

In the Matter of )  
 )  
Standards for Assessing )  
Forfeitures for Violations )  
of the Broadcast EEO Rules )

POLICY STATEMENT

Adopted: January 31, 1994 ; Released: February 1, 1994

By the Commission: Commissioner Quello issuing a statement.

I. Introduction

1. In this Policy Statement, we establish non-binding guidelines for assessing forfeitures for violations of the Commission's broadcast Equal Employment Opportunity (EEO) rules.<sup>1</sup>

2. The Commission's broadcast EEO rules and other policies which promote participation by minorities and women in the broadcast industry are vitally important. They further the Commission's goals of promoting diversity of programming on broadcast stations. See NAACP v. FPC, 425 U.S. 662, 670 n. 7 (1975); Metro Broadcasting, Inc. v. FCC, 497 U.S. 547 (1990) (Metro). And, as the Supreme Court has noted, "[s]afeguarding the public's right to receive a diversity of views and information over the airwaves is . . . an integral component of the FCC's mission." Metro, 497 U.S. at 548. We reaffirm our commitment to this bedrock goal underlying our broadcast EEO rules and believe that the Policy Statement we adopt here will further achievement of that goal.

3. In addition to promoting program diversity, our broadcast EEO rules enhance access by minorities and women to increased employment opportunities. Increased employment opportunities are the foundation for increasing opportunities for minorities and women in all facets of the communications industry, including

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<sup>1</sup> See 47 C.F.R. § 73.2080.

participation in ownership.<sup>2</sup> Those who have access to employment opportunities are able to develop experience and expertise that can be put to beneficial use in a variety of communications enterprises, in a variety of ways. Thus, by combating discrimination and other arbitrary barriers to employment, we contribute to the development of the broadcast industry and ultimately promote the further development of the broader communications infrastructure.<sup>3</sup>

## II. Background

4. In 1989, Congress amended the Communications Act of 1934 to increase substantially the maximum dollar amounts of forfeitures the Commission could impose on broadcasters under Section 503(b) of the Act.<sup>4</sup> The Commission's forfeiture rule has been amended to reflect the higher forfeiture amounts. 47 C.F.R. § 1.80(b)(1).

5. On August 1, 1991, in order to assist both the Commission and licensees in adjusting to the statutory increases, the Commission released its Policy Statement, Standards for Assessing Forfeitures (1991 Policy Statement).<sup>5</sup> The 1991 Policy Statement provided general, non-binding guidance regarding the assessment of forfeitures. It established base forfeiture amounts for a wide range of violations. For violations of broadcast EEO rules, the Commission set a base amount of \$12,500. The 1991 Policy Statement also provided that the base forfeiture amount for any violation

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<sup>2</sup> The Commission seeks to promote minority ownership of broadcasting facilities. See Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC 2d 849 (1982); Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979 (1978).

<sup>3</sup> We note, in this regard, that Section 309(j)(4)(C) of the Communications Act of 1934, as amended, directs the Commission to promote economic opportunity in competitive bidding among applicants proposing to use the spectrum "by disseminating licenses among a wide variety of applicants . . . including businesses owned by members of minority groups and women."

<sup>4</sup> Pub. L. No. 239, 101st Cong., 1st Sess., 103 Stat. 2131 (1989) (amending, among other sections, 47 U.S.C. § 503(b)). Amended Section 503(b) provides the Commission with authority to assess forfeitures of up to \$25,000 for each violation or each day of a continuing violation against broadcasters, with a limit on forfeitures for continuing violations involving a single act or failure to act of \$250,000 for broadcasters.

<sup>5</sup> 6 FCC Rcd 4695 (1991), modified in part on recon., 7 FCC Rcd 5339 (1992), petition for review pending sub nom. USTA v. FCC, No. 92-1321 (D.C. Cir. filed July 30, 1992).

could be increased or decreased by applying adjustments to the base amount as relevant to the facts in any particular case. On August 12, 1993, the Commission released its most recent forfeiture guidelines.<sup>6</sup> Among other actions, the 1993 Policy Statement deleted the broadcast EEO violation category and indicated that the Commission would issue a further policy statement on broadcast EEO forfeiture matters at a later date.<sup>7</sup>

### III. Discussion

6. The Policy Statement we adopt here, as set forth in the Appendix, re-establishes the base forfeiture amount for violations of the broadcast EEO rules at \$12,500. It also provides guidance on what situations may generally lead to such a forfeiture. In addition, it describes upward and downward adjustment criteria that may be used to adjust the forfeiture in particular cases. The adjustment guidelines reflect the factors set forth in Section 503(b) of the Act, section 1.80 of our rules and case precedent. See 47 U.S.C. § 503(b)(2)(D); 47 C.F.R. § 1.80(b)(4). All of these factors will not necessarily be relevant in each individual case and other adjustments may also be made as appropriate in particular cases. The Appendix also provides guidance regarding when short-term renewals may be appropriate in particular cases. We believe that these guidelines will assist the Commission and its staff in determining broadcast EEO forfeitures in a generally consistent manner that furthers the public interest while nevertheless ensuring that the Commission and the staff retain the discretion to decide each case based on the specific facts and circumstances at issue. At the same time, we believe these guidelines will give licensees and the public greater guidance regarding which types of forfeitures may result from particular types of EEO violations.

7. Finally, we stress that we do not intend this Policy Statement to limit our flexibility. In particular cases, forfeitures that are higher or lower than those reflected by the guidelines may be imposed. In this regard, what we have said in connection with our prior forfeiture policy statements applies here as well:

[T]he Policy Statement simply describes the general approach the Commission may take in forfeiture cases and is not binding on any licensees or the Commission. The Policy

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<sup>6</sup> 8 FCC Rcd 6215 (1993), petition for review pending sub nom. USTA v. FCC, No. 93-1526 (D.C. Cir. filed August 23, 1993) (1993 Policy Statement).

<sup>7</sup> Id. at n.1. The forfeiture amount for violations of the Commission's cable EEO rules is set at \$500 per day by section 634 of the Act and is addressed in the 1993 Policy Statement.

Statement does not impose any obligations on [licensees] or require the Commission to issue a forfeiture of any particular magnitude -- or any forfeiture at all . . . .

\* \* \* \*

[W]e reiterate that while the Policy Statement may guide us and the staff in particular cases, we do not intend for the Commission or the staff to be bound by it. In addition, both the Commission and the staff intend to apply these guidelines flexibly. In particular, we and the staff remain committed to deciding every forfeiture case on the basis of the specific facts and equities presented in the record of that case.

7 FCC Rcd at 5339 (internal citations omitted).

#### IV. Conclusion

8. Accordingly, IT IS ORDERED that this Policy Statement IS ADOPTED, to be effective upon adoption.

9. The notice and comment and effective date provisions of the Administrative Procedure Act do not apply to this Policy Statement. 5 U.S.C. § 553(b)(A), (d)(2).

**FEDERAL COMMUNICATIONS COMMISSION**

William F. Caton  
Acting Secretary

## Appendix

Failure to recruit so as to attract an adequate pool of minority/female applicants or hires for at least 66% of all vacancies during the license term being reviewed

\$12,500 base forfeiture  
(accompanied by reporting conditions)

(Evidence of this violation will include (1) inadequate record-keeping and/or (2) inadequate self-assessment throughout the license term)

### Upward Adjustment Criteria

#### I. Egregious Misconduct

A. Failure to recruit so as to attract an adequate pool of minority/female applicants or hires for at least 33% of all vacancies reported for the license term being reviewed. Efforts are evaluated both for the station's staff overall and for upper four job categories.

\$ 6,250 upward adjustment

(EEO programs achieving only this level of compliance will warrant a short-term renewal, irrespective of whether other upward adjustments for "egregiousness" factors are present, if the percentage of vacancies for which the licensee failed to recruit, or the percentage of pools containing minorities, falls below 33% and other factors— e.g., use and productivity of recruiting sources, use and productivity of minority-specific sources; evidence of self-assessment— are absent or particularly inadequate)

B. Large number of hiring opportunities that did not translate into an adequate pool of minority/female applicants or employees hired.

-- "Large number" means hiring opportunities equal to at least the average number of employees on the full-time staff, with a minimum of 25 hiring opportunities

\$ 6,250 upward adjustment  
(Base plus 50%)

-- "Substantial number" means hiring opportunities equal to three times the number of full-time staff, with a minimum of 25 hiring opportunities

Additional upward adjustment  
of 50-90% of base

C. Large pool of minorities/women in the relevant labor force did not translate into an adequate pool of applicants minority/women or employees hired

Analysis will focus on (1) the overall percentage of minorities in the relevant labor force and (2) the presence of a single minority group constituting a significant percentage of that labor force.

-- If a licensee has a relevant labor pool of at least 20 percent minorities or a single minority group constitutes at least 10 percent of the labor force  
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\$ 6,250 to \$11,250 upward adjustment  
(base plus 50-90%)

**Short term renewals:** Short term renewals will be assessed if (A), (B) or (C) are applied in any combination of two or more upward adjustments. In addition, short term renewals also will be warranted where the specific criteria set forth in (A) above are present. The presence of the mitigating factors described in Section II below are grounds for not issuing short term renewals.

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|----|---|--|
| D. | Prior EEO violations that resulted in previous sanction or remedy | <ul style="list-style-type: none"> <li>- If reporting conditions were previously imposed, the licensee receives reporting conditions and the base forfeiture plus a 90% upward adjustment in addition to any other upward adjustments warranted by these guidelines (including short-term renewal)</li> <li>- If reporting conditions plus a forfeiture were previously imposed, the licensee receives reporting conditions, the base forfeiture plus a 90% upward adjustment, any other upward adjustments warranted by these guidelines, and a short-term renewal</li> <li>- If previous sanction and remedies included a short-term renewal, the renewal will be designated for hearing and possible forfeiture of \$250,000</li> </ul> |
| E. | EEO violations with respect to both minorities and women          | \$11,250 upward adjustment and a short-term renewal  |

**Downward Adjustment Criteria**

II. Actual Hiring Experience

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|----|--|--|
| A. | Minority hiring represents 50% of the minority profile of the relevant labor force <u>for both overall employment and upper four employment</u>  | \$ 6,250 downward adjustment   |
|    | or   |  |
| B. | Minority hiring represents 100% of the minority profile of the relevant labor force <u>for both overall employment and upper four employment</u> | \$ 6,250 downward adjustment and presumptive removal of short-term renewal. Evidence indicating the substantial absence of an EEO program will rebut the presumption of removal. |

III. Employment Profile

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|----|---|------------------------------|
| C. | Minority employment represents 50% of the minority profile of the relevant labor force <u>for both overall employment and upper four employment</u> | \$ 6,250 downward adjustment |
|    | or  |                              |

D. Minority employment represents 100% of the minority profile of the relevant labor force <u>for both overall employment and upper four employment</u>	\$ 6,250 downward adjustment and presumptive non-issuance of short-term renewal. Evidence indicating the complete absence of an EEO program will rebut the presumption of removal.
III(C) and III(D) apply if the employment profile meets the guidelines in 4 of 5 years for a television renewal and 6 of 7 years for a radio renewal. Where less than a full term exists, the employment profile must meet the guidelines for a majority of the years reported	
IV. Employment Profile <u>and</u> Hiring Experience	If II(B) <u>and</u> III(D) apply, a short-term renewal would not be imposed.
V. Few Hiring Opportunities	\$ 6,250 downward adjustment
A. 5 or fewer hiring opportunities across the entire license term	\$ 6,250 downward adjustment
B. 10 or fewer hiring opportunities across the entire license term if the average full-time staff during the entire term exceeds 50 employees	\$ 6,250 downward adjustment (Either (A) or (B) will apply, but not both)
VI. Low Percentage of Minorities in Relevant Population	\$ 6,250 downward adjustment and possible non-issuance of short-term renewal depending upon staff balancing of factors (number and productivity of sources contacted, number and productivity of minority-specific sources, extent to which licensee demonstrated severe shortfall in recruitment)
Minorities constitute less than 6% of the relevant labor force	
VII. Inability to Pay (if raised and demonstrated by the licensee)	Varies
VIII. Stand-alone station in markets 200 and above as reflected in the annual Abitron population rankings.	\$ 6,250 downward adjustment

## Separate Statement of Commissioner James H. Quello

### In the Matter of Standards for Assessing Forfeitures for Violations of the Broadcast EEO Rules

The Commission today has voted an item that will prove to be a turning point in the enforcement of our EEO rules. This Policy Statement sets forth guidelines for assessing forfeitures for violations of the Commission's EEO rules. 47 C.F.R. 73.2080. As reflected in the statement, the base amount for a forfeiture will be \$12,500, an amount that can be increased or decreased depending on the facts of a given case. These higher forfeitures are a direct result of the increases in forfeiture amounts imposed by Congress. The guidelines are designed to ensure that these new, higher forfeitures are assessed in a reasoned, consistent manner. For this reason, and because I strongly support vigorous enforcement of our EEO rules, I have voted in favor of this item.

However, at the same time, I am concerned that the Commission may be entering the era of the telecommunications superhighway wielding a club, rather than offering a hand, to broadcasters making their way down the road. At the dawn of this new era, we are imposing fines against 22 of 24 radio stations whose EEO records were reviewed, in amounts ranging from \$18,750 to \$37,500. Short term renewals are assessed against 21 of the 22 stations receiving forfeitures. Radio broadcasters will be "contributing" a total of \$325,000 to the Federal Treasury as a result of our actions today. I am troubled by the amount of these forfeitures and the increased use of the short term renewal as a sanction. Yet, I recognize that, at least with respect to the increased forfeiture amounts, Congress increased our forfeiture authority.

I would have much preferred an approach that would have served three compelling goals: (1) ensuring compliance with our EEO rules by imposing meaningful sanctions; (2) imposing these sanctions in such a way so as not to cripple broadcasters in their travels along the information superhighway; and (3) directly furthering the underlying public interest purpose of the EEO rule -- the increased hiring and promotion of minorities and women in the broadcast industry. Specifically, if we had the legal authority to do so, I would have voted for a program that would have allowed monies received as a result of violations or alleged violations of our EEO or other rules to be placed into a fund and not into the Federal Treasury. Funds received for EEO violations would be used for training, educating, and providing placement services for minorities and women interested in a career in broadcast. What better use for the \$325,000 in forfeitures imposed for violations of the EEO rules today than for the very purpose underlying the rule?