

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

<hr/>	
In re:)
Applications for Renewal)
of License of:)
)
The Lutheran Church/Missouri Synod)
KFUO-AM/FM, Clayton, Missouri)
)
TO: THE CHIEF, MASS MEDIA BUREAU)
<hr/>	

FCC File Nos.
BRH-890929VB
and
BR-890929VC

OPPOSITION TO PETITION TO
DENY AND RESPONSE TO INQUIRY

THE LUTHERAN CHURCH/MISSOURI
SYNOD

Reed Miller
Marcia Cranberg

ARNOLD & PORTER
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 872-6700

Its Attorneys

February 23, 1990

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY.....	ii
BACKGROUND.....	2
DISCUSSION.....	3
I. THE RATE AT WHICH KFUE HAS EMPLOYED MINORITIES COMPARES FAVORABLY WITH MINORITY AVAILABILITY FOR KFUE.....	4
A. KFUE Has Employed More Minorities Than is Alleged By Petitioners.....	4
B. Reliance Upon Employment Percentages Rather Than Raw Numbers Is Misleading.....	6
C. Petitioners Grossly Overstate Minority Availability for Those Job Categories Which KFUE Primarily Requires.....	7
II. PETITIONERS' DESCRIPTION OF KFUE'S RECRUITMENT PRACTICES IS INACCURATE.....	11
III: HIRING AND REFERRAL INFORMATION -- RESPONSE TO FCC INQUIRY.....	16
CONCLUSION.....	16
TABLE ONE	
TABLE TWO	
TABLE THREE	
ATTACHMENT ONE	
AFFIDAVIT OF DENNIS STORTZ	

SUMMARY

Petitioners have requested the Commission to designate KFUO's minority employment record for hearing and thereafter to deny KFUO's renewal applications. This request is based upon Petitioners' conclusion that KFUO has employed an insufficient number of minorities in comparison to the availability of minorities in the St. Louis area. Petitioners reach this conclusion by comparing employment data in KFUO's Annual Employment Reports (FCC Form 395), with 1980 Census Data for the St. Louis SMSA. Petitioners also assert that KFUO did not adequately utilize recruitment sources during the license term.

For several reasons the Petition to Deny should be dismissed. First, the statistical data upon which Petitioners rely do not accurately reflect KFUO's minority employment record. Petitioners misrepresent the number of minority employees shown in two of KFUO's seven Annual Employment Reports. Moreover, four of the Annual Employment Reports understate the number of minority employees at KFUO for the years reported. In fact, during most of its license term KFUO never needed more than 1.5 additional minority employees to achieve full parity.

Second, it is misleading to rely on overall minority availability in evaluating KFUO's employment

record. In fact, KFUD has employed minorities at a rate commensurate with the availability of minorities possessing the skills which the vast majority of KFUD's employees must have.

Finally, the statistical data upon which Petitioners rely do not accurately reflect KFUD's commitment to minority employment. Economic and managerial considerations, as well as the specialized nature of KFUD's employment needs, have all made it impractical for KFUD to recruit new employees as actively as do most other stations. Nevertheless, KFUD recruited employees from a number of different sources throughout the license period, and KFUD has recently further diversified its minority recruitment practices.

BACKGROUND

KFUO-AM has been operated by the Lutheran Church/Missouri Synod since 1924. It is operated non-commercially, broadcasting exclusively religious programming. KFUE-FM has been operated by the Church since 1948. It is the only full-time classical music station in the St. Louis market. For many years, KFUE-FM, like KFUE-AM, was operated as a noncommercial station. In 1983 the station for the first time supplemented its voluntary contributions with sales of commercial advertising.

The KFUE stations are small -- up until 1988 the number of full-time employees at the two stations combined was about 18. At present, the stations jointly employ 25 people.

Both stations have experienced a high degree of turnover at management levels. During the seven years of the license period there have been seven different station managers between the two stations. This is in part due to the fact that the stations' managers have typically been Lutheran ministers with little broadcasting experience. Recognizing the need for greater continuity in management, in 1988 KFUE hired a lay Station Manager who has extensive prior experience in broadcasting.

KFUO's Statement of Purpose reflects the singularity of the stations' programming. As set forth in that Statement, KFUE was created to both "reflect God's glory" and "contribute to the cultural well-being of the community".

DISCUSSION

Petitioners' request that KFUE's renewal applications be set for hearing and thereafter denied is based on three grounds.

First, purporting to rely upon statistics from the Annual Employment Reports filed by KFUE from 1983 through 1989, and comparing these numbers to overall minority labor force availability in St. Louis, Petitioners assert that KFUE's employment of minority employees is inadequate. Second, Petitioners assert that KFUE's "only" efforts to recruit new employees have been to contact certain unspecified employment services. Finally, Petitioners state that KFUE has provided no information concerning top four job category hires or applicant referrals.

As shown below, there is no basis for denial of KFUE's renewal applications.

I. THE RATE AT WHICH KFUO HAS EMPLOYED
MINORITIES COMPARES FAVORABLY WITH
MINORITY AVAILABILITY FOR KFUO.

A. KFUO Has Employed More Minorities
Than is Alleged by Petitioners.

Petitioners base their conclusion that KFUO has employed inadequate numbers of minorities on the figures contained in KFUO's Annual Employment Reports. However, Petitioners have misrepresented the number of minority employees shown in KFUO's 1985 and 1986 Reports. Further, the Reports distort KFUO's actual record of minority employment for the years 1984, 1985, 1988 and 1989.

Petitioners state that KFUO had one minority employee in 1985 and no minority employees in 1986. This is incorrect. In fact, KFUO's Annual Employment Reports show that KFUO had two minority employees in 1985 (or 11.8 percent) -- one more than Petitioners claim -- and one minority employee in 1986 (or 5.9 percent) -- again, one more than stated by Petitioners.

Moreover, as noted, the Annual Employment Reports, representing a random two-week period, themselves distort KFUO's actual employment record. Table One hereto accurately describes the Stations' record of minority employment. As shown therein, during the first year of KFUO's license term (1983) one of KFUO's seventeen employees (or 5.8%) was a member of a

minority group -- a black female employed in the Professional category. Midway through the second year (1984) and subsequent to the Annual Employment Report reporting period, KFUD hired a second black employee -- a female employed in the Office and Clerical category. Thus, in 1984, two out of KFUD's eighteen employees (not the single employee reflected in the Employment Report), or 11.1 per cent, were black.

During the first half of 1985 (but again subsequent to the Annual Employment Report reporting period), KFUD hired two additional black female employees, in the Office and Clerical category, for a total of four minority employees out of 17 total, or 23 per cent. This exceeded the parity level. Thus, in both 1984 and 1985 KFUD employed a greater number of minorities than is reflected in KFUD's Annual Employment Reports.²

Reliance upon KFUD's Annual Employment Report for 1988 is also misleading. The Report shows that no minority employees were at the stations in 1988 -- in fact, however, an Hispanic employee was hired in the

² By the 1986 Annual Employment Report reporting period, two of KFUD's minority employees had left the stations for opportunities in other fields, and one had died, leaving the stations once again with one minority employee out of 17 total. Shortly thereafter KFUD's remaining minority employee received an offer in another field and similarly left the stations.

Sales category in early March 1988. Because she was hired just subsequent to the 1988 reporting period, however, the fact that she worked at KFUD for nearly all of 1988 is not reflected.

Similarly, the 1989 Annual Employment Report understates KFUD minority employment for 1989. KFUD hired a black female in the Office and Clerical category subsequent to the 1989 reporting period. As such, in 1989 KFUD had two minority employees rather than the single employee reflected in the Employment Report.

Thus, in reality, during several years of its license period KFUD employed minorities at rates in excess of those claimed by Petitioners and in excess of the figures shown in KFUD's Employment Reports. KFUD employed minorities at a rate of 11.1 percent (just below full parity) in 1984; at 23.5 per cent (well above parity) in 1985; and at 5.9% and 7.7% (below parity, but less so than represented by Petitioners), respectively, in 1986 and 1989.

B. Reliance Upon Employment Percentages Rather Than Raw Numbers Is Misleading

Even relying upon the employment figures in KFUD's Annual Employment Reports, a realistic assessment of KFUD's performance during the early years of its license period (1983-1986) must take into account the impact that the small size of the stations has upon the

applicable percentages. As shown in Table One hereto, the extent to which KFUO fell short of achieving parity in 1983-1986 in terms of number of employees is far less than reliance upon percentages alone might suggest. Thus, as shown in Table One, had only 1.5 additional minority employees been employed at the stations they would have been at full parity in 1983, 1984 and 1986, and well in excess of parity in 1985. The employment of only one-half additional employee would have placed KFUO within the FCC's 50% "zone of reasonableness" for each of the years 1983-1986 and 1989.

C. Petitioners Grossly Overstate Minority Availability for Those Job Categories Which KFUO Primarily Requires.

Petitioners assert that KFUO's rate of employment of minorities is unacceptable in light of the 15.6 per cent minority labor force availability in the St. Louis area. Petitioners overstate the availability to KFUO of minorities with the specialized skills required for most job positions at the stations.

Nearly all of KFUO's employees are employed in one of the "top-four" job categories. In 1987 (the first year in which KFUO's minority employment fell significantly below parity), 16 of 18 employees were employed in a top-four category; in 1988, the figures were 19 of 23; and in 1989, they were 22 of 26.

Given the specialized nature of KFUO's formats, nearly all of the positions within KFUO's top four job categories can only be filled by persons who have either expertise in classical music (for KFUO-FM) or theological training in the doctrine of the Lutheran church (for KFUO-AM).

Table Two hereto describes the job titles and employment requirements for each of the top four job categories at KFUO for each of the years 1986-1989. The Table shows the following for each year:

1986. Of the six Officials and Managers positions at the stations, four required either expertise in classical music or theological training. Of the seven Professionals positions, six required either expertise in classical music or theological training.³

1987. In addition to the categories described above, one new Professional job and one new Sales job were added in 1987: the former requires a theological

³ The three remaining Top Four positions at the stations (none of which requires religious or musical training) are Chief Engineer, a post held by the same individual since 1959, Technician, held by the same individual since the early 1960's, and Business Director, held by the same individual since 1971.

background and the latter (that of sales person) a working knowledge of classical music.⁴

1988. A new Professional job position was added at each station, and a new Sales position was added at the FM station: religious training or classical music expertise were required for each respective new position.

1989. Two new Sales positions and a new Professional position were added at the FM station: all required expertise in classical music.

Clearly nearly all of KFUCO's employees must have specialized skills. However, relatively few minorities in the St. Louis area possess these skills.

Only five per cent of Lutherans in the St. Louis metropolitan area are members of minority groups. Only three per cent of Lutherans in the United States overall are blacks.⁵ The number of Lutherans of any ethnic group possessing a formal Lutheran theological background is very small, and the number of minorities with such training is obviously even smaller. KFUCO is unaware of any statistics showing the number of minority persons with a Lutheran theological background; however,

⁴ Salespersons who can talk knowledgeably about classical music are essential to effectively market the station.

⁵ Source: Research and Development Department, Lutheran Church/Missouri Synod.

an estimate can be made based upon minority enrollment figures for Concordia Seminary, the largest Lutheran seminary in the United States, located in St. Louis. Of the 482 students currently enrolled in the seminary, only three are black, two are Hispanic, and five are Asian -- or about two per cent total.

Similarly, KFUO is not aware of any specific statistics showing classical music training among members of minority groups. However, one measure is the popularity of KFUO-FM (the only full-time classical music station in the area) among persons who are members of minority groups. In October and November 1988 (the most recent figures available to KFUO), only 3.7 per cent of KFUO-FM's 72,800 listeners -- or 2,693 -- were black; 0 per cent were Hispanic or Asian.⁶ This is approximately .1 per cent of the population of the St. Louis Metropolitan Statistical Area. Figures as to persons in the labor market with classical music expertise -- as opposed to simply interest -- would, of course, be even lower.

Thus, KFUO's highly specialized employment needs make reliance upon overall minority labor force availability meaningless. In fact, there is but a small number of minority persons in the St. Louis SMSA -- or,

⁶ Source: The Media Audit -- St. Louis, 1988
International Demographics, Inc.

for that matter, nationwide -- who possess the qualifications KFUO requires for nearly every job position at the station. By one estimate, only about .1 per cent of the St. Louis population consists of members of minority groups with classical music training; roughly two per cent of the population consists of members of minority groups with Lutheran theological training. KFUO's minority employment record must be considered in that context.

II. PETITIONERS' DESCRIPTION OF KFUO'S RECRUITMENT PRACTICES IS INACCURATE

Petitioners assert that KFUO's only recruitment efforts have consisted of contacting unspecified employment agencies. This is incorrect. KFUO has drawn on multiple referral sources throughout its license term.

It should be noted at the outset that several factors have contributed to a historical trend militating against widespread employee recruitment at KFUO. First, the specialized nature of KFUO's program formats have resulted in the stations' receiving a large number of qualified "write-in" applicants each year. The reason is clear -- because there are relatively few classical music or Lutheran religious stations in the country, those persons with a particular expertise in

classical music, or a Lutheran theological background, actively solicit positions at stations such as KFUD. When a given job vacancy occurs, KFUD typically has available to it some 20 resumes on file for persons with the specific qualifications KFUD seeks.⁷

In addition, KFUD's studios are located on the campus of Concordia Seminary. KFUD pays no rent for these facilities. Given the noncommercial nature of the AM operation (and, until recently, of the FM as well), this arrangement is extremely important to KFUD's ability to continue to offer high quality broadcast service. Part of the arrangement has included reciprocal efforts by KFUD to provide broadcast training to Concordia students or their spouses through employment at the stations. Thus, as an accommodation to the Seminary, KFUD has tried to fill a number of the non-specialized positions at the stations with Seminary students or their spouses.

Finally, as noted, KFUD has experienced a tremendous degree of management turnover during its license period. The lack of consistent leadership has increased the difficulties in maintaining a consistent recruitment program. As noted above, KFUD is sensitive

⁷ Indeed, a number of KFUD's employees originally came to the stations as dedicated volunteers with a special interest in theology and/or classical music.

to the need for establishing greater continuity in management, and to this end, hired a new Manager in 1988 who has significant broadcast experience. KFUCO is hopeful that more stable management will result, with a resulting opportunity to focus on a number of areas requiring attention at the stations, including employee recruitment.

Despite these considerations, KFUCO has nevertheless recruited job applicants from a number of sources throughout its license period. First, KFUCO has advertised a number of its positions through the years with Broadcasting Magazine. KFUCO was able to fill 1987 job openings in both the Sales, and Officials and Managers categories, with applicants who responded to KFUCO's advertisements in Broadcasting.

Second, KFUCO has advertised job openings during the license period with the St. Louis Post Dispatch, a major daily newspaper. One of the stations' bookkeepers was hired in 1985 through a Post Dispatch advertisement.

Third, KFUCO has regularly posted its job openings at the International Center of the Lutheran Church/ Missouri Synod in St. Louis. 11.5 per cent of the employees at the International Center are members of minority groups. Many of KFUCO's employees have come directly from the Center, or through referrals by Center employees, throughout the license period.

Fourth, a number of the station manager positions at the AM station have been advertised throughout the license period in nationwide periodicals published by the Lutheran Church. Five manager positions have been filled since 1983 with applicants responding to these advertisements.

Fifth, the stations contacted the St. Louis Broadcast Center, the only full-time broadcasting school in St. Louis, to fill job openings during the license period. An announcer at the AM station was hired in 1987 through the Broadcast Center, as was a KFUO-FM Sales employee in 1989.

Finally, since last year the stations have begun to recruit more actively in a number of new areas.⁸ First, KFUO has established a successful relationship with the Lutheran Employment Project of St. Louis, a clearinghouse run by the Lutheran Church for employment of members of minority groups. In November 1989, KFUO interviewed three minority persons referred by the Project, and hired one of them to fill an open clerical position. KFUO is presently interviewing a number of additional minority applicants referred by the Project and will shortly make a hiring decision to fill a second

⁸ These increased efforts were described in some detail in a supplement to its renewal application which KFUO filed on December 29, 1989. A copy of this supplement is attached hereto as Attachment One.

job opening at the stations. Second, KFUCO has sent letters to a number of employment agencies, described in Attachment One hereto, specifically requesting them to send qualified minority and female applicants to the stations. Third, KFUCO has sent similar letters to all of the major educational institutions in the St. Louis area, as well as to The Broadcast Center. With the exception of one branch of St. Louis Community College, each institution has at least a 13 per cent minority enrollment -- and one has a minority enrollment of 44 per cent.⁹ Fourth, as noted in Attachment One, KFUCO has begun advertising its job openings with the St. Louis Argus, the local newspaper with the highest black readership in St. Louis. KFUCO has since also begun advertising with The St. Louis American and The Sentinel, two additional local newspapers with a primarily black readership. KFUCO recently interviewed eight persons who responded to advertisements in these publications, and has hired a black male to fill a new position in the Service Workers category. Finally, KFUCO has begun working with Reverend Otis Woodard, a black Lutheran minister who operates an outreach ministry in northern St. Louis. Reverend Woodard has referred minority applicants to KFUCO.

⁹ A listing of these institutions, and their minority enrollments, is included at Attachment One.

In sum, KFUO has used multiple recruitment sources throughout its license period. While circumstances unique to KFUO have made recruiting more difficult than it would be for most stations, KFUO has nevertheless in the last year initiated a more widespread recruitment effort which has already yielded results and which KFUO intends to continue.

III. HIRING AND REFERRAL INFORMATION --
RESPONSE TO FCC INQUIRY

Finally, Petitioners state that KFUO provided no top four hiring or referral information in the Equal Employment Opportunity Program Report filed with its renewal application. That information was filed as part of the renewal application supplement. (See Attachment One.)

The FCC's letter of inquiry has requested KFUO to provide detailed information about its hiring from October 1, 1986 to October 1, 1989. This information is included at Table Three hereto..

CONCLUSION

KFUO's employment record must be considered in the context of KFUO's unique employment needs. Nearly every Top-Four position at the stations requires highly specialized skills; however, less than two per cent of

the population of the St. Louis SMSA consists of members of minority groups possessing these particular skills. Even so, KFUE's minority employment record is superior to that represented by Petitioners. In fact, for the majority of its license term, KFUE needed no more than 1.5 additional minority employees to achieve a rate of minority employment equal to or greater than the availability of minorities overall in the St. Louis SMSA labor force.

For the reasons stated above, the Petition to Deny KFUE's renewal applications should be dismissed, and KFUE's renewal applications granted.

Respectfully submitted,

THE LUTHERAN CHURCH/MISSOURI SYNOD

By: Marcia Cranberg
Reed Miller
Marcia A. Cranberg

ARNOLD & PORTER
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 872-6700

Its Attorneys

Date: February 23, 1990

TABLE ONE

Full-Time Minority Employment at KFUCO

	<u>Number of Minorities/ Total</u>	<u>Percent of Minorities</u>	<u>Number Needed for Full Parity</u>	<u>Number Needed for 50% Parity</u>
<u>1983</u>	1/17	5.9%	2.6	1.3
<u>1984</u>	2/18	11.1%	2.8	1.4
<u>1985</u>	4/17	23.0%	2.6	1.3
<u>1986</u>	1/17	5.9%	2.6	1.3
<u>1987</u>	0/18	0.0%	2.8	1.4
<u>1988</u>	1/23	4.3%	3.6	1.8
<u>1989</u>	2/26	7.7%	4.0	2.0

TABLE TWO

Top-Four Full-Time Job Titles at KFUO

1986 Officials and Managers

General Manager of KFUO-AM*
 Director of Religious Programming of KFUO-AM*
 Program Director of KFUO-FM**
 Traffic Director of KFUO-FM**
 Chief Engineer
 Business Director

Professionals

Director of Development of KFUO-AM*
 Announcer/Program Director of KFUO-AM*
 Announcers for KFUO-FM(4)**
 Bookkeeper

Technicians

Single Technician

Sales Workers

None

1987 Same as 1986, plus:Professionals

Announcer for KFUO-AM*

Sales Workers

Salesperson for KFUO-FM**

1988 Same as 1987, plus:Professionals

Director of Broadcast Ministries for KFUO-AM*
 General Manager of KFUO-FM**

Sales Workers

New Salesperson for KFUO-FM**

* Theological training required.

** Knowledge of classical music required.

1989 Same as 1988, plus:

Professionals

Announcer for KFUC-FM**

Sales Workers

2 New Salespersons for KFUC-FM**

* Theological training required.

** Knowledge of classical music required.

TABLE THREE

Full-Time Hires: 10/1/86 - 10/1/89

1987BEVERLY BRANDT - WFSALES 3/23/87 - KFUD-FM
Salesworker*

Resume on file. Only person interviewed.

BOB EVANS - WMPROFESSIONAL 9/21/87 - KFUD-FM
Announcer*

Resume on file. Only person interviewed.

BERN HENIZE - WMSALES 1/26/87 - KFUD-FM
Salesworker*

Ad placed in Broadcasting Magazine and Notice posted at Church headquarters. Two white males and one white female interviewed.

TOM LAUHER - WMMANAGEMENT 5/14/87 - KFUD-FM
Station Manager

Ad placed in Broadcasting Magazine. Approximately 20 resumes received, cannot determine race.

KEN LOMBARDI - WMMANAGEMENT 7/27/87 - KFUD-AM
Station Manager**

Advertisements placed in Lutheran publications with nationwide circulation. Field narrowed to 5 from nationwide search. None of the five was a minority. (Race of others submitting resumes cannot be determined.)

JUDY McMURTRY - WFSALES 2/23/87 - KFUD-FM
Salesworker*

Resume on file. Only person interviewed.

* Knowledge of classical music required.

** Theological training required.