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

FCC 94M-319  
41744  
FCC MAIL SE

In re Applications of )  
 )  
The Lutheran Church/ )  
Missouri Synod )  
 )  
For Renewal of Licenses of )  
Stations KFUE/KFUE-FM )  
Clayton, Missouri )

MM Docket No. 94-10 ✓ May 5 4 26  
File Nos. BR- 890929VC  
BRH-890929VB  
DISPATCHED

MEMORANDUM OPINION AND ORDER

Issued: May 4, 1994 ; Released: May 5, 1994

1. Under consideration are: (a) a Further Motion to Compel Production of Documents filed on April 26, 1994, by 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"); (b) an Opposition to (a), filed on April 29, 1994, by The Lutheran Church-Missouri Synod ("KFUE"); (c) a Further Motion to Compel Answers to Interrogatories, filed on April 26, 1994, by the NAACP; and (d) an Opposition to (c), filed on April 29, 1994, by KFUE.

Further Motion to Compel Production of Documents

2. Organization of Documents. The NAACP complains about the organization of KFUE's document exchange, particularly Documents 2370-3922, contending that they were "literally thrown together in no logical sequence and no apparent system of organization."<sup>1</sup> The NAACP also requests that an index be provided of these documents indicating the NAACP production requests to which they are responsive. In its Opposition, KFUE has explained its organization of the documents in question, and stated that each document was marked with the Mass Media Bureau ("Bureau") document request to which it was responsive.

3. KFUE will not be compelled to comply with the NAACP's requests. It appears that KFUE has made a good faith attempt to organize thousands of pages of documents in a logical and intelligible manner. No more will be required.<sup>2</sup>

4. Privilege. In response to a Bureau document production request, KFUE waived the attorney-client privilege and produced documents between KFUE and Arnold & Porter regarding the subject matter of the request. KFUE, however,

<sup>1</sup> Further Motion to Compel Production of Documents, at pages 1-2.

<sup>2</sup> During the prehearing conference held on March 16, 1994, counsel for the parties were asked to cooperate with each other during the course of discovery. (Tr. 33.) While counsel apparently got off to a good start, it appears that things have broken down. Henceforth, counsel shall attempt to resolve their discovery difficulties informally prior to the filing of a motion. Further, any future motion concerning a disputed discovery matter must contain a certification by the movant that informal efforts to reach a resolution have failed.

stated in its letter transmitting these documents that it did not waive the privilege with respect to other counsel and other subjects. Claiming that there are no "limited waivers" of the attorney-client privilege, the NAACP seeks the production of documents exchanged between KFUD and other counsel, as well as privileged documents relating to other subjects. The NAACP also seeks attorney work product documents which might have been withheld. KFUD opposes these requests.

5. No further document production will be required of KFUD. First, KFUD has not claimed work product doctrine protection so it does not appear that there are any documents in that category which could be produced. Second, the Bureau request to which KFUD responded was limited to correspondence between KFUD and "FCC counsel" with regard to one discrete subject. KFUD chose to produce the documents and waive the privilege with respect to that law firm and subject. Contrary to the NAACP's contention, KFUD's action did not constitute a blanket waiver of the attorney-client privilege with respect to different subjects and different counsel. Welch Communications, Inc., 4 FCC Rcd 3979, 3981 (Rev. Bd. 1989).

6. Document Request 20. The NAACP contends that KFUD did not produce the documents called for in this request. KFUD states that it did produce such documents and provides a reference to where they may be found. Since the documents appear to have been produced, no further action is required.<sup>3</sup>

#### Further Motion to Compel Answers to Interrogatories

7. Interrogatory 1. KFUD's objection is sustained. The interrogatory is vague and compiling a response would be unduly burdensome. However, the NAACP may develop this information through depositions.

8. Interrogatory 10. KFUD will be required to answer this interrogatory. The information sought appears reasonably calculated to lead to the discovery of admissible evidence. See Section 1.311(b) of the Commission's Rules.

9. Interrogatory 15. KFUD will not be required to answer this interrogatory for the reasons stated at pages 4-5 of KFUD's Opposition to Further Motion to Compel Answers to Interrogatories. However, the NAACP may develop this information through depositions.<sup>4</sup>

10. Interrogatories 16, 19, 20, 21(d through f), and 22. KFUD will not be required to answer these interrogatories for the reasons stated at pages 5-6 of KFUD's Opposition to Further Motion to Compel Answers to Interrogatories. However, the NAACP may develop this information through depositions. In addition, if the NAACP requires the current or last known addresses and telephone numbers of specific individuals, and that information does not appear in the

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<sup>3</sup> This is a matter which could easily have been handled informally. See note 2, supra.

<sup>4</sup> This also appears to be a matter on which a stipulation could be reached.

documents exchanged, KFUCO should make every effort to provide that information. See note 2, supra.

Accordingly, IT IS ORDERED that the Further Motion to Compel Production of Documents, filed by the NAACP on April 26, 1994, IS DENIED.

IT IS FURTHER ORDERED that the Further Motion to Compel Answers to Interrogatories, filed by the NAACP on April 26, 1994, IS GRANTED to the extent indicated above and IS DENIED in all other respects, and an answer to Interrogatory 10 SHALL BE MADE within ten (10) days of the release of this order, or at such other time as may be mutually agreeable to counsel.

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg  
Administrative Law Judge