

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

In the Matter of)	
)	
Liberman Television of Dallas License Corp.)	NAL/Acct. No. MB200741410239
)	FRN: 0003748613
Licensee of Station KMPX(TV))	Facility I.D. No. 73701
Decatur, Texas)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 7, 2007

Released: February 9, 2007

By the Chief, Media Bureau:

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 by the Chief, Media Bureau, pursuant to authority delegated under Section 0.283 of the Rules,² we find that Liberman Television of Dallas License Corp. (the “Licensee”), licensee of Station KMPX(TV), Decatur, Texas (the “Station”), apparently willfully and repeatedly violated Sections 73.2080(c)(1), 73.2080(c)(1)(i), 73.2080(c)(1)(ii), 73.2080(c)(3), 73.2080(c)(5), 73.2080(c)(6), 73.2080(c)(6)(iv), and 73.3526(e)(7) of the Rules by failing to comply with the Commission’s Equal Employment Opportunity (“EEO”) recruitment, notification, self-assessment, record keeping, public file, data, and information requirements.³ 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 twenty thousand dollars (\$20,000). We also impose reporting conditions on the Licensee and any successor licensee of the Station 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)(1)(i): use recruitment sources for each vacancy in a manner sufficient, in the licensee’s reasonable, good faith judgment, to widely disseminate information concerning the vacancy;
- Section 73.2080(c)(1)(ii): provide notification of each vacancy to any organization that distributes information about employment opportunities to job seekers upon request by such organization;

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

² See 47 C.F.R. § 0.283.

³ See 47 C.F.R. §§ 73.2080(c)(1), 73.2080(c)(1)(i), 73.2080(c)(1)(ii), 73.2080(c)(3), 73.2080(c)(5), 73.2080(c)(6), 73.2080(c)(6)(iv), and 73.3526(e)(7).

- 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;
- Sections 73.2080(c)(6) and 73.3526(e)(7): place its EEO public file report in the station's local public inspection file; and
- Section 73.2080(c)(6)(iv): maintain interviewee data.

3. *EEO Audit and Review.* The Bureau audited the Licensee for its compliance at the Station with Section 73.2080 of the Rules⁴ and has before it the Licensee's responses to the audit.⁵ The Bureau also has before it the Licensee's license renewal application for the Station and accompanying Broadcast EEO Program Report (Form 396).⁶ Our review shows that, during the reporting periods at issue (January 21 through March 31, 2004; April 1, 2004, through March 31, 2005; and April 1, 2005 through March 31, 2006), the Licensee failed to properly recruit for 30 of its 54 full-time vacancies because it relied solely on walk-ins to fill 11 of those vacancies and on referrals from employees and other individuals to fill 19 vacancies in violation of Section 73.2080(c)(1). The Licensee also failed to recruit widely for six such vacancies because it relied solely on an Internet web site (or that web site and referrals) to fill those vacancies, in violation of Section 73.2080(c)(1)(i). This failure to recruit appropriately continued through March 2006, the last month of the combined three reporting periods, thus revealing a continuing lack of self-assessment, in violation of Section 73.2080(c)(3).

4. Moreover, the Bureau audit reveals that the Licensee did not retain fully detailed documentation to support the data reported on its 2004 and 2005 EEO public file reports, as required by Section 73.2080(c)(5). In addition, the Station's 2004 and 2005 EEO public file reports failed to list the total number of interviewees for all Station full-time vacancies and the number of interviewees referred by each of the Station's 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). The Licensee also failed, during the 2005 and 2006 reporting periods, to provide notification of each full-time vacancy to three organizations that had requested vacancy notification, as required by Section 73.2080(c)(1)(ii). One of these organizations was notified only once, while the other two were notified for only one out of eight vacancies during the 2005 reporting period and one out of 22 vacancies during the 2006 reporting period. Finally, the Licensee failed to place its EEO public file report for the reporting period of April 1, 2004, through March 31, 2005, in its public inspection file, as required by Sections 73.2080(c)(6) and 73.3526(e)(7).

III. DISCUSSION

5. We conclude that the Licensee failed to recruit for every full-time vacancy, as required by Section 73.2080(c)(1), instead relying solely on walk-ins for 11 such vacancies. A "walk-in" may reflect the "source" of an interviewee or hiree, but relying solely on walk-ins does not reflect a recruitment effort.⁷ We further conclude that the Licensee failed to recruit for 19 vacancies, instead relying solely on referrals from employees or other individuals. Again, although such referrals may

⁴ Letter from Lewis Pulley, Assistant Chief, Policy Division, Media Bureau, to Liberman Television of Dallas License Corporation (June 10, 2005).

⁵ Letters from Liberman Television of Dallas License Corporation to Lewis Pulley, Assistant Chief, Policy Division, Media Bureau (Aug. 10, 2005 and Oct. 19, 2005).

⁶ See FCC File Nos. BRCT-20060403BKA and B396-20060403BEZ, respectively. The renewal applications remain pending before the Bureau.

⁷ *New Northwest Broadcasters LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, 21 FCC Rcd 10748, 10749 (2006) (forfeiture paid).

reflect the source of an interviewee or hiree, relying only on a licensee's own employees or its own private contacts does not constitute recruitment as contemplated under the Commission's rules, which require public outreach.⁸ We also find that the Licensee failed to recruit widely for every full-time vacancy, as required by Section 73.2080(c)(1)(i), instead relying solely on either one Internet web site or that web site and referrals as recruitment sources for six full-time vacancies. The Commission has established that, although we do not require a specific number of recruitment sources, if a source or sources cannot reasonably be expected, collectively, to reach the entire community, the licensee may be found in noncompliance with the Commission's EEO Rule, as here.⁹ The Commission's policy allows recruitment from as few as one source, but the effort must be sufficiently broad.¹⁰ Further, the Commission's EEO policy requires a licensee to recruit from non-Internet sources, in addition to any sources from the Internet, in order for its recruitment to sufficiently widely disseminate information concerning the vacancy.¹¹ We also find that the Licensee failed to maintain adequate recruitment documentation records for all of its vacancies for its 2004 and 2005 reporting periods, as required by Section 73.2080(c)(5). In addition, the unit's 2004 and 2005 EEO public file reports failed to list the total number of interviewees for full-time vacancies and the number of interviewees referred by each recruitment source, in violation of Sections 73.2080(c)(6)(iv) and 73.3526(e)(7). 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). We also find that the Licensee failed to provide notification of each full-time vacancy to organizations that requested vacancy notification, as required by Section 73.2080(c)(1)(ii). Finally, we find that it failed to place its EEO public file report in its public inspection file, as required by Sections 73.2080(c)(6) and 73.3526(e)(7).

6. 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.¹² 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.¹³ 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,¹⁴ and the Commission has so interpreted the term in the Section 503(b) context.¹⁵ 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."¹⁶

7. 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 for

⁸ *Id.*

⁹ See 47 C.F.R. § 73.2080(c)(1)(i). See also, *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, MM Docket No. 98-204, Second Report and Order and Third Notice of Proposed Rulemaking, 17 FCC Rcd 24018, 24047, ¶86 (2002), *recon. pending*.

¹⁰ *Id.*

¹¹ See 17 FCC Rcd at 24051, ¶99, wherein the Commission said, "...we are unable to conclude that Internet usage has become sufficiently widespread to justify allowing it to be used as the sole recruitment source."

¹² 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. § 1.80(a)(1).

¹³ 47 U.S.C. § 312(f)(1).

¹⁴ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁵ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁶ 47 U.S.C. § 312(f)(2).

vacancies, provide vacancy notifications, 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.¹⁷ 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."¹⁸

8. As discussed *supra*, the Licensee failed to recruit or recruit widely for 36 (67%) of its 54 vacancies, maintain adequate records for all of its vacancies for the 2004 and 2005 reporting periods, list interviewee data on its EEO public file report, retain fully detailed documentation to support the data reported on its EEO public file reports, place its EEO public file report in its public inspection file, provide notification of each full-time vacancy to organizations requesting vacancy notification, and self-assess its EEO program. Accordingly, based upon the facts before us, and the factors noted above, and pertinent precedent,¹⁹ we find that the Licensee is apparently liable for the following respective forfeiture amounts for its willful and repeated violations of the Rules: \$10,000 for its violation of Section 73.2080(c)(1); \$4,000 for its violation of Section 73.2080(c)(1)(i); \$1,000 for its violation of Section 73.2080(c)(1)(ii); \$1,000 for its violation of Section 73.2080(c)(3); \$1,000 for its violation of Section 73.2080(c)(5); \$1,000 for its violation of Section 73.2080(c)(6); \$1,000 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 \$20,000. We will also impose reporting conditions as set forth below, to ensure that the Licensee and any successor licensee of the Station maintains an adequate EEO program in compliance with the Rules.

IV. ORDERING CLAUSES

9. 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 Liberman Television of Dallas License Corporation is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of twenty thousand dollars (\$20,000) for its apparent willful and repeated violation of Sections 73.2080(c)(1), 73.2080(c)(1)(i), 73.2080(c)(1)(ii), 73.2080(c)(3), 73.2080(c)(5), 73.2080(c)(6), 73.2080(c)(6)(iv), and 73.3526(e)(7) of the Commission's Rules.

10. 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*, Liberman Television of Dallas License Corporation SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by

¹⁷ 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.

¹⁸ 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.

¹⁹ In *Emmis Television Licensee, LLC*, as the result of an EEO audit, we proposed an \$18,000 forfeiture for a licensee's violations of various EEO rules, specifically Sections 73.2080(c)(1), 73.2080(c)(3), 73.2080(c)(5), 73.2080(c)(6)(iv), and 73.3526(e)(7). The licensee had failed to recruit for 11 (22%) of 51 openings, failed to retain or report any data on interviewees or referrals, and failed to self-assess adequately. *Emmis Television Licensee, LLC*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 13860 (2005) (forfeiture paid).

overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

12. 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.

13. 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.

14. 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. 20554.²⁰

15. IT IS FURTHER ORDERED that Liberman Television of Dallas License Corporation and any successor licensee submit to the Federal Communications Commission, Media Bureau, EEO Staff, an original and one copy of the following information on May 1, 2008; May 1, 2009; and May 1, 2010:

- (a) the Station'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; and
- (c) the total number of interviewees for each full-time vacancy for the preceding reporting year and the referral source for each interviewee.

16. IT IS FURTHER ORDERED that, pursuant to Section 73.3526(e)(10) of the Commission's Rules, Liberman Television of Dallas License Corporation place a copy of this *NAL* in the KMPX(TV) public inspection file.

17. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Liberman Television of Dallas License Corporation, 1845 Empire Avenue, Burbank, California 91504, and to its counsel, Kathleen Kirby, Esquire, Wiley Rein & Fielding, 1776 K Street, NW, Washington DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai, Chief
Media Bureau

²⁰ See 47 C.F.R. § 1.1914.