

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

In the Matter of)	
)	
Fidelity Cablevision, Inc.)	NAL/Acct. No. 201641420018
Lawton, Oklahoma)	FRN: 0000013326
)	Employment Unit I.D. No. 1575

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 8, 2016

Released: August 8, 2016

By the Chief, Media Bureau:

I. INTRODUCTION

1. We propose a penalty of eleven thousand dollars (\$11,000) against Fidelity Cablevision, Inc. (Fidelity Cablevision), operator of Employment Unit 1575, Lawton, Oklahoma (the Fidelity Cablevision Unit or Unit), for apparently violating the Commission's equal employment opportunity (EEO) rules. Specifically, we find that the Unit apparently willfully and repeatedly failed to comply with the Commission's recruitment and self-assessment requirements.¹ To prevent future violations of these requirements, we also impose reporting conditions on the Unit and any successor owner of the Unit. In addition, we adjudge the Unit not certified for compliance with our EEO rules for the year 2015.

II. BACKGROUND

2. Section 76.75(b)(1)(i) of the Commission's rules requires multichannel video programming distributor (MVPD) employment units to use recruitment sources for each vacancy in a manner sufficient, in their reasonable, good faith judgment, to "widely disseminate information concerning the vacancy."² While the Commission does not require the use of a specific number of recruitment sources, if a source or sources cannot reasonably be expected, collectively, to reach the entire community, a unit will be found in noncompliance with this rule.³ In addition, Section 76.75(f) of our rules requires a unit to "analyze its recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach, and address any problems found as a result of its analysis."⁴

3. The Media Bureau (Bureau) audited the Fidelity Cablevision Unit for its compliance with

¹ 47 C.F.R. §§ 76.75(b)(1)(i) and 76.75(f). Section 76.75(b)(1)(i) requires that an MVPD employment unit use recruitment sources for each vacancy in a manner sufficient, in its reasonable, good faith judgment, to widely disseminate information concerning the vacancy. Section 76.75(f) requires that an MVPD unit analyze its recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach, and address any problems found as a result of its analysis.

² 47 CFR § 76.75(b)(1)(i).

³ See *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, MM Docket No. 98-204, *Second Report and Order and Third Notice of Proposed Rulemaking*, 17 FCC Rcd 24018, 24047, para. 86 (2002), *recon. pending (Second Report and Order)*.

⁴ See 47 C.F.R. § 76.75(f).

the Commission's MVPD EEO rules in 2015.⁵ The Unit submitted its response on November 24, 2015, for the reporting period of September 1, 2014 through August 31, 2015.⁶ The Unit submitted a further response on July 8, 2016.⁷

III. DISCUSSION

4. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁸ 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.⁹ The legislative history of Section 312(f)(1) clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹⁰ and the Commission has so interpreted the term in the Section 503(b) context.¹¹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹² The term "repeated" means the commission or omission of such act more than once or more than one day.¹³

A. EEO Rule Violations

5. We find that, during the reporting period investigated, the Unit failed to recruit widely for 13 full-time vacancies in apparent violation of Section 76.75(b)(1)(i). Specifically, the Unit filled a total of nine full-time vacancies using referrals from existing employees and walk-in applicants on the following dates: September 2, 2014, October 6, 2014, October 28, 2014, December 2, 2014, January 27,

⁵ Letter from Lewis Pulley, Assistant Chief, Policy Division, FCC Media Bureau, to Fidelity Cablevision, Inc. (October 9, 2015).

⁶ Letter from Kathy Ruwwe, Director of Human Resources, Fidelity Communications, to EEO Staff, Policy Division, FCC Media Bureau (November 24, 2015).

⁷ Letter from Jason Ross, General Counsel and Vice President - Legal, Fidelity Communications, to EEO Staff, Policy Division, FCC Media Bureau (July 8, 2016) (Ross Letter).

⁸ 47 U.S.C. § 503(b).

⁹ 47 U.S.C. § 312(f)(1).

¹⁰ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in Section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission's application of those terms").

¹¹ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹² See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator's repeated signal leakage).

¹³ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) 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." See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, para. 9.

2015, February 9, 2015, March 16, 2015 (two vacancies), and March 26, 2015. The Unit hired another employee on July 20, 2015, using an unspecified referral. In addition, it hired two employees on October 28, 2014 and December 22, 2014, respectively, using applications on file from walk-in applicants. Finally, it hired an employee on August 24, 2015, based on a combination of walk-ins, internal postings, and Internet websites.¹⁴

6. None of the procedures the Unit used to fill these positions appears to satisfy the Commission's rules. While it is permissible for a unit to interview or hire a "walk-in" applicant, walk-ins do not constitute a recruitment effort under the Commission's rules.¹⁵ Similarly, relying only on a unit's own private contacts, such as employee referrals, does not constitute recruitment as contemplated under the Commission's rules, which require public outreach.¹⁶ Internal postings do not result in sufficient public outreach to inform job seekers who are unconnected to Unit staff that positions at the Unit are available.¹⁷ Further, the Commission has made clear that recruiting solely from Internet sources does not satisfy the requirement to widely disseminate information concerning vacancies.¹⁸

7. Because of the Unit's ongoing failure to widely recruit, we find that it was not possible for the Unit to have adequately analyzed its recruitment program on an ongoing basis to ensure that it was effective in achieving broad outreach or addressing any problems found as a result of this analysis, in apparent violation of Section 76.75(f).¹⁹ Although the Unit states that it "strongly believe(s)" that its "general outreach initiatives did result in the recruitment of candidates," it acknowledges that it is "not able to confirm that these specific hires were recruited through those outreach initiatives."²⁰

B. Proposed Forfeiture

8. In light of the one-year statute of limitations on the Commission's authority to issue forfeitures for MVPD EEO violations, 12 of the Unit's recruiting failures cannot be redressed through a monetary penalty.²¹ With respect to the thirteenth recruiting failure, however, which occurred on August 24, 2015, we issue a Notice of Apparent Liability and propose a monetary forfeiture.

9. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the rules do not establish a base forfeiture amount for EEO violations, such as a failure to self-assess EEO performance

¹⁴ The Unit reports that it used the following websites to recruit for this position: Career Builder, Indeed, Fidelity Communications, careerrookie.com, headhunter.com, jobsinmotion.com, miracleworkers.com, moneyjobs.com, sologig.com, workinretail.com.

¹⁵ See *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*).

¹⁶ *Id.*

¹⁷ See *Cox Radio, Inc., Notice of Apparent Liability for Forfeiture*, 24 FCC Rcd 8889, 8890 (MB 2009) (forfeiture paid) (*Cox Radio, Inc.*).

¹⁸ See *Second Report and Order*, 17 FCC Rcd at 24051, para. 99.

¹⁹ 47 CFR § 76.75(f).

²⁰ Ross Letter.

²¹ Section 503(b)(6)(B) of the Act limits the time period within which the Commission can initiate a forfeiture proceeding against non-broadcast entities to only those violations that occur within one year prior to the issuance date of a notice of apparent liability for forfeiture.

or perform adequate EEO recruitment.²² 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.”²³

10. Based upon the facts before us and pertinent precedent, we find that the Unit is apparently liable for \$10,000 for its apparent violation of Section 76.75(b)(1)(i) and \$1,000 for its apparent violation of Section 76.75(f), for a total proposed forfeiture of \$11,000. In proposing this amount, we take cognizance of the fact that the Unit recruited inadequately on a number of occasions prior to August 2015 and upwardly adjust the penalty accordingly. Specifically, the Unit failed to recruit widely for 13 of its 16 total vacancies (81%) during the relevant period, and we therefore find its recruitment failures to be egregious.²⁴ In accordance with Section 76.77(b), we also adjudge the Unit not certified and impose reporting conditions as set forth below to ensure that the Unit, and any successor owner, maintains an adequate EEO program in compliance with the rules.²⁵

IV. ORDERING CLAUSES

11. Accordingly, we find that Fidelity Cablevision, Inc.’s employment unit No. 1575 is adjudged **NOT CERTIFIED** for compliance with our EEO rules for 2015, in accordance with 47 C.F.R. § 76.77(b).

12. **IT IS FURTHER 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 Fidelity Cablevision, Inc. is hereby NOTIFIED of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of eleven thousand dollars (\$11,000) for its apparent willful and repeated violation of Sections 76.75(b)(1)(i) and 76.75(f) 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 date of this NAL, Fidelity Cablevision, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation

²² 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.

²³ 47 C.F.R. § 1.80(b)(4).

²⁴ *See New Northwest Broadcasters, LLC* at 10749 (Licensee paid a \$5,000 forfeiture for failing to recruit for eight out of 25 vacancies (32%) by relying solely on walk-in applicants or referrals as recruitment sources); *Cox Radio Inc.* at 8891 (Licensee paid a \$1,000 forfeiture for failing to recruit properly for one out of 25 vacancies (4%) by relying on industry and employee referrals, and a separate \$6,000 forfeiture for failing to recruit widely for seven out of 25 vacancies (28%) by relying on websites and internal postings, industry or employee referrals, or walk-in applicants); *MHR License LLC, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture*, 26 FCC Rcd 17144 (MB 2011) (Licensee paid a \$6,000 forfeiture for failing to recruit widely for five out of 14 vacancies (36%) by relying solely on Internet websites to fill two vacancies, and websites, word-of-mouth referrals and vacancy postings on its employee board to fill three vacancies.)

²⁵ 47 C.F.R. § 76.77(b). Section 76.77(b) requires the Commission to determine, based on information submitted on a unit’s EEO program annual report, whether the unit is in compliance with the Commission’s EEO rules. If the unit is found to be in compliance, the Commission is required to send a Certificate of Compliance to the unit; if it is found to not be in compliance, the Commission must notify the unit that it is not so certified for the year in question.

of the proposed forfeiture.

14. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁶ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Any requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

15. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th 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 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.

17. **IT IS FURTHER ORDERED** that the Unit and any successor owner, 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 the Unit, containing the following information on October 3, 2016; October 2, 2017; and October 1, 2018:

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

²⁶ FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

(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, the job title of each full-time vacancy filled, and the date each full-time vacancy was filled;

(d) the total number of interviewees for each full-time vacancy for the preceding reporting year and the referral source for each interviewee; and

(e) the sources contacted for each full-time opening during the reporting year.

18. **IT IS FURTHER ORDERED** that copies of this NAL shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Jason Ross, General Counsel and Vice President - Legal, Fidelity Communications, 64 N Clark, Sullivan, Missouri 63080 and Scott Friedman, Esquire, Cinnamon Mueller, 307 N. Michigan Ave., Suite 1020, Chicago, Illinois 60601.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief
Media Bureau