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

FCC 94M-392  
42112

In re Applications of

The Lutheran Church/  
Missouri Synod

For Renewal of Licenses of  
Stations KFUE/KFUE-FM  
Clayton, Missouri

JUN 8 2 45 PM '94

DIS BY

MM Docket No. 94-10 ✓

) File Nos. BR- 890929VC  
) BRH-890929VB

MEMORANDUM OPINION AND ORDER

Issued: June 3, 1994 ; Released: June 8, 1994

1. Under consideration are: (a) NAACP's Amended Notice of Deposition Upon Oral Examination, filed on May 19, 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 May 23, 1994, by The Lutheran Church-Missouri Synod ("KFUE"); (c) an opposition to (a), filed on May 23, 1994, on behalf of Reed Miller, Esquire ("Mr. Miller"); (d) a letter to the Presiding Judge, dated May 24, 1994, from counsel for the NAACP requesting that a further prehearing conference be held;<sup>1</sup> and (e) a consolidated reply to (b) and (c), filed on June 2, 1994, by the NAACP.

2. The NAACP seeks to take the deposition of Mr. Miller.<sup>2</sup> In support, the NAACP contends that Marcia Cranberg, Esquire, in her deposition, did not know or could not recall a variety of facts which are relevant to the issues in this proceeding. In addition, the NAACP asserts that many letters to KFUE and KFUE documents regarding EEO matters were written or signed by Mr. Miller. While recognizing that Mr. Miller is ill, the NAACP maintains that "it is imperative that his recollections be preserved in the form of a deposition."<sup>3</sup>

3. Both KFUE and counsel for Mr. Miller oppose the taking of his deposition. Counsel for Mr. Miller argues that his deposition should not be taken because he can add nothing to the testimony of Ms. Cranberg; that before Ms. Cranberg's deposition she and Mr. Miller discussed her recollections, and Mr. Miller could not remember anything in addition to what she remembered; that Mr. Miller has severe and chronic health problems which have required recent hospitalization; that his doctor has recommended that he not be required to appear until his health has substantially improved;<sup>4</sup> and that "[t]he request to take Mr. Miller's deposition under these circumstances is simple harassment."<sup>5</sup> KFUE maintains that the NAACP's Amended Notice "is a compendium to conjecture and

<sup>1</sup> In light of the action taken herein, this request will be denied.

<sup>2</sup> See Order, FCC 94M-349, released May 18, 1994, for the background of this matter.

<sup>3</sup> Amended Notice, at page 5.

<sup>4</sup> A letter from Mr. Miller's physician was appended to his opposition.

<sup>5</sup> Mr. Miller's Opposition, at pages 5-6.

speculation that Reed Miller might possibly have knowledge that is relevant";<sup>6</sup> that the documents speak for themselves; that numerous KFUD witnesses have been deposed; that Ms. Cranberg was the person primarily responsible for matters involving KFUD during the critical periods of time; that Mr. Miller is not an essential witness; and that "to depose a man who is seriously ill amounts to harassment."<sup>7</sup>

4. In its consolidated reply, the NAACP submits that it is entitled to depose Mr. Miller inasmuch as he was the senior attorney in charge of the KFUD account throughout the license term; that he is likely to have considerable knowledge of the facts of this case in light of that position; that Ms. Cranberg's deposition testimony was silent on Mr. Miller's role before she assumed primary responsibility for the account and on Mr. Miller's role after the NAACP's Petition to Deny was filed; and that the question of whether Mr. Miller knows things Ms. Cranberg does not know can only be determined by deposing him. The NAACP also states that Mr. Miller's health can be fully protected in any deposition, and suggests some specific procedures for doing so.

5. Mr. Miller's deposition shall be taken. The NAACP has made a prima facie showing that deposing Mr. Miller appears reasonably calculated to lead to the discovery of admissible evidence. See Section 1.311(b) of the Commission's Rules. Mr. Miller was counsel to KFUD for a substantial period of time during the license term, and it is reasonable to believe that he has personal knowledge about relevant facts, as well as many of the documents that were provided to the NAACP during discovery. In this connection, the argument that Mr. Miller's deposition should not go forward because he knows or remembers nothing more than Ms. Cranberg is rejected. Suffice it to say, the NAACP is entitled to test that proposition. However, given the state of Mr. Miller's health, the time and place of his deposition shall be scheduled to assure his maximum convenience and comfort, and his deposition shall be taken in such a manner as to avoid undue stress, fatigue, and controversy.<sup>8</sup> To that end, counsel for the parties and counsel for Mr. Miller shall confer as expeditiously as possible for the purpose of making the appropriate arrangements.

Accordingly, IT IS ORDERED that the letter request by the NAACP for a further prehearing conference IS DENIED.

IT IS FURTHER ORDERED that the deposition of Reed Miller, Esquire, SHALL BE TAKEN at a time and place mutually agreeable to counsel for the parties and counsel for Mr. Miller.

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg  
Administrative Law Judge

<sup>6</sup> KFUD's Opposition, at page 4.

<sup>7</sup> Id.

<sup>8</sup> Specifically, compound, argumentative, and hypothetical questions shall be avoided, and objections shall be kept to a minimum.