

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

In re Applications of)	
)	
Progressive United Corporation)	File Nos. BRH-960119WC
)	BR-960119WD
)	BRH-960119WB
)	
For Renewal of License For)	
Stations KVKI-FM, KEEL(AM)/KITT(FM))	
Shreveport, Louisiana)	

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

Adopted: December 16, 1996;

Released: December 27, 1996

By the Commission:

1. The Commission has before it for consideration: (i) license renewal applications for KVKI-FM, KEEL(AM)/KITT(FM), Shreveport, Louisiana;¹ and (ii) the licensee's responses to Commission inquiries.

2. Review of the stations' renewal applications, annual employment reports, and inquiry responses leads us to conclude that there are no substantial and material questions of fact warranting designation for hearing. Further, we find no evidence of employment discrimination. Grant of the applications is consistent with Section 309(k) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(k). Thus, because the licensee is otherwise qualified, grant of the applications will serve the public interest. 47 U.S.C. §309(d)(2). However, for the reasons discussed below, we will grant renewal for a short term subject to reporting conditions and a Notice of Apparent Liability for forfeiture in the amount of \$30,000.

3. Section 73.2080 of the Commission's Rules requires that a broadcast licensee refrain from employment discrimination and establish and maintain an EEO program that reflects positive and continuing efforts to recruit and promote qualified women and minorities. When evaluating EEO performance, the Commission focuses on the licensee's efforts to recruit and promote qualified minorities and women and the licensee's ongoing assessment of its EEO

¹ The license term for these stations expired June 1, 1996.

efforts. Such an assessment enables the licensee to take corrective action if qualified women and minorities are not present in the applicant pools. The Commission also focuses on any evidence of discrimination by the licensee. See Sections 73.2080 (a), (b), and (c) of the Commission's Rules, 47 C.F.R. §§ 73.2080 (a), (b), and (c).²

4. Review of the licensee's renewal applications for stations KVKI-FM, KEEL(AM)/KITT(FM), which are commonly operated, and inquiry responses reveals that the licensee had 19 full-time hires, including 14 for upper-level positions, from June 1, 1993, to June 1, 1996.³ The licensee indicates that, prior to its acquisition of KEEL(AM)/KITT(FM) on February 1, 1994, its "recruiting efforts were strictly word of mouth recruiting efforts of then existing employees." It made general contacts with various sources during the remainder of the period under review, including one minority source, and added an additional six minority sources to its recruitment list four months prior to the end of its license term, in February 1996. In the recruitment letters, dated during the period under review and attached to one of its inquiry responses, the licensee states only that the stations "are actively seeking employees on an ongoing basis" and fails to refer to any specific job openings. Accordingly, the licensee does not appear to have specifically recruited for any of its vacancies. The licensee reports that minorities were in five applicant and interview pools (26.3%) for the 19 overall positions and no applicant or interview pools for the 14 upper-level positions. Three minorities were among 26 applicants and

² 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 licensees fail to do so, female, as well as minority recruitment is affected.

³ According to 1980 Census data, the Shreveport, Louisiana Metropolitan Statistical Area (MSA), in which the stations are located, had a 45.0% female and 30.6% minority labor force (28.6% Black, 1.4% Hispanic, .6% Other). The present licensee took control of KVKI(AM)/KVKI-FM on October 1, 1990. The stations' 1991 Annual Employment Report lists eight females (47.1%) and three minorities [two Blacks (11.8%) and one Asian/Pacific Islander (5.9%)] on an overall staff of 17, and seven females (46.7%) and three minorities [two Blacks (13.3%) and one Asian/Pacific Islander (6.7%)] on an upper-level staff of 15. In 1992, the stations employed four females (30.8%) and four minorities [three Blacks (23.1%) and one Asian/Pacific Islander (7.7%)] on an overall staff of 13 and three females (27.3%) and three minorities [two Blacks (18.2%) and one Asian Pacific Islander (9.1%)] on an upper-level staff of 11.

The Commission uses 1990 labor force statistics for license renewal applications filed after May 31, 1993, and for 1993 Annual Employment Reports. See Public Notice # 32651 (April 12, 1993). According to 1990 Census data, the Shreveport, Louisiana MSA includes 48.3% females and 31.5% minorities (29.3% Black, 1.3% Hispanic, and .9% Other). The stations' 1993 Report lists four females (30.8%) and three Blacks (23.1%) on an overall staff of 13 and two females (22.2%) and one Black (11.1%) on an upper-level staff of 9. On May 14, 1993, the Commission granted the licensee's request to cancel its authority to operate KVKI(AM). The licensee took control of KEEL(AM)/KITT(FM), which are commonly operated with KVKI-FM, on February 1, 1994. The stations' 1994 Report lists 16 females (43.2%) and eight Blacks (21.6%) on an overall staff of 37 and 13 females (39.4%) and five Blacks (15.2%) on an upper-level staff of 33. The stations' 1995 Report lists 18 females (45.0%) and ten minorities [nine Blacks (22.5%) and one Hispanic (2.5%)] on an overall staff of 40 and 12 females (35.3%) and six minorities [five Blacks (14.7%) and one Hispanic (2.9%)] on an upper-level staff of 34. In 1996, the stations reported 13 females (40.6%) and seven Blacks (21.9%) on an overall staff of 32 and ten females (35.7%) and five Blacks (17.9%) on an upper-level staff of 28.

among 19 interviewees for the 19 positions.⁴ Fourteen (54%) of the applicants and interviewees, including three minorities, were referred by word of mouth. Five additional applicants and interviewees were referred by a newspaper. The six remaining applicants, whose gender and race or ethnic origin were unknown, were referred by a college or a university. The licensee drew on only two applicant pools to fill 13 of its vacancies despite the fact that no minorities were in these pools. In addition, the licensee continued to draw applicants from these pools to fill vacancies for over a year and a half. The licensee reports that it hired two Blacks and one Hispanic for lower-level positions. The licensee states in its June 5, 1996, inquiry response that it has "centralized responsibility for implementation of [its] EEO program in a single individual to seek to insure that EEO outreach is conducted every time there is a new hire, so that situations in which a person is hired without conducting EEO outreach will be minimized and hopefully eliminated entirely."

5. There is no evidence that the licensee engaged in employment discrimination. The licensee interviewed and hired minorities during the review period. Moreover, KVKI-FM, KEEL(AM)/KITT(FM)'s record does not present a substantial and material question of fact warranting a hearing. Therefore, finding the licensee to be otherwise qualified, renewal of the licenses is appropriate. However, for the reasons discussed herein, we will grant renewal with appropriate remedies and sanctions.

6. We find the licensee's recruitment efforts to be deficient because it failed to recruit actively for any of its 19 vacancies and, despite the presence of minorities in only five of 19 overall applicant and interview pools (26.3%) and in none of its 14 upper-level applicant and interview pools, failed to engage in meaningful self-assessment of its EEO program by making significant changes in its recruitment efforts. 47 C.F.R. § 73.2080.

7. In determining a forfeiture, we look to case precedent, taking into consideration the relevant statutory factors in Section 503(b)(2) of the Communications Act, including the nature, circumstances, extent and gravity of the violations, and a licensee's record of compliance with our rules. In our evaluation, we consider the station's size, number of hiring opportunities, minority labor force, recruitment patterns, applicant and interview pools, assessment and record-keeping. *E. g.*, Stauffer Communications, Inc., 10 FCC Rcd 5060, 5061 (1995).

8. After carefully reviewing the facts, we find that the record in the instant case is similar to but more egregious than that of WAXQ(FM), New York, New York, in Application of GAF Broadcasting, Inc., 10 FCC Rcd 10760 (1995). WAXQ(FM) failed to recruit actively for a substantial number (16) of its 23 vacancies, and it included minority applicants in only nine of its overall applicant pools and only one of its upper-level applicant pools despite being located in an area with a significant minority labor force (37.8%). The licensee also failed to maintain adequate records for meaningful self-assessment. We renewed the license of WAXQ(FM) subject

⁴ The licensee indicated that the gender and race or ethnic origin of six of the applicants were unknown.

to reporting conditions and issued a Notice of Apparent Liability for \$30,000.⁵

9. Both KVKI-FM, KEEL(AM)/KITT(FM) and WAXQ(FM) failed to include minority applicants in a majority of their applicant pools (73.9% and 60.9%, respectively) despite having a large number of hiring opportunities and being located in areas with significant minority labor forces. Both licensees also failed to successfully recruit minority applicants for upper-level positions. Specifically, WAXQ(FM) recruited minorities for only one of its 15 upper-level applicant pools and KVKI-FM, KEEL(AM)/KITT(FM) recruited minorities for none of their 14 upper-level applicant pools. The licensee of WAXQ(FM) failed to keep complete records of its EEO efforts, necessary for meaningful self-assessment, whereas the licensee in this case kept complete records of its EEO efforts. However, there is little evidence that the licensee in the instant case reviewed the information that it recorded to self-assess its EEO program meaningfully. As previously stated, the licensee herein used two applicant pools with no minority applicants to fill 13 vacancies over a substantial period of time, and failed to recruit specifically for any of its 19 vacancies despite having minorities in few of its overall applicant pools and none of its upper-level applicant pools. KVKI-FM, KEEL(AM)/KITT(FM)'s record is more egregious than that of WAXQ(FM) because the stations failed to specifically recruit for any vacancies while WAXQ(FM) did recruit for seven out of 23 vacancies. KVKI-FM, KEEL(AM)/KITT(FM)'s lack of any specific recruitment or meaningful self-assessment of their recruitment efforts warrants a short term renewal. Given the facts of this case and broadcasters' familiarity with our long-standing EEO rule, we conclude that a Notice of Apparent Liability for \$30,000 and short term renewal is justified. Further, we impose reporting conditions to monitor the licensee's prospective recruitment and recordkeeping measures. Accordingly, finding the licensee to be otherwise qualified, we will grant renewal for a short term, subject to reporting conditions, and issue a Notice of Apparent Liability for \$30,000.

10. Accordingly, **IT IS ORDERED** that the license renewal applications for Stations KVKI-FM, KEEL(AM)/KITT(FM) **ARE GRANTED FOR A SHORT TERM** ending June 1, 2000, subject to the 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 \$30,000.

11. **IT IS FURTHER ORDERED** that the licensee of Stations KVKI-FM, KEEL(AM)/KITT(FM) submit to the Commission an original and one copy of the following information on February 1, 1998, February 1, 1999, and February 1, 2000:

- (a) Two lists divided by full-time and part-time vacancies during the 12 months preceding January 1, 1998, for the first report, January 1, 1999, for the second report, and January 1, 2000, for the third report, indicating the job title and FCC job category of the position, the date of hire, the race or national origin, sex and

⁵ We note that the station in Application of Hilton Head Television, Inc., 10 FCC Rcd 1676 (1995), similarly failed to comply with the EEO Rule, resulting in the imposition of a short-term renewal and a \$27,500 forfeiture.

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;⁶

- (b) A list of employees as of the January 1, 1998, payroll period for the first report, January 1, 1999, payroll period for the second report, and January 1, 2000, payroll period for the third report, 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 licensee's efforts to recruit minorities and women for each position filled during the 12 months preceding January 1, 1998, for the first report, January 1, 1999, for the second report, and January 1, 2000, for the third report, including identification of sources used and indicating whether any of the applicants declined actual offers of employment. In addition, the licensee may submit any relevant information with regard to the stations' EEO performance and efforts thereunder.

12. **IT IS FURTHER ORDERED** that the Mass Media Bureau send by Certified Mail -- Return Receipt Requested -- a copy of this Memorandum Opinion and Order and Notice of Apparent Liability to Progressive United Corporation.

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

14. 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

⁶ 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: Hispanic male (08/18/97); NHMC