

MAR - 9 1994

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM Docket No. 94-10
	)	
The Lutheran Church/ Missouri Synod	)	File Nos. BR - 890929VC BRH - 890929VB
	)	
For Renewal of Licenses of Stations KFYO/KFYO-FM Clayton, Missouri	)	

To: Administrative Law Judge  
Arthur I. Steinberg

MASS MEDIA BUREAU'S OPPOSITION TO MOTION  
TO MODIFY HEARING ISSUES

1. On February 21, 1994, the Missouri State Conference of branches of the NAACP, the St. Louis Branch of the NAACP and the St. Louis County Branch of the NAACP ("NAACP") filed a motion requesting that the Presiding Judge modify the issues specified in the Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture, FCC 94-23, released February 1, 1994. The Bureau hereby opposes the NAACP's motion.

2. Section 73.2080(b) of the Commission's Rules requires that "[e]ach broadcast station shall establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity in every aspect of station employment policy and practice." Section 73.2080(a) requires broadcast stations to provide equal employment opportunity to all qualified persons and that "no person shall be discriminated against in employment by such stations because of race, color,

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religion, national origin, or sex." The HDO specified an issue to determine whether The Lutheran Church/Missouri Synod, licensee of Stations KFYO/KFYO-FM, complied with the affirmative action requirements of Section 73.2080(b). The specified issue does not mention Section 73.2080(a).

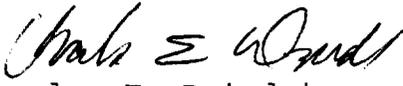
3. The NAACP contends that the Commission inadvertently erred in failing to include in the specified issue an inquiry into the licensee's compliance with Section 73.2080(a). In support, the NAACP cites the HDO's holding, at paragraph 26, that "[i]t would appear that the licensee's reasons for its failure to conduct recruitment at the FM station are inherently discriminatory and not based on the result of any actual recruitment efforts." This language, the NAACP contends, indicates that the Commission was concerned about the licensee's noncompliance with the nondiscrimination requirement of Section 73.2080(a) and that the failure to include Section 73.2080(a) in the issue was an inadvertent oversight. The NAACP also contends that the above language constitutes a finding by the Commission that a prima facie case of discrimination had been made. Where such a determination has been made, the NAACP contends, the omission of Section 73.2080(a) from the designated issues would be unlawful.

4. The NAACP misreads paragraph 25 of the HDO. What the HDO is saying is that the reasons propounded by the licensee for its failure to recruit minorities at the FM station were contrary

to the requirements of Section 73.2080(b) that stations establish a program to avoid such discrimination. Indeed the entire discussion preceding paragraph 25 relates to the licensee's recruiting practices. Section 73.2080(a) relates to situations where a licensee has been found to have discriminated against a particular person or persons. Where there has been a general failure to institute a program to insure that no group has been discriminated against in the station's hiring, such as in the instant case, the relevant rule violation is Section 73.2080(b).

5. In sum, the issue as presented in the HDO is correct and the NAACP's motion should be denied.

Respectfully submitted,  
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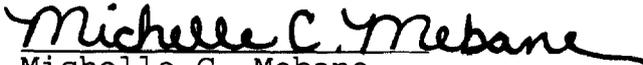
**CERTIFICATE OF SERVICE**

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 9th day of March 1994, sent by regular United States mail, U.S. Government frank, copies of the foregoing "**Mass Media Bureau's Opposition to Motion to Modify Hearing Issues**" to:

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