

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

In the Matter of)	
)	
Grande Communications)	NAL/Acct. No. MB-201241410034
San Marcos, Texas)	FRN: 0004257614 for
)	Employment Unit I.D. Nos. 11775, 12295,
)	12297, 12299, and 12301;
)	FRN: 0006178198 for
)	Employment Unit I.D. Nos. 12296,
)	12298, and 12300

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

Adopted: June 22, 2012

Released: June 25, 2012

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Grande Communications Networks, LLC (“Grande”), multi-channel video programming distributor (“MVPD”) of Texas Employment Units 11775, Hays; 12295, Midland; 12296, Bexar County; 12297, Ector County; 12298, Dallas County; 12299, Travis County; 12300, McClellan County; and 12301, Nueces County (the “Units”), apparently, willfully and repeatedly violated the Commission’s equal employment opportunity (“EEO”) Rules, by failing to comply with the Commission’s EEO recruitment and self-assessment requirements.¹ Based upon our review of the facts and circumstances before us, we conclude that Grande is apparently liable for a monetary forfeiture in the amount of ten thousand dollars (\$10,000). To prevent future violations of these requirements, we also impose reporting conditions on the Units and any successor owners of the Units. We also adjudge the Units not certified for compliance with our EEO Rules for the year 2011.

II. BACKGROUND

1. Sections of the Rules at issue in this case include the following:

- Section 76.75(b)(1)(i) of the Rules requires than an MVPD employment unit use recruitment sources for each vacancy in a manner sufficient, in its reasonable, good faith judgment, to widely disseminate information concerning the vacancy;
- Section 76.75(f) of the Rules requires that an MVPD analyze its recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach, and address any problems found as a result of its analysis;
- Section 76.77(b) requires the Commission to determine, based on information

¹ See 47 C.F.R. §§ 76.75(b)(1)(i) and 76.75(f).

submitted on a unit's EEO program annual report, whether the unit is in compliance with the Commission's EEO rules. If the unit is found to be in compliance, the Commission is required to send a Certificate of Compliance to the unit; if it is found to not be in compliance, the Commission must notify the unit that it is not so certified for the year in question.

2. The Bureau conducted a review of the MVPD Equal Employment Opportunity Annual Reports (FCC Forms 396-C) submitted by Grande for the 2009-2010 reporting year. This review revealed violations of the EEO rules based on information in the public file reports covering the reporting period of July 20, 2009 through July 18, 2010. As a result, the Media Bureau's Policy Division denied Grande EEO certification for this period, and, in accordance with the provisions of 47 C.F.R. § 76.77(d), notified Grande that it would audit Grande's EEO program for the 2010-2011 review period for compliance with the Commission's MVPD EEO Rules.² The Commission requested that Grande respond to the audit letter by January 6, 2012. Grande failed to respond to the audit by the Commission's deadline. On January 17, 2012, Grande sought and was granted an extension of time to respond to the audit up to January 30, 2012. Grande filed a response to the 2010-2011 EEO audit on January 27, 2012.³

III. DISCUSSION

3. Our review of the audit response reveals that during the 2010-2011 reporting period, Grande filled 121 full-time vacancies and failed to recruit widely for 34 (28%) vacancies, relying solely on the use of Internet websites for those vacancies, in apparent violation of Section 76.75(b)(1)(i) of the Rules. The 34 vacancies with inadequate recruitment included openings filled at each of Grande's eight units. While the Commission does not require the use of a specific number of recruitment sources, if a source or sources cannot reasonably be expected, collectively, to reach the entire community, as here, a unit may be found in noncompliance with the Commission's EEO Rule.⁴ Further, the Commission's interpretation of the EEO Rule does not allow a unit to recruit solely from Internet sources to meet the requirement to widely disseminate information concerning vacancies.⁵

4. Because of these recruiting failures in all eight of Grande's units, we find that the Units also did not adequately analyze their recruitment programs on an ongoing basis to ensure that they were effective in achieving broad outreach or address any problems found as a result of their analysis, in apparent violation of Section 76.75(f). In its January 27, 2012 response to the December 7, 2011 audit letter, Grande stated that it continuously evaluates recruitment sources to identify new sources that will provide a diverse pool of candidates for its openings and that it uses new sources every year in response to this analysis. But during the 2010-2011 review period, Grande failed to recruit adequately for 34 openings, starting with a broadband communications technician hired on August 16, 2010, in the San Marcos unit, and ending with a broadband communications technician hired on July 2, 2011, in the San Antonio unit.⁶

² Letter from Lewis Pulley, Assistant Chief, Policy Division, Media Bureau to Bartlett F. Leber, Senior Vice President and General Counsel, Atlantic Broadband, Quincy, Massachusetts (December 7, 2011); Letter from Lewis Pulley to Bartlett Leber (December 7, 2011). Atlantic Broadband is the parent company of Grande Communications.

³ Letter and Attachments from Bartlett Leber, General Counsel, Atlantic Broadband, on behalf of Grande Communications Networks LLC to Lewis Pulley, Assistant Chief, Policy Division, Media Bureau (January 27, 2012).

⁴ See 47 C.F.R. § 76.75(b)(1). 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* ("Second Report and Order").

⁵ See *Second Report and Order*, 17 FCC Rcd at 24051, ¶99.

⁶ The recruitment failures occurred multiple times at each of the reporting Units.

Such ongoing failure to recruit widely demonstrates a continuing failure by the Units to properly review and, as needed, amend their practices to ensure compliance with the Commission's EEO recruitment requirements. Had the Units effectively examined their practices, they should have noted the continuing nature of their failure to satisfy their wide recruitment obligation and could have taken the needed steps to correct it.

5. In light of the one-year statute of limitations on the Commission's authority to issue NALs for MVPD EEO violations, 31 of the Units' recruiting failures cannot be redressed through monetary forfeiture proceedings.⁷ We therefore admonish the Units for failing to recruit widely for these 31 vacancies. With respect to the three hires that occurred within the past 12 months and for which the Units also failed to recruit widely, we issue this NAL.⁸ Further, we issue this NAL for the Units' failure to adequately self-assess its EEO recruitment programs, cited above, which also occurred within the past 12 months.⁹ This NAL is issued pursuant to Section 503(b)(1)(B) of the Communications Act of 1934, as amended (the "Act").¹⁰ 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.¹¹ 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.¹² 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,¹³ and the Commission has so interpreted the term in the Section 503(b) context.¹⁴ 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."¹⁵

6. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules do not establish a base forfeiture amount for EEO violations such as a failure to perform adequate recruitment or self-assess EEO performance.¹⁶ Accordingly, we must look to pertinent precedent involving similar violations to determine the appropriate proposed forfeiture amount here. In determining the appropriate forfeiture amount, we may adjust the amount upward or downward by considering the factors enumerated

⁷ Section 503(b)(6)(B) of the Act limits the time period within which the Commission can initiate a forfeiture proceeding against non-broadcast entities to only those violations that occur within one year prior to the issuance date of a notice of apparent liability for forfeiture.

⁸ The following three Units hired applicants by inadequate recruitment through sole reliance on Internet websites less than one year ago: Unit #12296 hired applicants on June 30, 2011 and July 2, 2011. Unit #12300 hired one applicant on June 27, 2011. Accordingly, under the one-year statute of limitations, of the 34 violations pertaining to inadequate recruitment, only the three vacancies just listed are eligible for NAL consideration. See 47 U.S.C. § 503(b)(6).

⁹ See 47 U.S.C. § 503(b)(6).

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

¹¹ *Id.*

¹² 47 U.S.C. § 312(f)(1).

¹³ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁴ See *Southern California Broadcasting Co., Memorandum Opinion and Order*, 6 FCC Rcd 4387, 4388 (1991).

¹⁵ 47 U.S.C. § 312(f)(2).

¹⁶ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order*, 12 FCC Rcd 17087, 17100-01, ¶ 27; 17113-16 (1997) ("*Forfeiture Policy Statement*"), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

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.”¹⁷

7. Based upon the facts before us, pertinent precedent,¹⁸ and the other factors noted above, we find that the Units are apparently liable for the following forfeiture amounts for their willful and repeated violations of the Rules: \$8,000 for their violation of Section 76.75(b)(1)(i) and \$2,000 for their violation of Section 76.75(f), for a total proposed forfeiture in the amount of \$10,000. The one-year statute of limitations bars us from assessing a forfeiture for the Units’ failure to recruit widely for 31 vacancies, but we will issue an admonishment for these failures. Moreover, the forfeiture amount proposed here has been adjusted upward to reflect the exacerbating factor of the Units’ history of having recruited inadequately 31 times prior to the June 27 – July 2, 2011 hires. We will also adjudge the Units not certified for 2011 and impose reporting conditions as set forth below to ensure that the Units, and any successor owner, if any, maintains an adequate EEO program in compliance with the Rules.

IV. ORDERING CLAUSES

8. Accordingly, we find that Grande Communications Networks LLC employment units Nos. 11775, 12295, 12296, 12297, 12298, 12299, 12300, and 12301 are adjudged NOT CERTIFIED for compliance with our EEO rules for 2011, in accordance with 47 C.F.R. § 76.77(b). Also Grande Communications Networks LLC, is hereby ADMONISHED for its willful and repeated violation of Section 76.75(b)(1)(i) of the Rules.

9. IT IS FURTHER ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission’s Rules, that Grande Communications Networks LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of ten thousand dollars (\$10,000) for its apparent willful and repeated violation of Sections 76.75(b)(1)(i) and 76.75(f) 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 date of this *NAL* Grande Communications Networks LLC, 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 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

¹⁷ *Id.*

¹⁸ In *Cox Radio, Inc.*, we proposed, among other things, a \$6,000 forfeiture for a licensee’s violation of Section 73.2080(c)(1)(i), and a \$2,000 forfeiture for violation of Section 73.2080(c)(3). *Cox Radio, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 8889 (2009) (forfeiture paid). The licensee had failed to recruit widely for seven of 25 full-time vacancies by relying solely on Internet web sites and referrals and other non-public sources and failed to self-assess its EEO program over a two-year period. In the case of Grande, however, the Units failed to recruit widely for a substantially larger number of hiring opportunities, and we have therefore increased the forfeiture to \$8,000 for this violation.

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 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.

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. IT IS FURTHER ORDERED that the Units and any successor owner who may acquire them during the periods set out below, SHALL SUBMIT to the Federal Communications Commission, Media Bureau, EEO Staff, an original and one copy of a filing, sworn to by an officer of the Units, containing the following information for all eight units on November 1, 2012; November 1, 2013; and November 3, 2014:

- (a) the units' most recent EEO public file reports;
- (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, the job title of each full-time vacancy filled, and the date each full-time vacancy was filled;
- (d) the total number of interviewees for each full-time vacancy for the preceding reporting year and the referral source for each interviewee; and
- (e) the sources contacted for each full-time opening during the reporting year.

15. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Bartlett F. Leber, Senior Vice President and General Counsel, Atlantic Broadband, One Batterymarch Park, Quincy, Massachusetts 02169, and to John T. Nakahata, Wiltshire & Grannis, LLP, 1200 18th Street, N.W., Suite 1200, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake, Chief
Media Bureau