCC Rcd 3967, 3974 (1987). Moreover, Rainbow's allegation that the "pay distribution pattern" for minority employees at WKNR(AM) "had to be the result of a systemic, long term failure" of the station's EEO program is speculative and without factual support.

14. In light of the record before us, we also disagree with Rainbow's argument that the licensee's "essentially exclusive use of word-of-mouth recruitment" compels a conclusion that the licensee

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<sup>6</sup> Our review of the licensee's inquiry response reveals that no minorities were included in 17 of 23 upper-level applicant/interview pools and that four minorities were hired during the three-year reporting period. See ¶ 7, supra.

recruited "with deliberate discriminatory intent." As will be discussed more fully below, we are concerned that ten (43.5%) of 23 upper-level hires were either employee or client referrals. We are likewise concerned with the licensee's failure to use minority-specific recruitment sources for most of its vacancies given the relatively low number of minorities in its applicant/interview pools, particularly for upper-level vacancies. However, the record shows that, in addition to "word-of-mouth" recruitment, the licensee used general recruitment sources, such as local newspapers, trade publications, and on-air ads for all of the vacancies for which it recruited. Thus, the licensee plainly did not rely "essentially exclusive[ly]" on "word-of-mouth" recruitment, contrary to Rainbow's claim. The cases relied upon by Rainbow in support of its argument are factually distinguishable and, therefore, do not persuade us to make a finding of intentional discrimination in this case.<sup>7</sup> Cf. Enterprise Media of Toledo, L.P., 12 FCC Rcd 3920, 3925 (1997). Furthermore, Rainbow has presented no direct evidence of discrimination.

15. Nevertheless, we find that the licensee's EEO efforts were clearly deficient. Although the licensee recruited for 29 of the 31 vacancies during the period under review, it failed to self-assess meaningfully the effectiveness of its recruitment efforts. The licensee attracted only 22 minorities (13.7%) out of 161 applicants/interviewees overall and only seven minorities (6.9%) out of 102 upper-level applicants/interviewees. Minorities were present in only eleven (36.7%) of the licensee's 30 applicant/interview pools, including six (26.1%) of its 23 upper-level applicant/interview pools. Despite its lack of success in attracting qualified minority applicants in an area with a significant minority labor force (17.3%), the licensee used minority-specific recruitment sources for only five vacancies overall and only one upper-level vacancy. We have held that a licensee may rely exclusively on general recruitment sources if such sources are adequately productive. See South Carolina Renewals, 5 FCC Rcd 1704, 1709 n.8 (1990). However, we have also held that if a licensee's exclusive reliance on general sources failed to produce meaningful results, we would question whether minority recruitment was adequate. Id. Here, we find that the licensee's minority recruitment efforts were inadequate. The general recruitment sources utilized by the licensee were largely unproductive in generating qualified minority applicants, particularly for upper-level positions. We believe that meaningful self-assessment would have alerted the licensee to the need for increased use of sources likely to elicit qualified minority applicants. Similarly, although females were absent from nine (39.1%) of its 23 upper-level applicant/interview pools, the licensee used no female-specific recruitment sources for its upper-level vacancies. Thorough and ongoing self-assessment would have prompted the licensee to modify its list of recruitment sources to include sources likely to generate qualified female applicants for upper-level vacancies.

16. Moreover, we are concerned that ten (43.5%) of 23 upper-level hires were either employee or client referrals and that the only applicants/interviewees for four of those ten upper-level vacancies were employee referrals. Employee referrals may be one way of satisfying a licensee's minority and female recruitment obligations. See 47 C.F.R. § 73.2080(c)(2)(iv). However, we have observed that the use of "word-of-mouth" recruitment may not be proper if it tends to exclude minorities and females. See Rust Communications Group, Inc., 73 FCC 2d 39, 48 n.13 (1979); see also Historic Hudson Valley Radio,

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<sup>7</sup> For example, in three of the cases relied upon by Rainbow, we found that "word of mouth" recruitment from a predominantly white staff was the sole means of recruitment for most or many vacancies. Walton Broadcasting, Inc., 78 FCC 2d 857, 875, recon. denied, 83 FCC 2d 440 (1980); William H. Schuyler, 44 RR 2d 559, 560 (1978); and Triple R, Inc., 42 RR 2d 907, 908 (1978). These cases are distinguishable from the instant case, where the licensee did use general recruitment sources for all of the vacancies for which it recruited. The federal court decision cited by Rainbow is also factually distinguishable. In Reed v. Arlington Hotel Co., Inc., 476 F.2d 721 (8th Cir.), cert. denied, 414 U.S. 854 (1973), the court found that a hotel's use of "word of mouth" recruitment in lieu of posting internal job vacancy notices discriminated against black employees by failing to notify them of opportunities for transfer and promotion in segregated departments within the hotel. 476 F.2d at 724.

Inc., 11 FCC Rcd 7391, 7396-97 (1996). Additionally, we have held that a licensee failed to self-assess adequately the effectiveness of its recruitment sources where the licensee's hires for a majority of its vacancies were referred by informal means such as "word-of-mouth." See Davidson County Broadcasting Company, Inc., 12 FCC Rcd 3375, 3383 (1997) (pet. for recon. pending). In the instant case, "word-of-mouth" recruitment, which was used for 18 of 31 vacancies (58.1%), resulted in only two minority applicants (one upper-level) during the period under review. The fact that the only qualified applicants attracted for four upper-level vacancies were employee referrals and that ten (43.5%) of 23 upper-level hires were either employee or client referrals provides an additional indication that greater efforts were warranted to seek out additional recruitment sources likely to refer qualified minority applicants.

17. After carefully reviewing the facts of this case, we conclude that the record of WKNR(AM) is similar to, but more egregious than, that of WPET(AM)/WKSI-FM, Greensboro, North Carolina, in WCCB-TV, Inc., 11 FCC Rcd 19680 (1996) (pet. for recon. pending).<sup>8</sup> The licensee of WPET(AM)/WKSI-FM recruited for 23 of 25 vacancies during the applicable review period. Of the 361 applicants reported by the licensee, only 22 (6.1%) were minorities. Minorities were present in only eight (50%) of 16 applicant pools, including five (38.5%) of 13 upper-level pools. We found that the paucity of minority applicants, particularly for upper-level vacancies, reflected poor self-assessment of the licensee's EEO program. Moreover, since the licensee could provide race and ethnicity data for only 166 (46%) of its 361 applicants, we found that the licensee failed to maintain records needed to self-assess meaningfully the effectiveness of its EEO program. We renewed the licenses of WPET(AM)/WKSI-FM subject to reporting conditions and issued a Notice of Apparent Liability for \$12,000.

18. Although the licensees of WKNR(AM) and WPET(AM)/WKSI-FM both recruited for most of their vacancies (93.5% and 92%, respectively), neither licensee could demonstrate that its recruitment efforts were effective. Only 22 (13.7%) of the 161 applicants recruited by the licensee of WKNR(AM) were minorities. Of the 361 applicants recruited by the licensee of WPET(AM)/WKSI-FM, only 22 (6.1%) were minorities. Minorities were present in only eleven (36.7%) of WKNR(AM)'s 30 applicant pools, including six (26.1%) of its 23 upper-level applicant pools, while minorities were present in eight (50%) of WPET(AM)/WKSI-FM's 16 applicant pools, including five (38.5%) of its 13 upper-level pools. Thus, while WKNR(AM) attracted a higher percentage of minority applicants than WPET(AM)/WKSI-FM (13.7% as compared to 6.1%), WPET(AM)/WKSI-FM included minorities in a greater percentage of its applicant pools than WKNR(AM) (50% as compared to 36.7%). Despite attracting few qualified minority applicants, neither licensee engaged in meaningful self-assessment of its recruitment efforts during the license term. Overall, we believe that the record of WKNR(AM) is more aggravated than that of WPET(AM)/WKSI-FM because WKNR(AM)'s female recruitment efforts for upper-level vacancies were also inadequate. Accordingly, given the facts of this case and broadcasters' familiarity with our long-standing EEO Rule, we believe that issuance of a Notice of Apparent Liability for \$14,000 is warranted. Further, we impose reporting conditions to monitor the station's prospective EEO performance.

#### IV. CONCLUSION

19. Upon review of the record, we conclude that no hearing is warranted. Therefore, finding the licensee to be otherwise qualified, we will grant the renewal application for WKNR(AM). However, because of the deficiencies in the licensee's recruitment efforts, we will issue a Notice of Apparent

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<sup>8</sup> WPET(AM)/WKSI-FM are located in the Charlotte--Winston-Salem--Highpoint, North Carolina MSA, which includes a labor force that is 19.7% minority (18.1% Black, 0.6% Hispanic, 0.6% Asian/Pacific Islander, and 0.4% American Indian).

Liability for \$14,000. We will also impose reporting conditions in order to monitor the station's prospective EEO performance.

#### V. ORDERING CLAUSES

20. Accordingly, **IT IS ORDERED** that the Petition to Deny filed by Rainbow regarding the license renewal application for Station WKNR(AM) **IS DENIED**.

21. **IT IS FURTHER ORDERED** that the license renewal application filed by CV Radio Associates, L.P. for Station WKNR(AM) **IS GRANTED** subject to the EEO reporting conditions specified herein and, pursuant to Section 503 of the Communications Act of 1934, as amended, 47 U.S.C. § 503, a **NOTICE OF APPARENT LIABILITY FOR FORFEITURE** in the amount of \$14,000.

22. **IT IS FURTHER ORDERED** that the licensee of Station WKNR(AM) submit to the Commission an original and one copy of the following information on May 1, 1998, May 1, 1999, and May 1, 2000:

- (a) Two lists divided by full-time and part-time vacancies during the 12 months preceding April 1, 1998, for the first report, April 1, 1999, for the second report, and April 1, 2000, for the third report, indicating the job title and FCC job category of the position, the date of hire, the race or national origin, sex and the referral source of each applicant and interviewee for each vacancy and the race or national origin and sex of the person hired. These lists should also note which recruitment sources were contacted;<sup>9</sup>
- (b) A list of employees as of the April 1, 1998, payroll period for the first report, April 1, 1999, payroll period for the second report, and April 1, 2000, payroll period for the third report, 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; and
- (c) Details concerning the station's efforts to recruit minorities and women for each position filled during the 12 months preceding April 1, 1998, for the first report, April 1, 1999, for the second report, and April 1, 2000, for the third report, including identification of sources used and indicating

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<sup>9</sup> Such a list might start:

- 1) News Director: Officials and Managers; Full-time
  - 3 Applicants: 1 White female A.W.R.T.
  - 1 Hispanic male National Hispanic Media Coalition
  - 1 Black female Urban League
- 2 Interviewees: 1 White female A.W.R.T.
- 1 Hispanic male National Hispanic Media Coalition

Sources contacted: Local newspaper, A.W.R.T., National Hispanic Media Coalition and Urban League  
 Selected: Hispanic male (08/18/96); NHMC

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.

23. **IT IS FURTHER ORDERED** that copies of this Memorandum Opinion and Order and Notice of Apparent Liability be sent by Certified Mail -- Return Receipt Requested -- to Rainbow and CV Radio Associates, L.P.

24. The reports are to be filed with the Acting Secretary of the Commission for the attention of the Mass Media Bureau's EEO Branch.

25. Regarding the forfeiture proceeding, the licensee of Station WKNR(AM) 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 Order. Any comments concerning ability to pay should include those financial items set forth in the attachment.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary