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92-207

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MASS MEDIA BUREAU

HEARING EXHIBITS

DECATUR, ALABAMA

MM DOCKET NO. 92-207

BUREAU EXHIBIT INDEX

1. Dixie's EEO Program (FCC Form 396), submitted with 1988
Renewal Application.

2. NAACP's Petition to Deny Dixie's renewal application,
filed March 1, 1988

Federal Communications Commission

Docket No. 92-207 JOE-1

Presented by MASS MEDIA BUREAU

Disputed 2/17
Reviewed 2/17

Reporter BARBARA LORA

Date 2/17/93

BUREAU EXHIBIT INDEX

1. Dixie's EEO Program (FCC Form 396), submitted with 1988 Renewal Application.
2. NAACP's Petition to Deny Dixie's renewal application, filed March 1, 1989.
3. Bureau's inquiry letter to Dixie, dated July 3, 1989.
4. Dixie's response to inquiry letter, dated July 28, 1989, containing Opposition to NAACP Petition to Deny.
5. Dixie's Supplement to Opposition to NAACP's Petition to

EX. 1
B33

Federal Communications Commission			
Docket No.	<u>92-207</u>	Exhibit No.	<u>1</u>
Presented by		<u>MASS MEDIA</u>	
Disposition	{	Identified	<u>2/17</u>
		Received	<u>2/17</u>
		Rejected	<u> </u>
<u>BARBARA LOKA</u>			

BROADCAST EQUA
OPPORTUNITY PR

MMB Ex. 1

(To be filed with broadcast license renewal application)

(For FCC Use Only)
Code No.

Call Letters WHOS/WDRM

Name of Licensee Dixie Broadcasting, Inc., Debtor-in-Possession

City and State which station
is licensed to serve Decatur, Alabama

TYPE OF BROADCAST STATION (Check one)

Commercial Broadcast Station

Noncommercial Broadcast Station

AM

TV

Educational Radio

FM

Low Power TV

Educational TV

Combined AM & FM
in same area

International

SEND NOTICES AND COMMUNICATIONS TO THE FOLLOWING NAMED PERSON AT THE ADDRESS INDICATED BELOW:

Name J. Mack Bramlett	Street Address 401 14th Street, S.E.
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CERTIFICATION

This report must be certified, as follows:

- A. By licensee, if an individual;
- By a partner, if a partnership (general partner, if a limited partnership);
- By an officer, if a corporation or an association; or
- By an attorney of the licensee, in case of physical disability or absence from the United States of the licensee.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT.
U.S. CODE, TITLE 18, SECTION 1001.

I certify to the best of my knowledge, information and belief, all statements contained in this report are true and correct.

Signed	
Title	V-P + G.M.
Date	11-23-88
Name of Respondent	J. Mack Bramlett
Telephone No. (include area code)	205-353-1750

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to determine if the license renewal requested is consistent with the public interest. The staff, consisting variously of attorneys, accountants, engineers, and applications examiners, will use the information to determine whether the license renewal application should be granted, denied, dismissed or designated for hearing. If all the information requested is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to obtain the requested authority.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3) AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

The purpose of this document is to remind broadcast station licensees of their equal employment opportunity responsibilities and to provide the licensee, the FCC and the public with information about whether the station is meeting these requirements.

GENERAL POLICY

A broadcast station must provide equal employment opportunity to all qualified individuals without regard to their race, color, religion, national origin, or sex in all personnel actions including recruitment, evaluation, selection, promotion, compensation

- Recruit prospective employees from educational institutions, including area schools and colleges with minority and women enrollments. Educational institutions contacted for recruitment purposes during the past 12 months and the number of minority and/or women referrals are:

Educational Institution	Number of Referrals Minority	Referrals Women
<u>National Career College</u>	<u>0</u>	<u>0</u>
<u>University of Alabama</u>	<u>0</u>	<u>0</u>

- Contact a variety of minority and women's organizations to encourage the referral of qualified minority and women applicants whenever job vacancies occur. Examples of such organizations contacted during the past 12 months are:

Organization	Number of Referrals Minority	Referrals Women
<u>None contacted within past 12 months</u>		

- We encourage present employees to refer qualified minority and women candidates for job openings. The number of minority and/or women referrals are:

Minority	<u>0</u>
Women	<u>1</u>

- Other (specify) and the number of minority and/or women referrals are:

Minority	
Women	

IV. JOB HIRES

A broadcast station must consider applicants for job openings on a nondiscriminatory basis. Further, to assure that qualified minorities and women are given due consideration for available positions, it must make efforts to encourage them to apply for job openings.

During the twelve-month period prior to filing this application beginning (Month-Day-Year) 11/1/87 and ending (Month-Day-Year), 11/2/88 we hired:

Total hires 16 Minorities 0 Women 6

During this period, for positions in the upper four job categories, we hired:

Total hires, upper 2 Minorities 0 Women 2
four categories

V. PROMOTIONS

A broadcast station must promote individuals on a nondiscriminatory basis. Further, to assure that qualified minorities and women are given due consideration for promotional opportunities, it must make efforts to encourage them to qualify and apply for advancement.

During the twelve-month period prior to filing this application beginning (Month-Day-Year) 11/1/87 and ending (Month-Day-Year), 11/2/88 we promoted:

Total promotions 2 Minorities 0 Women 2

During this period, in the upper four job categories, we promoted:

Total promotions, upper 2 Minorities 0 Women 2
four categories

VI. AVAILABLE LABOR FORCE

A broadcast station must evaluate its employment profile and job turnover against the availability of minorities and women in the relevant labor market. The FCC will use labor force data for the MSA in which your station is located, or county data if the station is not located in an MSA, to evaluate your station's equal employment efforts. If you use these data in your evaluation, you need not submit them to the FCC.

EXHIBIT 1

Stations WHOS/WDRM are licensed to Decatur, Alabama, which is located in Morgan County and is not part of any MSA. Consequently, the relevant labor market for evaluating the stations employment profile is Morgan County. According to 1980 U.S. Census data, the civilian labor force in Morgan County is 39.8% female and 7.4% Black, with other racial minorities represented in statistically insignificant numbers.

Stations WHOS/WDRM currently employ 26 persons in full-time jobs, and 23 of those jobs fall within the "upper four" FCC Form 395 job categories. Consequently, under the 50% of parity test, the relevant employment targets for female and Black employment at the stations are as follows:

Overall

Women	$26 \times .389 \times .5 = 5.17$
Blacks	$26 \times .074 \times .5 = 0.96$

Upper Four Job Categories

Women	$23 \times .398 \times .5 = 4.58$
Blacks	$23 \times .074 \times .5 = 0.85$

The stations currently employ a total of 11 women, 8 of whom held "upper four" jobs. Thus, the stations' employment of

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Federal Communications Commission	
Docket No. <u>92-207</u>	Exhibit No. <u>2</u>
Presented by <u>MASS MEDIA</u>	
Disposition	Identified <u>2/17</u>
	Received <u>2/17</u>
	Rejected _____
Reporter <u>BARBARA LORD</u>	
Date <u>2/17/93</u>	

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

WAGO-FM, Athens, GA

WBBO-AM-FM, Augusta, GA

WVGS-AM and WSGY-FM, Tifton, GA

WQPO-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.

SUMMARY

This petition to deny asks the Commission to conduct Bilingual investigations and designate for hearing the renewal applications of 11 radio stations (or AM-FM combinations) in Alabama and Georgia.

BACKGROUND

The filing of this petition is the result of a study by Petitioners of the 1982-1989 EEO performance and 1989 renewal applications of all radio stations in Alabama and Georgia. That study identified the stations subject to this petition as having had no more than token employment of Blacks and other minorities during the license term. These stations do not appear to be operating under meaningful EEO programs, nor have the stations proposed meaningful EEO programs for the coming 1989-1996 renewal term.

It is well established that the Commission cannot grant a license renewal application without further investigation if it lacks sufficient facts to determine that renewal would serve the public interest. In the leading case setting out the requirements for Commission review of serious allegations of violations by licensees of its EEO Rule, 47 CFR §73.2080, Bilingual-Bicultural Coalition on the Mass Media v. FCC, 595 F.2d 621, 629-630 (D.C. Cir. 1978), the court explained:

[e]vidence of substantial statistical disparity - evidence that a licensee's minority employment is outside the "zone of reasonableness" - while it may not in itself necessarily require resolution at a hearing, should at least put the FCC on notice that more information is required before the license renewal application can be granted. This is because a substantial statistical disparity, especially when coupled with a languishing affirmative action plan, raises questions as to whether the station's poor EEO performance owes to inadvertence, or to intentional discrimination. (fns. omitted; emphasis in original.)

Such an inquiry should be conducted even if the statistical record reveals operation falling barely above the rule of thumb working definition of the "zone of reasonableness," since this "zone" is expected to contract over time. 2/

2/ Los Angeles Women's Coalition for Better Broadcasting v. FCC, 584 F.2d 1089 (D.C. Cir. 1978). Thus, what was reasonable in the 1980-1982 renewal period cannot be deemed reasonable now, since each licensee is expected to resolutely and deliberately improve the representation of minorities on its staff with the ultimate goal of attaining parity with the representation of minorities in the workforce of the surrounding community. The Commission has determined that the 50% of parity guideline is not a "safe harbor" but instead is only an administrative tool. Florida Renewals, 3 FCC Rcd 1930 (1988); Broadcast EEO, 2 FCC Rcd 3967, 3974 (1987).

Petitioners to deny are to be fully involved in this inquiry. The procedure to be followed, as directed by the Bilingual court, supra at 634, is that

[t]he full report of the Commission's investigation, including all evidence it receives, must be placed in the public record, and a reasonable time allowed for response and rebuttal by petitioners.

The following discussion will focus on the factual record contained in the annual employment reports, and the EEO programs as proposed for the 1989-1996 renewal term. 3/

WVNN-AM and WZYP-FM, Athens, AL

WVNN/WZYP have been owned and operated by Athens Broadcasting Company since 1975. The stations' record of fulltime minority employment since 1982 is reflected in the following table. 4/

3/ All employment statistics contained in this petition are derived from the FCC Form 395s submitted by the licensees to the Commission and covering a reporting week in March of the relevant year. The percentages of minority representation in the respective markets (counties, or MSAs if located in an MSA) are as follows: Athens, AL: 12.5%; Birmingham, AL: 26.1%; Decatur, AL: 8.7%; Huntsville, AL: 12.5%; Montgomery, AL: 30.6%; Selma, AL: 47.5%; Tuscumbia, AL: 12.0%; Athens, GA: 17.7%; Augusta, GA: 32.7%; Tifton, GA: 22.5%; and Valdosta, GA: 28.0%.

As used herein, "top four job categories" refers to officials and managers, professionals, technicians and salespersons as reported on FCC Form 395. "Parity" refers to the level of minority employment which, as a percentage of the station's top four category or total fulltime employment, would equal the percentage of minorities in the MSA workforce.

4/ Throughout this Petition, Petitioners have included, where available, data for the year preceding the year on which a given licensee has assumed control. At times this will shed light on whether the current licensee has continued the egregious record of its predecessor, has vitiated progress made by its predecessor, or has improved upon its predecessor's record.

WAPI-AM-FM, Birmingham, AL

WAPI-AM-FM have been owned and operated by WAPI, Inc. since

WHOS-AM and WDRM-FM, Decatur, AL

WHOS/WDRM have been owned and operated by Dixie Broadcasting, Inc. for over a decade (exact date of acquisition not available.) The stations' record of fulltime minority employment since 1983 is reflected in the following table.

Table 3. Minority Employment at WHOS/WDRM, 1983-1988

<u>Month and Year</u>	<u># Mins./#Empls., Top 4 Categs.</u>	<u># Mins./#Empls., Total Fulltime</u>	<u>% of Parity, Top 4 Categs.</u>	<u>% of Parity, Total Fulltime</u>
1988	0/18	0/20	0%	0%
1987	0/17	0/21	0%	0%

WBHP-AM, Huntsville, AL

WBHP has been owned and operated by Radio WBHP Inc. since 1937. The station's record of fulltime minority employment since 1982 is reflected in the following table.

Table 4. Minority Employment at WBHP-AM, 1982-1988

Month and	# Mins./#Empls., Top 4 Categs.	# Mins./#Empls., Total Fulltime	% of Parity.	% of Parity.
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WLWI-AM-FM, Montgomery, AL

WLWI-AM-FM has been owned and operated by Colonial Broadcasting Co., Inc. since February, 1985 and WLWI-FM has been owned and operated by Colonial since November, 1977. The station (or, as applicable, stations') record of fulltime minority employment since 1982 is reflected in the following table.

Table 5. Minority Employment at WLWI-AM-FM, 1986-1988 and WLWI-FM, 1982-1985

<u>Month</u> <u>and</u> <u>Year</u>	<u># Mins./#Empls.,</u> <u>Top 4 Categs.</u>	<u># Mins./#Empls.,</u> <u>Total Fulltime</u>	<u>% of</u> <u>Parity,</u> <u>Top 4</u>	<u>% of</u> <u>Parity,</u> <u>Total</u>
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WHBB-AM and WTUN-FM, Selma, AL

WHBB/WTUN have been owned and operated by Holder Communications Corp. since February, 1987. 5/ The station's record of fulltime minority employment since 1987 is reflected in the following table.

Table 6. Minority Employment at WHBB/WTUN, 1987-1988

Month and	# Mins./#Empls., Top 4 Categs.	# Mins./#Empls., Total Fulltime	% of Parity.	% of Parity.
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WVNA-AM-FM, Tuscumbia, AL

WVNA-AM-FM have been owned and operated by Elton H. Darby since 1956 (AM) and 1962 (FM). The stations' record of fulltime minority employment since 1983 is reflected in the following table.

Table 7. Minority Employment at WVNA-AM-FM, 1982-1988

<u>Month and Year</u>	<u># Mins./#Empls., Top 4 Categs.</u>	<u># Mins./#Empls., Total Fulltime</u>	<u>% of Parity, Top 4 Categs.</u>	<u>% of Parity, Total Fulltime</u>
1988	0/14	1/17	0%	49%
1987	0/13	1/17	0%	49%
1986	0/15	0/17	0%	0%
1985	0/15	0/17	0%	0%
1984	1/19	1/20	44%	42%
1983	1/15	1/17	56%	49%
1982	1/13	1/15	64%	56%

WVNA's 1982 renewal application featured an EEO program whose high point was a minority training program which had trained four people in a year. That program is not reported or proposed in the current renewal application. Nor did the licensee report the use of a single minority organization, a single minority educational institution or a single minority media outlet for recruitment purposes. No minorities were among the 15 people hired from 10/17 to 10/88.

No explanation appears in the current renewal application for the near absence of minority employees in meaningful positions throughout the license term. Therefore, to determine the reason for the licensee's consistent failure to employ minorities, a Bilingual investigation and, if need be, a hearing is required.

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WAGQ-FM, Athens, GA

WAGQ-FM has been owned and operated by Diamond Broadcasting, Inc. since 1986. The station's record of fulltime minority employment since 1986 is reflected in the following table.

Table 8. Minority Employment at WAGQ-FM, 1985-1988

<u>Month and Year</u>	<u># Mins./#Empls., Top 4 Categs.</u>	<u># Mins./#Empls., Total Fulltime</u>	<u>% of Parity, Top 4 Categs.</u>	<u>% of Parity, Total Fulltime</u>
1988	0/10	0/11	0%	0%
1987	0/10	1/11	0%	51%
1986	0/11	0/12	0%	0%
1985	1/12	2/13	47%	87%

The 1989 renewal application contains little in the way of affirmative action initiatives. The current program specifies no minority media, no minority educational institutions and no minority (or even nonminority) community organizations as recruitment sources. Only two local newspapers, the University of Georgia and Athens High School were proposed as putative EEO sources.

On the other hand, the EEO program associated with the 1986 application to transfer control of the licensee to Diamond Broadcasting, Inc. proposed the use of a number of appealing recruitment sources, including Action, Inc. and four Black colleges: Savannah State, Clark, Lawson State, and Shaw. These sources were not

WBBQ-AM-FM, Augusta, GA

WBBQ-AM-FM have been owned and operated by Savannah Valley Broadcasting Company since 1947 (AM) and 1955 (FM). The station's record of fulltime minority employment since 1982 is reflected in the following table.

Table 9. Minority Employment at WBBQ-AM-FM, 1982-1988

<u>Month and Year</u>	<u># Mins./#Empls., Top 4 Categs.</u>	<u># Mins./#Empls., Total Fulltime</u>	<u>% of Parity, Top 4 Categs.</u>	<u>% of Parity, Total Fulltime</u>
1988	0/24	2/28	0%	22%
1987	0/23	2/28	0%	22%
1986	1/24	2/29	13%	21%
1985	2/24	3/29	26%	32%
1984	2/25	4/30	24%	41%
1983	2/25	4/30	24%	41%
1982	3/24	4/28	38%	44%

WBBQ's EEO sources appear to have been relatively unproductive

WWGS-AM and WSGY-FM, Tifton, GA

WWGS/WSGY have been owned and operated by WWGS/WSGY Partnership since March, 1981. The station's record of fulltime minority employment since 1982 is reflected in the following table.

Table 10. Minority Employment at WWGS/WSGY, 1982-1988

<u>Month and Year</u>	<u># Mins./#Empls., Top 4 Categs.</u>	<u># Mins./#Empls., Total Fulltime</u>	<u>% of Parity, Top 4 Categs.</u>	<u>% of Parity, Total Fulltime</u>
1988	No data available			
1987	1/13	2/16	34%	56%
1986	0/15	0/16	0%	0%
1985	1/15	1/17	30%	26%
1984	0/15	1/18	0%	25%
1983	0/11	0/13	0%	0%
1982	0/12	0/13	0%	0%

Petitioners note, at the outset, a strange coincidence in reviewing the number of minority and female applicants reported from recruitment sources: of the 13 statistics provided for referrals of minorities or women from particular sources, seven are multiples of five. This suggests that the numbers may have been contrived. Indeed, all of the numbers look suspicious. It would have been very unusual for eight minorities to respond to ads in Broadcasting for a Tifton, Georgia station.

Furthermore, if this many minorities were applying for jobs, it is hard to understand why only two of 27 persons hired were minorities. If the licensee's statistics are to be believed, its various sources generated 29 minority applicants, two of whom were hired.

Petitioners have no way to determine whether the licensee's representations are genuine. Therefore, given the station's statistical record, a Bilingual investigation is appropriate before the Commission might pass on the applications.