

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

In re Application of

Act III Broadcasting of
Nashville, Inc.

File No. BRCT-910730KJ

For Renewal of License for
Station WNRW-TV
Winston-Salem, North Carolina

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

Adopted: October 30, 1995; Released: November 6, 1995

By the Commission:

I. INTRODUCTION

1. The Commission has before it for consideration: (i) a license renewal application for the above-captioned station; (ii) a Petition to Deny timely filed on November 1, 1991, by the North Carolina State Conference of Branches of the National Association for the Advancement of Colored People ("NAACP"); (iii) an opposition by the licensee; (iv) the licensee's response to a staff letter of inquiry; and (v) a Joint Request for Approval of Settlement Agreement between the parties, filed on December 27, 1991.

II. BACKGROUND

2. *Settlement Agreement.* The Joint Request for Approval of Settlement Agreement seeks approval of the agreement, dismissal of the petition to deny, and grant of the station's license renewal.¹ We have reviewed the settlement agreement pursuant to 47 C.F.R. § 73.3588 and *Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process*, 4 FCC Rcd 4780 (1989). We find that the settlement agreement complies with the Commission's

Rules and policies and, therefore, the petition to deny is dismissed. As is our practice in all such cases, however, we reviewed the station's Equal Employment Opportunity (EEO) program and performance. See Section 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 309; see also *Hilton Head Television, Inc.*, 10 FCC Rcd 1679 (1995); *WHYW Associates, L.P.*, 10 FCC Rcd 2093 (1995). We find that the licensee did not keep adequate recruitment records and failed to self assess its program until the end of its license term. The licensee claims to have recruited for all 29 of its full-time vacancies, but was unable to provide recruitment data for 15 of its vacancies (51.7%) during the inquiry period. We find, however, no evidence of employment discrimination. Thus, grant of the renewal application will serve the public interest. 47 U.S.C. § 309(d)(2); *Astroline Communications Co. v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) (*Astroline*). Accordingly, we will grant renewal with appropriate remedies and sanctions for deficiencies in WNRW-TV's EEO program.

III. DISCUSSION

3. Section 73.2080 of the Commission's Rules, 47 C.F.R. § 73.2080, requires that a broadcast licensee refrain from employment discrimination and establish and maintain an EEO program reflecting positive and continuing efforts to recruit, employ and promote qualified women and minorities. When evaluating EEO performance, the Commission focuses on the licensee's efforts to recruit, employ and promote qualified minorities and women and the licensee's ongoing assessment of its EEO efforts. Such an assessment enables the licensee to take corrective action if qualified minorities and women are not present in the applicant pool. The Commission also focuses on any evidence of discrimination by the licensee. See 47 U.S.C. § 73.2080 (a), (b) and (c).

4. In response to a staff letter of inquiry requesting recruitment efforts data, the licensee admitted that its records were incomplete or unavailable. The licensee was unable to provide the race or national origin for any of its 216 full-time applicants. Likewise, the licensee was unable to provide the "race or national origin of its interviewees. To ensure that better recruitment records are kept in the future, WNRW-TV implemented a new record keeping system in 1992.

5. Review of the licensee's renewal application, inquiry response, and opposition reveals 29 full-time hires, including 19 upper-level hires, during the period July 31, 1988, through July 31, 1991.² The licensee's records, submitted

¹ The NAACP contended that the licensee failed to maintain issues/programs lists for 1987, 1988 and the first quarter of 1989. The NAACP stated that the licensee even acknowledged in its renewal application that its issues/programs lists for the remainder of 1989 and 1990 were inadequate. We have reviewed these allegations and found that there are no substantial or material questions of fact warranting designation for hearing. The grant of renewal here is without prejudice to whatever further action, if any, the Commission may deem appropriate in light of WNRW-TV's alleged issues/programs lists violations.

² The current license term ended on December 1, 1991. The Winston-Salem, NC, Metropolitan Statistical Area, in which the station is located, has a 45.3% female and 17.8% minority labor force (16.8% Black, 0.6% Hispanic, 0.2% Asian/Pacific Islander, 0.2% American Indian). In the 1987 Annual Employment Report, 12 females (40.0%), five Blacks (16.7%) and one Hispanic

(3.3%) are listed among 30 full-time employees and eight females (32.0%), three Blacks (12.0%) and one Hispanic (4.0%) are among 25 upper-level employees. In the 1988 report, 17 females (47.2%), six Blacks (16.7%) and one Hispanic (2.8%) are listed among 36 full-time employees and nine females (36.0%), four Blacks (16.0%) and one Hispanic (4.0%) are among 25 upper-level employees. The 1989 report lists 17 females (48.6%) and three Blacks (8.6%) among 35 full-time employees and eight females (32.0%) and one Black (4.0%) among 25 upper-level employees. In the 1990 report, 18 females (48.6%) and four Blacks (10.8%) were listed among 37 full-time employees and 10 females (38.5%) and two Blacks (7.7%) were among 26 upper-level employees. The 1991 report lists 17 females (47.2%) and six Blacks (16.2%) among 37 full-time employees and eight females (30.8%) and two Blacks (7.7%) among 26 upper-level employees.

with its inquiry response, reveal recruitment data for 14 of its 29 full-time positions. It appears that WNRW-TV used five minority specific recruitment sources, seven general recruitment sources and 12 educational institutions as recruitment sources during the inquiry period. However, in its renewal application, the licensee was unable to provide any data regarding the number of minority referrals from the above referenced recruitment sources.

6. The licensee received 216 applicants for 29 full-time positions and 90 applicants for 19 upper-level positions. Of the 216 applicants, the licensee received 81 applicants from five general recruitment sources. However, the licensee was unable to provide the referral sources for the other 135 applicants. The licensee reported that it interviewed 8 minorities (4.8%) among 54 interviewees, including three minorities (7.8%) out of 38 upper-level interviewees. Minorities were included in four interview pools overall (13.7%) and one upper-level interview pool (5.2%). Two minority interviewees came from employee referrals and one minority interviewee was unsolicited. The licensee, however, was unable to provide the referral source for five minority interviewees. Four Blacks were hired overall (13.7%), one of which was hired for an upper-level position (5.2%).

7. Although there are deficiencies in recruitment, record-keeping and self-assessment, we find no substantial and material questions of fact to warrant designation for hearing. *See Astroline*. WNRW-TV consistently hired minorities. Thus, we find no evidence of employment discrimination. Accordingly, renewal of the license is appropriate.

8. We find, however, that WNRW-TV's overall recruitment efforts were deficient. The licensee could not document recruitment activity for 15 of its 29 overall and 10 of its 19 upper-level full-time positions.³ Moreover, the licensee was unable to provide data regarding the race or national origin of any of its applicants. Likewise, the licensee did not keep sufficient data regarding the race or national origin of its interviewees. Furthermore, WNRW-TV neglected to track the number of minority referrals received from its sources which would have shown the success of its recruitment contacts. Consequently, the licensee was unable to conduct meaningful self-assessment of its EEO program as required by our Rule. *See* 47 C.F.R. § 73.2080.

9. We believe that the record in the instant case is similar to that of the licensee of WSPA/WSPA-FM, Spartanburg, South Carolina, in *Applications of Certain Broadcast Stations Serving Communities in the State of South Carolina*, 5 FCC Rcd 1704 (1990). The licensee's recruitment efforts included local newspapers, five local colleges, the South Carolina state employment service, contacts with local minority leaders and various other persons involved in broadcasting. In the licensee's 1988 renewal application, WSPA/WSPA-FM reported 29 full-time employees, three of whom were minorities (10.3%), and 24 upper-level employees, two of whom were minorities (8.3%). WSPA/WSPA-FM indicated that out of the 12 hires during the reporting period only one minority (Black) was hired (8.3%). Moreover, recruitment information sent by WSPA/WSPA-FM, covering an additional period of ap-

proximately two years, indicates "few, if any black applicants." Further, the licensee did not keep adequate records and was unable to indicate how many of its referrals were minorities. Additionally, the licensee did not indicate the total number of interviewees. Minorities constituted 16.0% of the labor force in the Spartanburg, South Carolina MSA, of which 14.8% were Black. In that case, we concluded that WSPA/WSPA-FM's efforts were inadequate because the licensee did not conduct meaningful self-assessment of its EEO program until the end of its license term. The Commission issued a \$5,000 Notice of Apparent Liability for Forfeiture and imposed reporting conditions.

10. WSPA/WSPA-FM, although issued in 1990, was decided based on a former forfeiture authority. Previously, the forfeiture penalty assessed against a broadcaster could "not exceed \$2,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation could not exceed a total of \$20,000." In 1989, Congress substantially increased the dollar amounts of our forfeiture authority. Pub. L. No. 101-239, 103 Stat. 2131. Pursuant to Section 503(b)(2), the forfeiture penalty assessed against a broadcaster may "not exceed \$25,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$250,000 for any single act or failure to act."

11. The record here indicates that the licensee of WNRW-TV claims to have contacted a variety of general and minority specific recruitment sources for all 29 of its full-time vacancies. However, the licensee was unable to provide any recruitment data for 15 of its 29 full-time job openings. The licensee could not provide recruitment sources for 135 of its 216 applicants and could only substantiate the use of five general recruitment sources for any of its remaining applicants. The licensee was unable to provide data regarding the race or national origin of any of its applicants. Likewise, the licensee did not keep sufficient data regarding the race or national origin of its interviewees. The licensee did not keep adequate applicant or interviewee data and therefore was unable to conduct meaningful self assessment of its EEO program as required by our Rule. Indeed, the licensee's records indicated that not a single minority referral came from its five minority specific sources, a fact which further evidences the licensee's failure to self-assess.

12. Given the facts of this case, broadcasters' familiarity with our long standing EEO rule, as well as our expanded forfeiture authority in this area, we feel that the circumstances in this case justify the issuance of a Notice of Apparent Liability for \$15,000. Accordingly, we will grant renewal subject to reporting conditions and issue a Notice of Apparent Liability for \$15,000.

³ The licensee is reminded that under our EEO Rule, 47 C.F.R. § 73.2080, it has an obligation to recruit for females and minorities for each vacancy. To the extent that a licensee fails to do so, female, as well as minority, recruitment is affected.

IV. CONCLUSION

13. Upon review of the record and the arguments submitted by all parties, we find that a hearing is not warranted and that renewal of the license is appropriate. However, we will grant the renewal subject to reporting conditions and issue a Notice of Apparent Liability for \$15,000.

V. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that the Joint Request for Approval of Settlement Agreement filed by the NAACP and Act III Broadcasting of Nashville, Inc., IS GRANTED and the settlement agreement IS APPROVED.

15. IT IS FURTHER ORDERED, that the Petition to Deny filed by the North Carolina State Conferences of Branches of the NAACP against the renewal application of WNRW-TV IS DISMISSED.

16. IT IS FURTHER ORDERED that the license renewal application filed by Act III Broadcasting of Nashville, Inc. for Station WNRW-TV IS GRANTED subject to reporting conditions specified herein, and pursuant to Section 503 of the Communications Act of 1934, as amended, 47 U.S.C. § 503, a NOTICE OF APPARENT LIABILITY FOR FORFEITURE in the amount of \$15,000.

17. IT IS FURTHER ORDERED, that the licensee of Station WNRW-TV, submit to the Commission an original and one copy of the following information on August 1, 1996:

(a) For the report, please make two lists divided by full-time and part-time job vacancies during the twelve months preceding the reporting date, indicating the job title and FCC job category, date of hire, the race or national origin, sex, and the referral source of each applicant for each job, and the race or national origin and sex of the person hired. The list should also note which recruitment sources were contacted;⁴

(b) A list of all employees as of the July 1, 1996, payroll period, by job title and FCC job category, indicating full-time or part-time status (ranked from highest paid classification), date of hire, sex, and race or national origin; and

(c) Details concerning the station's efforts to recruit minorities for each position filled during the 12-month period specified, including identification of sources used and indicating whether any of the applicants declined actual offers of employment. In addition, the licensee may submit any information it believes relevant regarding the station's EEO performance and its efforts thereunder.

18. IT IS FURTHER ORDERED, that the Mass Media Bureau send by Certified Mail -- Return Receipt Requested -- copies of this Memorandum Opinion and Order to all parties.

19. The reports are to be filed with the Acting Secretary of the Commission for the attention of the Mass Media Bureau's EEO Branch.

20. Should the parties have any questions regarding this action or require further information concerning employment reports, they may call the Mass Media Bureau's EEO Branch at (202) 418-1450. With respect to the forfeiture proceeding, the licensee may take any of the actions set forth in Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, as summarized in the attachment to this Order. Any comments concerning the ability to pay should include those financial items set forth in the attachment.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

⁴ Such a list might start:

1) News Director: Officials and Managers; Full-time.

3 Applicants:

1 White female A.W.R.T

1 Hispanic male National Hispanic Media Coalition

1 Black female Urban league

Sources contacted - Local newspaper, A.W.R.T., National Hispanic Media Coalition and Urban League

Selected - Black female, Urban League, (10/12/95)