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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM DOCKET NO. 92-207
	)	
DIXIE BROADCASTING, INC.	)	File Nos. BR-881201XN
	)	BRH-881201XO
For Renewal of Licenses of	)	
Stations WHOS (AM) / WDRM (FM),	)	
Decatur, Alabama	)	

DOCKET FILE COPY ORIGINAL

To: Administrative Law Judge  
Arthur I. Steinberg

MASS MEDIA BUREAU'S COMMENTS IN  
OPPOSITION TO MOTION FOR SUMMARY DECISION

Respectfully submitted,  
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January 27, 1993

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To: Administrative Law Judge  
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**MASS MEDIA BUREAU'S COMMENTS IN  
OPPOSITION TO MOTION FOR SUMMARY DECISION**

1. On January 8, 1993, Dixie Broadcasting, Inc. ("Dixie") filed a motion for summary decision. The Mass Media Bureau, pursuant to Section 1.251 of the Commission's Rules, and the Presiding Judge's Order, FCC 92M-1104, released December 28, 1992, hereby submits its comments in opposition to Dixie's motion.

**Summary**

2. The Commission designated the above-captioned applications for hearing because of substantial and material questions of fact as to: 1) whether the licensee misrepresented facts or lacked candor about its Equal Employment Opportunity (EEO) record; and 2) the extent of the licensee's compliance with the affirmative action portion of the Commission's EEO rules (Section 73.2080(b) of the Commission's Rules). See Hearing Designation Order, 7 FCC Rcd 5638, 5640 (1992) ("HDO"). The misrepresentation/lack of candor issue was specified primarily because of a significant difference between the licensee's

initial representations about its total number of license term hires -- 20 -- and its ultimate acknowledgement that the stations in fact had 104 hiring opportunities during the license term. The affirmative action issue was specified because the licensee's responses to Commission inquiries contained little evidence with respect to the licensee's recruitment efforts, its evaluation of the stations' employment profile and job turnover against the availability of minorities, and its self-assessment of the stations' EEO program.

3. The Bureau has carefully reviewed Dixie's motion for summary decision, deposition testimony, documents received from the licensee during discovery, and the licensee's admissions of fact. In the Bureau's view, Dixie has not established that the false statements in its opposition to the petition to deny about its affirmative action efforts and its repeated failures to respond to Commission inquiries about those efforts were merely innocent mistakes on the part of counsel and/or the stations' general manager. In this regard, Dixie has focused only on explaining how it incorrectly represented its license term hiring figures. However, Dixie has completely glossed over the glaring disparity between its initial contentions that its affirmative action efforts were in accordance with the Commission's Rules, its subsequent refusals to answer Commission inquiries, and its deposition admissions that revealed that Dixie had no EEO program to speak of until the time of the filing of the petition to deny its stations' applications. It thus appears that Dixie's

failures to respond fully and truthfully to Commission inquiries about its EEO efforts occurred because Dixie had few, if any, records to support assertions in its opposition pleading regarding its compliance with the Commission's affirmative action provisions. Accordingly, the Presiding Judge should deny Dixie's motion for summary decision.

#### Background

4. Except to the extent necessary, the Bureau will not restate facts set forth by Dixie in paragraphs 7 through 62 of its motion for summary decision ("MSD"). Thus, during the 1982-89 license term, Dixie hired 104 persons as employees for its stations. Counting trainees as hires for full-time positions, 90 of the 104 license-term jobs were full-time. Eight of the 104 persons hired were Black. Of the eight, six were hired for full-time jobs, two for part-time jobs. All of the Blacks were hired for jobs in the upper-four job categories. Six of the Blacks were hired and employed during the first 18 months of the 1982-89 license term at which time Dixie had an urban format. After switching to a country format, Dixie hired two Blacks during the remainder of the license term. None of the Blacks was hired during the 12 month reporting period reflected in the stations' renewal application EEO program. However, in comparing the number of hires who were Black either with the total number of full-time job openings or the total number of both full-time and part-time job openings, the percentage of Blacks hired by Dixie

during the 1982-89 license term was almost at parity with their presence in the local labor force. (MSD at 7-8; Admissions Request, Attachment J, Exhibits 1 and 2; J. Mack Bramlett Deposition at 33-34).

5. During the 1982-89 license term, Dixie's EEO program was informal at best.<sup>1</sup> J. Mack Bramlett, Dixie's vice president and general manager since 1976, had overall responsibility for EEO compliance. He hired and fired employees. He (and his wife, Rebecca Bramlett) prepared Annual Employment Reports (FCC Form 395, now 395-B). He contacted recruitment sources. He would assess whether or not the stations' EEO program was effective. (MSD at 14; J. Mack Bramlett Deposition, pp. 8-9, 12, 20.)

6. Generally, Dixie did not go through a formal recruitment process when it had a job to fill. Rather, Dixie relied primarily on walk-ins; that is, by people who happened to contact the station at the moment a job opening occurred. In this regard, Dixie justified its lack of recruitment by claiming, inter alia, that disc jockey openings, especially during the period 1982-86, often created a "crisis" at the stations, which Dixie resolved by hiring the first available person.<sup>2</sup> When

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<sup>1</sup> Beginning sometime in 1989, Dixie substantially modified its EEO program by using the procedures set forth in a handbook published by the National Association of Broadcasters. (J. Mack Bramlett deposition at 13, 115-16.)

<sup>2</sup> Under the circumstances, it would appear merely fortuitous that Dixie hired any minorities during the license term.

recruitment contacts did occur, they may have included<sup>3</sup> one or more of the following: advertisements in Decatur's general circulation newspaper, The Decatur Daily; advertisements in industry weeklies, Radio and Records and/or Broadcasting; job notices to Calhoun Community College; and informal contacts with Nathan (Nat) Tate, the current President of the Decatur/Morgan County Chapter of the NAACP. Dixie also claims that it occasionally advertised in Decatur's weekly minority-community newspaper, Speaking Out News. Further, beginning sometime in 1986 after WDRM(FM) increased its coverage area, Dixie advertised in Huntsville and posted job notices at the University of Alabama and National Career College. (MSD at 9-12; J. Mack Bramlett Deposition at 13-18, 29, 31-3, 36-40, 46.)

7. Although Dixie claims it employed Blacks at various times during the 1982-89 license term, its Annual Employment Reports indicated that none of its full-time employees had been Black.<sup>4</sup> In addition, Dixie's renewal application EEO program showed that none of the stations' hires during the 12 month reporting period had been a minority and that the stations' recruitment contacts had not yielded any referrals who were minorities. Consequently, Dixie's counsel, Daniel Van Horn, advised Bramlett by letter, dated December 7, 1988, that the

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<sup>3</sup> The licensee presented virtually no corroboration in the form of documentary evidence to support its assertions regarding recruitment efforts.

<sup>4</sup> For the bulk of the license term, Dixie did not note the race or ethnic origin of any of its full-time employees.

Commission might question Dixie's EEO efforts and that Dixie should compile mitigating information. Bramlett apparently ignored this advice inasmuch as he could not even remember having received Van Horn's letter, nor could he remember having done anything to compile EEO information. (J. Mack Bramlett Deposition at 111-15; Admissions Request, Attachment A; Admissions Request Attachment C, pp. 10-11, n. 10; MMB Attachment 1.)

8. On March 1, 1989, Dixie's license renewal applications were challenged by a petition to deny filed by the NAACP/NBMC. Relying on the information appearing in the stations' EEO reports, the petitioners argued that the apparent absence of Blacks during the entirety of the license term raised a question about Dixie's EEO compliance which warranted further inquiry. The petitioners did not explicitly accuse Dixie of discrimination. (MMB Attachment 2.)

9. In its opposition, Dixie sought to rebut the petition by showing that it had not discriminated against Blacks and by claiming that it had made a "continuous effort to seek out minority and female employees for available positions and to improve the representation of minorities on the stations' staff." Admissions Request, Attachment C (Opposition, p. 2).) Thus, Dixie's opposition focused on the fact that, contrary to the

impression conveyed by the stations' Annual Employment Reports<sup>5</sup> and EEO program, Dixie had recruited, hired and employed Blacks in significant jobs at various times during the license term. However, in its opposition, Dixie did not compare the total number of Blacks hired by the stations with its total number of hires. Moreover, except when describing the sources contacted when Blacks were hired and when rehashing its renewal application EEO program, Dixie did not discuss its license term EEO efforts. (MSD at 15-17; Admissions Request, Attachment C.)

10. By letter, dated July 3, 1989, the Bureau's EEO Branch informed Dixie that its EEO program contained insufficient information about Dixie's efforts to attract minority applicants. Accordingly, Dixie was asked to furnish details about its efforts to hire minorities during a three year period between November 1, 1985 and November 1, 1988. Among other things, Dixie was requested to list all jobs filled during that period, and to specify for each job, the recruitment sources contacted; the number of minorities interviewed; and the referral source, race/national origin and sex of the person hired. (Admissions Request, Attachment B.)

11. Before Bramlett received the Commission's July 3, 1989, letter of inquiry, he was briefed on its contents by Van Horn

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<sup>5</sup> While preparing its showing, Dixie learned that it had incorrectly prepared most of the stations' license term Annual Employment Reports by failing to note the race/ethnic origin of nearly all of its employees. Had the reports been correctly prepared, they would have shown Black full-time employees in both 1983 and 1987. (Admissions Request, Attachment C, pp. 10-11, n. 10).

and/or Van Horn's colleague, Susan Marshall. From the briefing, Bramlett claims he understood that the Commission was seeking information that Dixie had already provided in its recently filed opposition. Thus, according to Bramlett, when he received the Commission's inquiry letter, he did not focus on the particular questions in the letter nor did he attempt to gather the requested information. Instead, Dixie and its lawyers merely resubmitted Dixie's opposition. (MSD at 18-19; J. Mack Bramlett Deposition at 54-58; Admissions Request, Attachment C.)

12. Resubmission of Dixie's opposition was totally unreasonable in that it did not respond to the Commission's questions. There was no information in the opposition about the total number of hires Dixie had during the requested three year period, Dixie's recruitment efforts for those jobs, the number of minorities interviewed, or the race/national origin and sex of the person hired. Moreover, Dixie's opposition was silent as to the presence or absence of records or other supporting documentation concerning Dixie's EEO efforts during the three year period cited in the Commission's letter of inquiry. Finally, in view of the detailed and specific information provided in Dixie's opposition about its minority hires and interviews, Dixie's failure to respond was all the more curious because it appeared that Dixie had documentation to support its descriptions of its EEO efforts. (Admissions Request, Attachment C (Opposition, pp. 6-11).)

13. Subsequently, by a telephone call in February 1991,

and a letter, dated March 15, 1991, the Bureau's EEO Branch notified Dixie that Dixie had not provided the specific information requested in the Commission's July 3, 1989, letter. However, rather than renewing its request for details concerning three years of hiring activity, the EEO Branch limited its request for information to one year's activity; namely, the period covered in the stations' renewal application EEO program. As had its July 3, 1989, letter, the Commission's March 15, 1991, letter also advised the licensee that it could submit any additional information it wished in order to show its EEO efforts. (MSD at 19-20; Admissions Request, Attachment E.)

14. Dixie responded to this second request for information on April 18, 1991. Once again, Dixie ignored the questions asked and did not provide the information sought by the Commission. Instead, in a supplemental report prepared by Marshall, Dixie merely summarized its prior submission (the opposition to the petition to deny). Dixie also stated that it had reviewed its records and had nothing more to add because all available information concerning the stations' EEO efforts had already been submitted. Nonetheless, Dixie went on to assert for the first time, on page three of the supplemental report, that: "As a result of their contact with these recruitment sources, from 1982 through February 1989, the stations hired approximately 20 new employees of which 7, or 35%, were African-Americans." Thereafter, Dixie submitted post-EEO program information by describing efforts to recruit for jobs filled between February

1989 and July 1990. Like its opposition, Dixie's supplemental report was verified by a statement under penalty of perjury from Bramlett. (MSD at 21-23; Admissions Request, Attachment F.)

15. Dixie's supplemental report did not reveal why it did not provide the specific recruitment and hiring information requested by the Commission. In this regard, Dixie did not identify what records it had reviewed in preparing the supplemental report nor did it explain how it could have prepared the stations' 1988 EEO program without reference to most, if not all, of the information requested by the Commission's March 15, 1991, letter.

16. Marshall testified at her deposition that she was responsible for coming up with the number 20 as the number of new employees hired during the license term. Marshall derived this number by combining two different sets of figures; namely, the 12 hires made during the twelve month EEO program reporting period with the seven minority hires recounted in the licensee's opposition. In her view, 20 hires for a seven year period was not unusually small given her understanding of turnover in the radio industry. She claims she did not focus on the fact that the 12 hires made in the last year of the license term were all white, while the seven hires made during the prior six years were all minority. According to both Bramlett and Marshall, Marshall did not discuss the claim about the stations' license term hires with Bramlett, and Bramlett claims he did not notice it in Dixie's formal response to the Commission's second inquiry

letter. (MSD at 24-26.)

17. In October 1991, EEO Branch staff attorney Hope Cooper called Marshall about Dixie's claimed total number of license term hires. Cooper also questioned the variation in license term hiring rates, namely, 12 hires for one year, but only seven for the other six years. Marshall related Cooper's call to Bramlett. (MSD at 26-27; J. Mack Bramlett Deposition at 72.)

18. On October 15, 1991, Dixie responded by submitting a three page statement under penalty of perjury from Bramlett. After stating that Cooper had requested information concerning the number of hires during the license term, Bramlett reframed Cooper's question as why so few hires were made during the seven year (1982-89) license term when the stations had eight hires in a subsequent 15-month period. Bramlett then answered the question thus recast by stating that all of the information available for the stations' EEO efforts during the 1982-91 period had already been provided to the Commission and that the stations' staff had determined that the variation in available vacancies was attributable to a variable turnover rate. (MSD at 27; Admissions Request, Attachment G.)

19. After receipt of Bramlett's statement, Cooper had several telephone conversations with Marshall. Among other things, Dixie was requested to provide further information about its license term hires. As a result of her conversations with Cooper, Marshall now understood that Dixie must have hired more than 20 employees during the 1982-89 license term. Accordingly,

Marshall asked Bramlett to try to provide information about any additional hires which may have occurred during the 1982-89 license term. (MSD at 30-31.)

20. Cooper's request for further information was memorialized in a January 2, 1992, letter from the Bureau's EEO Branch. That letter recounted prior correspondence between the Commission and Dixie and explained how it was determined that the new hires information provided by Dixie was inaccurate. In view of the apparent discrepancy between the number of hires reported by Dixie and the number of hires (then unknown) that Dixie actually had, Dixie was requested to provide an explanation. (Admissions Request, Attachment H.)

21. Dixie responded on January 13, 1992. In a supplemental report, Dixie acknowledged that its previously reported number of new hires -- approximately 20 -- was inaccurate. Dixie's explanation for the inaccurate figure, which was subsequently belied by the deposition testimony of both Marshall and Bramlett (see para. 25 infra), was that it was derived from "the best information the licensee was able to provide based on available documentation of recruitment efforts." Dixie then stated that a search of its collective memory, apparently aided by previously warehoused payroll records, resulted in a determination that 83 new hires had occurred during the license term. Dixie concluded that, in any event, its record of minority hires, when viewed in comparison with the presence of minorities in the local labor force, warranted a conclusion that the licensee had engaged in

recruitment to employ Blacks for job openings. Dixie's supplemental report was verified by a statement under penalty of perjury from Bramlett. (Admissions Request, Attachment I.)

22. Dixie's submission contained no hint that its prior assertions regarding license term hires had resulted from mistaken assumptions on the part of its attorney or that Bramlett had never meant for the Commission to believe that 20 had been the sum of its license term hires.<sup>6</sup> In addition, not only did Dixie acknowledge 83 new hires during the license term, but also suggested that 57 other persons had worked at the stations. However, Dixie contended these 57 persons had worked as "talent only" and not as employees even though some of them had been listed as part-time employees on Annual Employment Reports. (MSD at 34-38; Admissions Request, Attachment I, Exhibit A.)

23. Dixie's response generated yet another telephone call and letter from the EEO Branch. At this point, the Commission's questions focused not only on the 57 persons Dixie identified as "talent only," but also sought (again) the dates of employment, gender, race/national origin, job title and classification of all persons hired by Dixie during the license term. Finally, the EEO Branch asked Dixie to explain further why it had changed its EEO program reporting year hiring data from 16 to 12 persons. (MSD at 38-39 and Exhibit 1.)

24. Dixie responded on February 7, 1992, and February 11,

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<sup>6</sup> It was not until Bramlett's deposition that he first claimed that he had never meant to tell the Commission that the stations had only 20 hires.

1992. Dixie's responses included lists of persons hired, whether viewed as employees or as talent, and copies of payroll cards for most of the persons so listed.<sup>7</sup> Dixie's responses made clear that the 57 persons identified as "talent only" were in addition to the 83 persons identified as new hires. Also included was Dixie's explanation as to why it considered the 57 "talent only" persons not to be employees. In this regard, however, Dixie acknowledged that 21 of those 57 had actually been hired as permanent employees. Dixie did not count them as such because they did not survive a probationary period. The 21 included announcers and sales workers. Once again, Dixie represented to the Commission that in prior filings Dixie had relied on the few records then available and the collective memory of the current staff to support its prior estimates of new hires. Dixie's submissions were again verified by statements under penalty of perjury from Bramlett. (MSD at 39-41; Admission Request, Attachments J and K.)

25. In view of all the foregoing, Dixie now concedes that material portions of several of its responses to Commission inquiries were inaccurate. Specifically, Dixie admits that its repeated assertion that it had approximately 20 license term hires was wrong. However, Dixie argues these statements were not

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<sup>7</sup> Interestingly, there were no payroll cards for some of the Blacks Dixie claims to have employed during the license term. Also, the lists showed that most of Dixie's Black hires occurred during the first 18 months of the 1982-89 license term. Bramlett averred that Dixie used an urban format during this period. (J. Mack Bramlett Deposition at 33.)

misrepresentations. In this regard, Dixie advances two principal explanations. First, Marshall derived the number 20 based on her erroneous assumptions concerning turnover in the radio industry, the state of Dixie's records, and the completeness of the hiring information in Dixie's opposition to the NAACP/NBMC petition to deny. Second, Bramlett never understood until after Dixie's applications were designated for hearing that Dixie had repeatedly represented to the Commission that it had had only 20 license term hires when in fact it had had more than 100 such hires.<sup>8</sup> Dixie also contends that it had no motive to deceive the Commission because its license term percentage of minority hires was nearly at parity with their presence in the local labor force. Dixie therefore concludes that it lacked the requisite intent to deceive the Commission and that its motion for summary decision on the misrepresentation/lack of candor issue should be granted.

#### Discussion

26. Section 1.251 of the Commission's Rules provides that the Presiding Judge may grant a motion for summary decision only in the absence of a genuine issue of material fact for determination at the hearing. See New Broadcasting Corporation, 44 FCC 2d 386 (Rev. Bd. 1973). In order to sustain such a motion, the burden is on the moving party to demonstrate that no genuine issue as to any material fact remains and that it is

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<sup>8</sup> Significantly, neither of these explanations was given by Dixie before its applications were designated for hearing.

otherwise entitled to summary decision. In so doing, it must be established that "the truth is clear," that "the basic facts are undisputed," and that "the parties are not in disagreement regarding material factual inferences that may be properly drawn from such facts." Big Country Radio, Inc., 50 FCC 2d 967, 968 (Rev. Bd. 1975).

27. Misrepresentation involves false statements of fact while lack of candor involves concealment, evasion, or other failures to be fully informative. Both represent deceit. The seriousness of either offense depends on the facts and circumstances of the particular case. Crucial to both is the existence of an intent to deceive. Fox River Broadcasting, Inc., 93 FCC 2d 127, 129 (1983). Carelessness and mistakes do not constitute misrepresentations or lack of candor. Cf. High Country Communications, 4 FCC Rcd 6327, 6328 (1989), quoting Kaye-Smith Enterprises, 71 FCC 2d 1402, 1415 (1979) ("bare existence of mistake" in an application "without any indication that the licensee meant to deceive the Commission, does not elevate such a mistake to the level of an intentional misrepresentation or raise a substantial and material question of fact."). See also, Gary D. Terrell, 59 RR 2d 1452 (Rev. Bd. 1985). In addition, reliance on counsel may, in certain situations, mitigate the impact of untruthfulness or incomplete submissions, especially where the applicant did not know about or acquiesce in counsel's error. Compare Broadcast Associates of Colorado, 104 FCC 2d 16, 19 (1986), with James C. Sliger, 70 FCC

2d 1565, 1572-73 (Rev. Bd. 1979) (subsequent history omitted). However, carelessness "so 'wanton, gross, and callous, and in total disregard of [the licensee's] obligations to the Commission, [may] be equivalent to an affirmative and deliberate intent.'" Golden Broadcasting Systems, Inc., 68 FCC 2d 1099, 1106 (1978), quoting Tipton County Broadcasters, 37 FCC 197, 291 (1963), aff'd, 37 FCC 191 (1964). Finally, "[t]he fact of concealment may be more significant than the facts concealed. The willingness to deceive a regulatory body may be disclosed by immaterial and useless deceptions as well as by material and persuasive ones." FCC v. WOKO, 329 U.S. 223, 227 (1946), quoted in Character Policy Statement, 102 FCC 2d 1179, 1210 n.77 (1986).

28. In the Bureau's view, Dixie has failed to show that its erroneous and/or incomplete responses to Commission inquiries were merely the result of innocent behavior on the part of Dixie and its attorneys. In this regard, the Bureau is aware of Dixie's post-designation explanations regarding the discrepancy concerning the total number of license term hires. Indeed, if Dixie had provided an accurate figure at the outset, it would likely have satisfied the Commission that it had not discriminated in employment against Blacks during the 1982-89 license term. However, the Commission's EEO rules require both nondiscrimination and affirmative action. Although Dixie had argued in its opposition to the petition to deny that its EEO program complied with the Commission's rules, Dixie now concedes that its EEO program (if it existed at all) was deficient. (MSD

at 84.) In this regard, review of Dixie's license term record reveals that most of its Black hires occurred during the first 18 months of the license term when one of its stations had an urban format. However, after the format change, the stations had few minority hires and applicants despite dozens of job openings. Moreover, during that latter period, the stations did not consistently seek out minorities, nor did it keep records of what few efforts it had made. Thus, when Dixie was confronted first with a petition to deny and then a Commission inquiry about its affirmative action efforts, Dixie apparently chose to hide or gloss over its shortcomings. In short, it appears that Dixie's repeated failures to respond fully and accurately to Commission inquiries occurred because Dixie did not want to expose as untrue its assertions regarding its compliance with the Commission's affirmative action provisions.<sup>9</sup> In view of the above, the Bureau submits that Dixie has not adequately justified its repeated failures to supply the Commission with the affirmative action information requested in its several inquiry letters, or, conversely, to explain why that information could not be provided. Accordingly, Dixie has not established that it is entitled to summary decision in its favor on the

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<sup>9</sup> "' [A] party must be assumed to have knowledge of conflicting statements it has made (unless it shows otherwise), and thus knowledge of falsity.'" Beaumont Branch of the NAACP v. FCC, 854 F.2d 501, 509 (D.C. Cir. 1988), quoting California Public Broadcasting Forum v. FCC, 752 F.2d 670, 679-80 (D.C. Cir. 1985).

misrepresentation/lack of candor issue.<sup>10</sup>

29. Moreover, disposition of the misrepresentation/lack of candor issue by summary decision will preclude the Presiding Judge from observing the demeanor of the witnesses and making his own credibility findings. Because demeanor findings are within the exclusive province of the trier of fact and are normally accorded substantial weight,<sup>11</sup> summary decision should not be granted when substantial questions regarding the motives and intent of the licensee and its agents remain.

### Conclusion

30. Despite Dixie's submission, the truth is still not clear and substantial questions of fact remain. In the Bureau's view, Dixie's submission does not remotely approach the standard of proof necessary to warrant summary decision. Thus, the only appropriate venue for resolution of the outstanding issues is the

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<sup>10</sup> Given the inappropriateness of summary decision for the misrepresentation/lack of candor issue and the critical role of the licensee's affirmative action efforts and its representations to the Commission about those efforts, the Bureau submits that summary decision should also not be granted with respect to the affirmative action issue. Rather, Dixie should explain fully what it did and did not do during the 1982-89 license term to comply with the requirements of Section 73.2080(b) of the Commission's Rules.

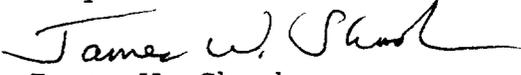
<sup>11</sup> See Universal Camera v. NLRB, 340 U.S. 474, 496 (1951); WPRY Radio Broadcasters, Inc., 40 FCC 2d 1183, 1184 n.1 (1973).

crucible of an evidentiary hearing. Accordingly, the Bureau urges denial of Dixie's motion for summary decision.

Respectfully submitted,  
Roy J. Stewart  
Chief, Mass Media Bureau

  
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Chief, Hearing Branch

  
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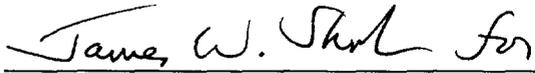
Federal Communications Commission  
2025 M Street, N.W.  
Suite 7212  
Washington, D.C. 20554

January 27, 1993

CERTIFICATE OF SERVICE

Michelle C. Mebane, secretary of the Hearing Branch, Mass Media Bureau, certifies that she has on the 27th day of January, 1993, sent by regular United States mail, U.S. Government frank, a copy of the foregoing "**Mass Media Bureau's Opposition to Motion for Summary Decision**" to:

Thomas Schattenfield, Esq.  
Gerald P. McCartin, Esq.  
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\_\_\_\_\_  
Michelle C. Mebane

Arent, Fox, Kintner, Plc

Washington Square 1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5339

Mass Media Bureau Attachment 1

Daniel F. Van Horn  
(202) 857-6030

December 7, 1988

Mr. J. Mack Bramlett  
Stations WHOS/WDRM  
P. O. Box 789  
Decatur, Alabama 35602

Dear Mack:

Enclosed is a copy of the renewal applications for WHOS/WDRM as filed with the Commission. Please see that these materials are placed in your local public records file. You should also make certain that the public file contains the ownership report to which the ownership certification relates and that the stations are broadcasting the post-filing announcements in accordance with the schedule I sent you previously.

As we discussed, I would not be surprised if the Commission raises a question concerning your affirmative action program. The Commission has recently been paying close attention to that area, and the absence of minorities from the stations' staff and of substantial outreach efforts to attract minority applicants will probably be noticed. We obviously cannot change the facts reflected in the EEO report, but you should compile any mitigating information you may have in case a supplemental filing is requested by the Commission, and should also develop a plan so that the stations will be more affirmative in their future recruitment efforts.

If you have any questions about the above please let me know.

Sincerely,



Daniel F. Van Horn

Enclosure

cc: Mr. Donald Martin (w/enc.)

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

MAR - 1 1989

Federal Communications Commission  
Office of the Secretary

DUP

In re:

- Applications for renewal of )
- license of the following Alabama and )
- Georgia Radio Stations: )
- WVNN-AM and WZYP-FM, Athens, AL )
- WAPI-AM-FM, Birmingham, AL )
- WHOS-AM and WDRM-FM, Decatur, AL )
- WBHP-AM, Huntsville, AL )
- WLWI-AM-FM, Montgomery, AL )
- WHBB-AM and WTUN-FM, Selma, AL )
- WVNA-AM-FM, Tuscumbia, AL )
- WAGQ-FM, Athens, GA )
- WBBQ-AM-FM, Augusta, GA )
- WWGS-AM and WSGY-FM, Tifton, GA )
- WQPQ-FM, Valdosta, GA )

TO THE CHIEF, MASS MEDIA BUREAU

PETITION TO DENY

Region V of the NAACP, the respective branches of the NAACP operating within the service areas of the above-referenced radio stations, and the National Black Media Coalition (collectively "Petitioners"), pursuant to §§307 and 309 of the Communications Act of 1934 and §73.3584 of the FCC's Rules and Regulations, respectfully request the Commission to designate the above referenced applications for evidentiary hearing and, based on the evidence expected to be adduced at these hearings, to deny the applications. 1/

1/ Owing to the large number of stations against which Petitioners are compelled to litigate, and thus the large amount of paper being generated, Petitioners respectfully request waiver of \$1.49 of the Commission's Rules (double-spaced pleadings) in order to conserve expenditures for all concerned.