

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

In the Matter of	)	
	)	
<b>Davidson Media Station WREJ Licensee, LLC</b>	)	NAL/Acct. No. MB-201441410002
Licensee of Station	)	FRN: 0012982526
WREJ(AM), Richmond, VA	)	Facility I.D. No. 21434
	)	File No. BR-20110601ABB
	)	
<b>Davidson Media Station WVNZ Licensee, LLC</b>	)	NAL/Acct. No. MB-201441410003
Licensee of Station	)	FRN: 0012982781
WVNZ(AM), Richmond, VA	)	Facility I.D. No. 52050
	)	File No. BR-20110601ABE
	)	
<b>Davidson Media Station WLEE Licensee, LLC</b>	)	NAL/Acct. No. MB-201441410004
Licensee of Station	)	FRN: 0012982922
WLEE(AM), Richmond, VA	)	Facility I.D. No. 50401
	)	File No. BR-20110601ABG
	)	
<b>Davidson Media Station WTOX Licensee, LLC</b>	)	NAL/Acct. No. MB-201441410005
Licensee of Station	)	FRN: 0012982567
WTOX(AM), Glen Allen, VA	)	Facility I.D. No. 129524
	)	File No. BR-20110601ABH

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

**Adopted:** December 18, 2014

**Released:** December 19, 2014

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 Davidson Media Station WREJ Licensee, LLC, Davidson Media Station WVNZ Licensee, LLC, Davidson Media Station WLEE Licensee, LLC, and Davidson Media Station WTOX Licensee, LLC (collectively referred to as the “Licensees” or “Davidson”),<sup>1</sup> licensees of Stations WREJ(AM), Richmond, Virginia; WVNZ(AM), Richmond, Virginia; WLEE(AM), Richmond, Virginia; and WTOX(AM), Glen Allen, Virginia, respectively (the “Stations”), apparently willfully and repeatedly violated the Commission’s equal employment opportunity (“EEO”) rules<sup>2</sup> by failing to comply with the recruitment and self-assessment requirements. Based upon our review of the facts and circumstances before us, we conclude that the Licensees are apparently liable for a monetary forfeiture in the amount of five thousand dollars (\$5,000). To prevent future violations of these requirements, we also impose reporting conditions on the Licensees and any successor licensee of any of the Stations, as well as on the

<sup>1</sup> Davidson Media Station WREJ Licensee, LLC, Davidson Media Station WVNZ Licensee, LLC, Davidson Media Station WLEE Licensee, LLC, and Davidson Media Station WTOX Licensee, LLC are wholly-owned subsidiaries of Davidson Media Virginia Stations, LLC. See FCC File No. BOA-20100706AMW.

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

licensee of any stations that become a part of the above Stations' employment unit during the reporting conditions periods listed below. We also grant the captioned renewal applications for Stations WVNZ(AM), WLEE(AM), and WTOX(AM).

## II. BACKGROUND

2. The Sections of the Rules at issue in this case include the following:
  - Section 73.2080(c)(1) of the Rules requires that a broadcast licensee broadly recruit for every full-time job vacancy in its employment unit operation; 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;

3. We have before us the Licensees' captioned license renewal applications for Stations WREJ(AM), WVNZ(AM), WLEE(AM), and WTOX(AM), and accompanying Broadcast EEO Program Report (Form 396).<sup>3</sup> We reviewed the applications and accompanying EEO public file reports for the Licensees' compliance at the Stations with Section 73.2080 of the Rules. The EEO public file reports cover the reporting periods from June 1, 2009 through May 31, 2010, and June 1, 2010 through May 31, 2011.

## III. DISCUSSION

4. *EEO Review.* Our review reveals that during the reporting period, the Licensees filled six full-time vacancies at its Stations and failed to recruit publicly for three of them, relying solely on walk-ins to fill one vacancy<sup>4</sup> and client/employee referrals to fill two vacancies,<sup>5</sup> in violation of Section 73.2080(c)(1) of the Commission's Rules. Relying only on a licensee's own private contacts, such as employee or client referrals, does not constitute recruitment as contemplated under the Commission's Rules, which require public outreach.<sup>6</sup> In addition, although licensees may interview or hire "walk-in" applicants, relying solely on walk-ins does not constitute a recruitment effort under the Commission's rules.<sup>7</sup>

5. The Licensees failed to recruit publicly for these three vacancies over 18 months of a two-year reporting period. We thus find that the Licensees 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).

6. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Communications Act of 1934,

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<sup>3</sup> See FCC File No. B396-20110601ABA.

<sup>4</sup> The Licensees hired one unrecruited walk-in applicant on August 17, 2009.

<sup>5</sup> The Licensees hired two unrecruited applicants through employee/client referrals on June 8, 2009 and December 6, 2010.

<sup>6</sup> *New Northwest Broadcasters LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, 21 FCC Rcd 10748, 10749 (2006) (forfeiture paid) ("*New Northwest Broadcasters LLC*").

<sup>7</sup> *Id.*

as amended (the “Act”).<sup>8</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>9</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>10</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>11</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>12</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>13</sup>

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 properly recruit for vacancies or to self-assess EEO performance. 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 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>14</sup>

8. Based upon the facts before us, the factors noted above, and pertinent precedent,<sup>15</sup> we propose the following forfeiture amounts for the Licensees’ apparent willful and repeated violations of these Rules: \$4,500 for its violation of Section 73.2080(c)(1) and \$500 for its violation of Section 73.2080(c)(3), for a total proposed forfeiture in the amount of \$5,000.<sup>16</sup>

9. In order to help deter future violations, we also impose reporting conditions. Specifically, Stations WREJ(AM), WVNZ(AM), WLEE(AM), and WTOX(AM), are required to submit to the Bureau’s EEO Staff annual reports for three years starting on July 1, 2015, as specified below, that include the unit’s most recent EEO public file report and dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing each full-time vacancy for the preceding

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<sup>8</sup> 47 U.S.C. § 503(b)(1)(B). *See also* 47 C.F.R. § 1.80(a)(1).

<sup>9</sup> *Id.*

<sup>10</sup> 47 U.S.C. § 312(f)(1).

<sup>11</sup> *See* H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>12</sup> *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>13</sup> 47 U.S.C. § 312(f)(2).

<sup>14</sup> 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.

<sup>15</sup> In *Inland Empire Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd. 2656 (2007) (forfeiture paid), we proposed a \$4,500 forfeiture for a licensee’s violation of Section 73.2080(c)(1) and a \$500 forfeiture for the violation of Section 73.2080(c)(3). The licensee had failed to recruit for four of its 10 full-time vacancies by relying solely on referrals, and accordingly, also failed to self-assess its EEO program.

<sup>16</sup> We do not assess a forfeiture for the violations involving WREJ(AM) because the station’s renewal application was granted on June 17, 2014. *See* File No. BR-20110601ABB; *see also* 47 U.S.C. § 503(b)(6)(A) (Commission is barred from issuing an NAL to broadcast licensees for violations which occurred during the previous license term if the license has already been renewed for the current term.).

reporting year. These conditions should ensure that the Licensees and any successor licensee of any of the Stations maintain 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.

10. *License Renewal Applications.* In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act. That Section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.<sup>17</sup> If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”<sup>18</sup>

11. We find that the Licensees' violations of the Commission's EEO rules discussed above do not constitute “serious violations” of the Rules of such gravity that they warrant designation for evidentiary hearing.<sup>19</sup> We also find no evidence of violations that, when considered together, evidence a pattern of abuse.<sup>20</sup> Further, we find that the Licensees served the public interest, convenience, and necessity with the Stations during their respective license terms. We will therefore grant the above-captioned license renewal applications for WVNZ(AM), WLEE(AM), and WTOX(AM).<sup>21</sup>

#### IV. ORDERING CLAUSES

12. 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 Davidson is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of five thousand dollars (\$5,000) for its apparent willful and repeated violation of Sections 73.2080(c)(1) and 73.2080(c)(3) of the Commission's Rules.

13. 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*, Davidson SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

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<sup>17</sup> 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

<sup>18</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>19</sup> See e.g., *New Northwest Broadcasters LLC*, 21 FCC Rcd at 10751; *Viper Communications*, Memorandum Opinion and Order and Notice of Apparent Liability, 20 FCC Rcd 20254, 20257 (2005).

<sup>20</sup> For example, we do not find here that the Licensees' operation of either of the Stations "was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." See *Heart of the Black Hills Stations*, 32 FCC 2d 196, 198, ¶6 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [its stations] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Heart of the Black Hills Stations*, 32 FCC 2d at 200, ¶11. See also *Center for Study and Application of Black Economic Development*, 6 FCC Rcd 4622 (1991); *Calvary Educational Broadcasting Network, Inc.*, 7 FCC Rcd 4037 (1992).

<sup>21</sup> See 47 U.S.C. § 309(k).

14. 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.

15. 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.

16. The Bureau 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.

17. IT IS FURTHER ORDERED that Davidson and any successor licensee of any or all of Stations WREJ(AM), WVNZ(AM), WLEE(AM), and WTOX(AM), 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 Davidson, containing the following information on July 1, 2015; July 1, 2016; and July 3, 2017, with respect to Stations WREJ(AM), WVNZ(AM), WLEE(AM), and WTOX(AM), and all other stations in their employment unit:

(a) the unit’s most recent EEO public file report and

(b) dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing each full-time vacancy for the preceding reporting year.

18. IT IS FURTHER ORDERED, pursuant to Section 309(k) of the Communications Act of 1934, as amended, that, subject to the above-stated conditions, the renewal applications for Stations WVNZ(AM), WLEE(AM), and WTOX(AM) ARE GRANTED.

19. IT IS FURTHER ORDERED that, pursuant to Section 73.3526(e)(10) of the Commission’s Rules, Davidson shall place a copy of this *NAL* in the public inspection files of Stations WREJ(AM), WVNZ(AM), WLEE(AM), and WTOX(AM).

20. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Davidson Media Station, 1945 J N Pease Place, Suite 101, Charlotte, North Carolina 28262, and to its attorney, Francisco Montero, Esquire, Fletcher Heald & Hildreth, PLC, 1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor, Arlington, Virginia 22209.

**FEDERAL COMMUNICATIONS COMMISSION**

William T. Lake, Chief  
Media Bureau