

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

In the Matter of	)	NAL/Acct. No. MB-201341410021
	)	
<b>Maryland Public Broadcasting Commission</b>	)	FRN: 0003857380
	)	
Licensee of Stations	)	
WMPB(TV), Baltimore, MD	)	Facility I.D. No. 65944
	)	
WCPB(TV), Salisbury, MD	)	Facility I.D. No. 40618
	)	
WFPT(TV), Frederick, MD	)	Facility I.D. No. 40626
	)	
WGPT(TV), Oakland, MD	)	Facility I.D. No. 40619
	)	
WMPT(TV), Annapolis, MD	)	Facility I.D. No. 65942
	)	
WWPB(TV), Hagerstown, MD	)	Facility I.D. No. 65943

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: December 5, 2013**

**Released: December 5, 2013**

By the Chief, Media Bureau

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Maryland Public Broadcasting Commission (“the Licensee”), licensee of Stations WMPB(TV), Baltimore, Maryland; WCPB(TV), Salisbury, Maryland; WFPT(TV), Frederick, Maryland; WGPT(TV), Oakland, Maryland; WMPT(TV), Annapolis, Maryland; and WWPB(TV), Hagerstown, Maryland (“the Stations”), apparently willfully and repeatedly violated the Commission’s equal employment opportunity (“EEO”) Rules<sup>1</sup> by failing to comply with the requirements to notify job referral sources about vacancies and to self-assess EEO performance, and by providing incorrect factual information of a material nature to the Commission without a reasonable basis for believing that the information was correct and accurate. 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). To prevent future violations of these requirements, we also impose reporting conditions on the Licensee and any successor licensee of any of the Stations, as well as on the licensee of any stations that become a part of the above Stations’ employment unit during the reporting periods listed below.

**II. BACKGROUND**

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

<sup>1</sup> See 47 C.F.R. §§73.2080(c)(1)(ii), 73.2080(c)(3) and 1.17(a)(2).

- Section 73.2080(c)(1)(ii) requires a licensee to provide notification of each vacancy to any organization that distributes information about employment opportunities to job seekers upon request by such organization; and
- Section 73.2080(c)(3) requires a licensee to analyze the recruitment program for its employment unit on an ongoing basis to ensure that the program is effective in achieving broad outreach to potential applicants, and to address any problems found as a result of its analysis.
- Section 1.17(a)(2) requires a licensee to provide correct and complete material factual information in any written statement of fact submitted to the Commission.

3. The Media Bureau audited the Licensee for its compliance at the Stations with Section 73.2080 of the Commission's Rules<sup>2</sup> and we have before us its response to the audit.<sup>3</sup>

### III. DISCUSSION

4. Our review of the audit response shows that, during the reporting period at issue (June 1, 2008 through May 31, 2010), the Licensee filled 11 vacancies at its Stations. The Licensee failed to provide notification of each of these full-time vacancies to an organization that had requested vacancy notifications, as required by Section 73.2080(c)(1)(ii). These failures reveal a continuing lack of self-assessment, in violation of Section 73.2080(c)(3). The Licensee also provided incorrect factual information of a material nature to the Commission without a reasonable basis for believing that the information was correct and accurate, in violation of Section 1.17(a)(2).

5. In its initial audit response letter of May 3, 2011, the Licensee asserted that it did not receive any requests from organizations seeking to receive copies of job announcements.<sup>4</sup> Yet in its EEO public file report of June 1, 2008 through May 31, 2009, submitted with the letter, the Licensee claims that it maintains a list of organizations interested in receiving notices of full-time vacancies, identifies CSB School of Broadcasting ("CSB") as one such organization, and states that "CSB has been added to our list and is notified of all vacancies."<sup>5</sup> The Licensee's EEO public file report of June 1, 2009 through May 31, 2010, also submitted with the letter, continues to assert that the Licensee "maintains a list of organizations interested in receiving notices of full-time vacancies."<sup>6</sup> However, this public file report does not list CSB, or any other organization requesting notification of vacancies, as a recruitment source. Upon further review, the Licensee explains that although CSB had contacted the stations' employment manager to request notices of vacancies, the Licensee did not send any such notices because the manager's position was eliminated in 2009 and his successor "did not find that contact information

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<sup>2</sup> Letter from Lewis Pulley, Assistant Chief, Policy Division, Media Bureau, to Maryland Public Broadcasting Commission (March 29, 2011). The audit information reviewed was based on the period June 1, 2008, through May 31, 2010.

<sup>3</sup> Letter from Robert Shuman, President and CEO, Maryland Public Television (transmitted through Steven Schaffer, Esq., Counsel for Maryland Public Broadcasting Commission), to EEO Staff, Policy Division, Media Bureau (May 3, 2011); facsimile from Gladys Kaplan, Vice President, Facilities and Human Resources, Maryland Public Television (June 27, 2011) (transmitted through Steven Schaffer, Esq.); email from Steven Schaffer, Esq. to EEO Staff (July 6, 2011).

<sup>4</sup> Letter from Robert Shuman, President and CEO, Maryland Public Television (transmitted through Steven Schaffer, Esq.), to EEO Staff, Policy Division, Media Bureau (May 3, 2011).

<sup>5</sup> Maryland Public Television EEO public file report, June 1, 2008 through May 31, 2009, Prong 2.

<sup>6</sup> Maryland Public Television EEO public file report, June 1, 2009 through May 31, 2010, Prong 2.

for CSB had been left in the files when recruitment for specific job openings was conducted.”<sup>7</sup> The Licensee further explains that CSB was the only organization to request notifications of job openings during the period covered by the two EEO public file reports.<sup>8</sup> The Licensee also explains that it does not know the specific date that CSB requested notification but “[i]t must have been between June 1, 2008 and May 31, 2009 to have been on that year’s EEO Report.”<sup>9</sup>

6. By failing to notify a requesting organization of vacancies, we 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). Moreover, the Licensee violated these recruitment requirements repeatedly over a two-year reporting period. We thus find that the Licensee also failed adequately to “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,” in violation of Section 73.2080(c)(3).

7. We also find that the Licensee provided incorrect factual information of a material nature to the Commission without a reasonable basis for believing that the information was correct and accurate, in violation of Section 1.17(a)(2) of the Commission’s Rules. Section 1.17 states that no person may provide, in any written statement of fact, “material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.”<sup>10</sup> All holders of any Commission authorization are subject to Section 1.17.<sup>11</sup> In expanding the scope of Section 1.17 in 2003 to include written statements that are made without a reasonable basis for believing the statement is correct and not misleading, the Commission explained that this requirement was intended to more clearly articulate the obligations of persons dealing with the Commission, ensure that they exercise due diligence in preparing written submissions, and enhance the effectiveness of the Commission’s enforcement efforts.<sup>12</sup> Thus, even in the absence of an intent to deceive, a false statement provided without a reasonable basis for believing that the statement is correct and not misleading constitutes an actionable violation of section 1.17 of the Rules.<sup>13</sup>

8. As the Commission has stated, parties must “use due diligence in providing information that is correct and not misleading to the Commission, including taking appropriate affirmative steps to determine the truthfulness of what is being submitted. A failure to exercise such reasonable diligence would mean that the party did not have a reasonable basis for believing in the truthfulness of the information.”<sup>14</sup> As noted above, had the Licensee exercised even minimal diligence, it would not have

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<sup>7</sup> Facsimile from Gladys Kaplan, Vice President, Facilities and Human Resources, Maryland Public Television (June 27, 2010) (transmitted through Steven Schaffer, Esq.)

<sup>8</sup> *Id.*

<sup>9</sup> Email from Steven Schaffer, Esq. to EEO Staff (July 6, 2011).

<sup>10</sup> 47 C.F.R. § 1.17(a)(2).

<sup>11</sup> 47 C.F.R. § 1.17(b)(2).

<sup>12</sup> *See Amendment of Section 1.17 of the Commission’s Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4021 (2003), *recon. denied*, Memorandum Opinion and Order, 19 FCC Rcd 5790, *further recon. denied*, Memorandum Opinion and Order, 20 FCC Rcd 1250 (2004) (“*Amendment of Section 1.17*”).

<sup>13</sup> *See id.* at 4017 (stating that the revision to section 1.17 of the Rules is intended to “prohibit incorrect statements of omissions that are the results of negligence, as well as an intent to deceive”).

<sup>14</sup> *Amendment of Section 1.17*, 18 FCC Rcd at 4021.

submitted incorrect and misleading material factual information to the Commission.<sup>15</sup> The Licensee filed two EEO public file reports<sup>16</sup> stating that it had notified requesting organizations of vacancies, but later admitted to the Commission upon further review that the organization had not been notified.<sup>17</sup> Although there is insufficient information to conclude that the Licensee's provision of incorrect material factual information was intentional in violation of section 1.17(a)(1) of the Rules,<sup>18</sup> we find that the Licensee apparently willfully violated section 1.17(a)(2) of the Rules by providing material factual information that was incorrect without a reasonable basis for believing that the information was correct and not misleading.<sup>19</sup>

9. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Communications Act of 1934, as amended (the "Act").<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> 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,<sup>23</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>24</sup> 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."<sup>25</sup>

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<sup>15</sup> See *Invision Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 13095, 13103-04 (2008) (finding that a television importer's failure to exercise due diligence to ensure that the information provided in its LOI Response was correct and not misleading constituted a violation of section 1.17(a)(2) of the Rules); *Syntax-Brilliant Corporation*, Forfeiture Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6323, 6342 (2008) (finding that a television manufacturer apparently provided incorrect material information concerning its importation and interstate shipment of non-DTV-compliant televisions without a reasonable basis for believing that the information was correct and not misleading, in violation of section 1.17(a)(2) of the Rules); *Citicasters Licenses, L.P., et al.*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 19324, 19338 (2007) (forfeiture paid) (finding that a licensee's false certification that it had not violated the Act or any Commission Rules during the preceding license term had no reasonable basis and was not made with the intent to deceive the Commission but nonetheless, violated section 1.17(a)(2) of the Rules); see also *Cardinal Broadband LLC, aka Sovereign Telecommunications*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 12233, 12237 (Enf. Bur. 2008) ("*Cardinal Broadband LLC*"), *recon. denied*, 27 FCC Rcd 7985 (Enf. Bur. 2012) (finding that an interconnected VoIP provider provided without a reasonable basis for believing that the information was correct and accurate incorrect material factual information in violation of section 1.17(a)(2) of the Rules).

<sup>16</sup> Maryland Public Television EEO public file report, June 1, 2008 through May 31, 2009, Prong 2; Maryland Public Television EEO public file report, June 1, 2009 through May 31, 2010, Prong 2.

<sup>17</sup> Facsimile from Gladys Kaplan, Vice President, Facilities and Human Resources, Maryland Public Television (June 27, 2010) (transmitted through Steven Schaffer, Esq.)

<sup>18</sup> 47 C.F.R. 1.17(a)(1).

<sup>19</sup> See, e.g., *Cardinal Broadband LLC*, 23 FCC Rcd at 12237.

<sup>20</sup> 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. § 1.80(a)(1).

<sup>21</sup> *Id.*

<sup>22</sup> 47 U.S.C. § 312(f)(1).

<sup>23</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>24</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>25</sup> 47 U.S.C. § 312(f)(2).

10. 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 notify organizations of job vacancies or to self-assess EEO performance.<sup>26</sup> Accordingly, we must look to pertinent precedent involving similar violations to determine the appropriate proposed forfeiture amount here.

11. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for misrepresentation or lack of candor is the statutory maximum.<sup>27</sup> Therefore, for broadcasters such as the Licensee, the base forfeiture is \$37,500 for each violation or each day of a continuing violation.<sup>28</sup> The Commission has stated that "[we rely] heavily on the truthfulness and accuracy of the information provided to us. If information submitted to us is incorrect, we cannot properly carry out our statutory responsibilities."<sup>29</sup>

12. In determining the appropriate forfeiture amount, we may adjust the 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."<sup>30</sup>

13. As discussed *supra*, the Licensee failed to provide notifications of each full-time vacancy to organizations requesting vacancy notification in violation of Section 73.2080(c)(1)(ii). This failure reveals a continuing lack of self-assessment, in violation of Section 73.2080(c)(3). The Licensee also provided incorrect material factual information to the Commission in violation of Section 1.17(a)(2). Because we do not have evidence that the misrepresentation was intentional and the Licensee provided the correct information against its interest and prior to any formal Commission action, we do not impose the statutory maximum forfeiture penalty here.<sup>31</sup> Accordingly, based upon the facts before us, the factors noted above, and pertinent precedent,<sup>32</sup> we propose the following forfeiture amounts for the Licensee's

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<sup>26</sup> *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

<sup>27</sup> *Forfeiture Policy Statement*; 47 C.F.R. § 1.80. *See, e.g., SBC Communications, Inc.*, Notice of Apparent Liability, 16 FCC Rcd 19091, 19120 (2001) (statutory maximum forfeiture amount proposed for intentional violation of Section 1.17 of the Rules) (subsequent history omitted).

<sup>28</sup> *See Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 23 FCC Rcd 9845 (2008).

<sup>29</sup> *Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, Notice of Proposed Rulemaking, 17 FCC Rcd 3296, 3297, para. 3 (2002).

<sup>30</sup> 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01, ¶27; 17113-16; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

<sup>31</sup> In *Cardinal Broadband LLC*, 23 FCC Rcd at 12237, the forfeiture amount proposed for a common carrier's violation of Section 1.17 was adjusted downward from the statutory maximum amount of \$130,000 to \$25,000 on the basis that the violation was unintentional and the common carrier provided the correct information against its interest and prior to any formal Commission action.

<sup>32</sup> In *CMP Houston-KC, LLC and CMP KC Licensing, LLC*, we proposed, among other things, a \$1,000 forfeiture for a licensee's violation of Section 73.2080(c)(1)(ii) and a \$1,000 forfeiture for violation of Section 73.2080(c)(3). The licensee had failed to provide notification of each full-time vacancy to two organizations that had requested vacancy notification over a one-year period. *CMP Houston-KC, LLC and CMP KC Licensing, LLC*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 8900 (2009) (forfeiture paid). In *Citicasters Licenses, L.P., et al.*, 22 FCC Rcd at 19339, the forfeiture amount proposed for a licensee's violation of Section 1.17 was adjusted downward from the base forfeiture amount of \$32,500 to \$10,000 on the basis that the violation was not made with the intent of deceiving the Commission.

apparent willful and repeated violations of these Rules: \$1,000 for its violation of Section 73.2080(c)(1)(ii); \$2,000 for its violation of Section 73.2080(c)(3); and \$17,000 for its violation of Section 1.17(a)(2) for a total proposed forfeiture in the amount of \$20,000.<sup>33</sup> We will also impose reporting conditions as set forth below, to ensure that the Licensee and any successor licensee of any of the Stations maintains an adequate EEO program in compliance with the Rules. The reporting conditions will apply to the above-captioned Stations, and to all other stations that are part of their employment unit in the future, if any.

#### IV. ORDERING CLAUSES

14. Accordingly, IT IS 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 Maryland Public Broadcasting Commission 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)(ii), 73.2080(c)(3) and 1.17(a)(2) of the Commission's Rules.

15. 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, Maryland Public Broadcasting Commission, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

16. 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 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.

17. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> 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.

18. 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.

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<sup>33</sup> The forfeiture amounts do not consider any violations for WMPB(TV), WCPB(TV), WFPT(TV), WGPT(TV), and WWPB(TV) because those stations' renewal applications were granted on September 27, 2012. See File Nos. BREDT-20120530AES, BREDT-20120530AEY, BREDT-20120530AEW, BREDT-20120530AEU and BREDT-20120530AFA, respectively; see also 47 U.S.C. § 503(b)(6)(A) (Commission is barred from issuing an NAL to broadcast licensees for violations that occurred during the previous license term if the license has already been renewed for the current term).

19. IT IS FURTHER ORDERED that Maryland Public Broadcasting Commission and any successor licensee of any or all of Stations WMPB(TV), WCPB(TV), WFPT(TV), WGPT(TV), WMPT(TV), and WWPB(TV), 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 Maryland Public Broadcasting Commission, containing the following information on July 1, 2014; July 1, 2015; and July 1, 2016, with respect to Stations WMPB(TV), WCPB(TV), WFPT(TV), WGPT(TV), WMPT(TV), and WWPB(TV), and all other stations in their employment unit:

- (a) the unit'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;
- (c) the recruitment source that referred the hiree for each full-time vacancy and the job title of each full-time vacancy;
- (d) the total number of interviewees for each full-time vacancy for the preceding reporting year and the referral source for each interviewee;
- (e) a list of all sources that requested job notifications from the employment unit for jobs posted during the reporting periods listed above;
- (f) a list of all sources notified of job openings during the reporting periods listed above; and

20. IT IS FURTHER ORDERED that, pursuant to Section 73.3527(e)(11) of the Commission's Rules, Maryland Public Broadcasting Commission shall upload a copy of this *NAL* to the online public inspection files of Stations WMPB(TV), WCPB(TV), WFPT(TV), WGPT(TV), WMPT(TV), and WWPB(TV).

21. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Robert Shuman, President and CEO, Maryland Public Television, 11767 Owings Mills Blvd., Owings Mills, Maryland 21117-1499 and to its attorney, Steven Schaffer, Esq., Schwartz, Woods & Miller, 1233 20<sup>th</sup> Street, N.W., Suite 610, Washington, D.C. 20036-7322.

**FEDERAL COMMUNICATIONS COMMISSION**

William T. Lake, Chief  
Media Bureau