

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 85-350

In the Matter of

Amendment of Part 73 of the
Commission's Rules Concerning
Equal Employment Opportunity
in the Broadcast Radio and
Television Services

MEMORANDUM OPINION AND ORDER

Adopted: February 8, 1989; Released: February 22, 1989

By the Commission:

1. The Commission has before it a "Request For Clarification And For Suspension Of Effective Date" filed June 8, 1988 by the National Association of Broadcasters (NAB). NAB asks that we clarify the procedures broadcasters are to follow in compiling data for and completing Section III of the new FCC Form 396.¹ The new Form 396, like its predecessor, seeks information concerning a broadcast station's EEO efforts and is filed with a station's license renewal application.² NAB also asks that we suspend or modify our use of Section III for at least one year to allow broadcasters time to come into compliance with its requirements.³

2. NAB notes that Section III of the form released for use with applications for license renewal that were due to be filed on or after June 1, 1988, differs from the version that appeared with the *Report and Order*. It asserts that the new version asks licensees to report separately the number of minority and women referrals, while the version released with the *Report and Order*, as well as the former FCC Form 396, merely asked for the number of referrals. NAB states that it does not, in principle, oppose the collection of separate referral data for minorities and women. However, it does object to the manner in which this requirement was introduced and the lack of a phase-in period to permit licensees to come into compliance with the new manner of reporting referral data.⁴ NAB also states that it is unclear how we expect the data to be collected and the type of data we expect to receive.

3. NAB contends that the new method of reporting referral data will cause confusion for broadcasters. It claims that to comply with nondiscrimination laws, broadcasters have been regularly advised by their attorneys not to request or maintain information on employment applications regarding the race or sex of applicants. NAB asserts that we are now mandating that broadcasters report such data without explaining how we expect those data to be collected without violating federal or state antidiscrimination laws. To resolve this dilemma, it requests that, at the least, we describe the procedures licensees should use so that licensees may cite our

instructions as a defense to a discrimination case with attacks the licensee for obtaining and maintaining the data.

4. NAB also asks that we define the term "referral" that licensees know who to include in the Section III data report. NAB claims that, historically, licensees counted referrals persons who submitted resumes received as result of help wanted advertisements or those who made telephone inquiries about possible job openings. To obtain information about such a person's race or sex, a licensee would have to send a data request form and have returned. Alternatively, a licensee could count only those who actually came to the station or those who were interviewed.

5. **DISCUSSION.** Our broadcast EEO rules require that broadcast licensees refrain from employment discrimination and establish and maintain an affirmative action program for qualified minorities and women.⁵ These basic obligations have existed since 1970.⁶ In explaining the scope of a licensee's affirmative action duties, we have repeatedly emphasized the importance of recruiting qualified minorities and women.⁷ Recruitment efforts became more important when, in June 1987, the Commission adopted an efforts-oriented EEO program. The Commission believed that the principal element of a good EEO program was the effort undertaken to attract qualified minority and female applicants whenever vacancies occurred, rather than relying on a station's statistical profile. Also, our rules have always stressed that periodic self-assessment is a necessary part of a functioning affirmative action program.⁸ In essence, self-assessment involves licensee review of its entire personnel process, i.e., from recruitment to termination, to ensure that minorities and women are afforded equal opportunities in employment.

6. In 1976, we adopted a model EEO program to assist licensees' compliance with our EEO rules. Section IV of that program, entitled recruitment, asked for a reporting of recruitment procedures for minorities and women in order to ensure nondiscrimination. Section IV asked licensees to list the number of referrals received from minority and women's organizations, employment services, educational institutions with significant minority and female enrollments, and advertisements in printed media which have significant circulation among minorities and women. The rationale for collecting and reporting referral data was to determine the success of the licensee's efforts to increase the pool of minority and female applicants.⁹ Also, the 1976 EEO program form asked licensees whether an analysis of their recruitment techniques, job applications, and new hires suggested that a sufficient number of qualified minorities and women were applying for available positions. Thus, in order to answer this question, even as far back as 1976, licensees would have had to collect data about the race and sex of minority and female referrals.¹⁰

7. We also note that, when questions have arisen about a licensee's recruitment efforts, the Commission has asked for and received information about applicant flow.¹¹ Specifically, we have asked licensees for a list of those hired as well as those who applied for each job filled during a particular period of time, identifying each applicant by referral source, sex, and race or national origin. When applicant flow data were not kept by a licensee or when a licensee could not determine whether its efforts resulted in any minority or female referrals, we held the program deficient.¹² Moreover, when we have found efforts to be

deficient, the reporting conditions imposed have usually required licensees to submit information about the race, sex and referral source of applicants.¹³

8. Therefore, we disagree with NAB that the new manner of reporting referral information constitutes a significant departure from past practice. We also disagree that the reporting change from undifferentiated data to data for only minority and female referrals means that we cannot sanction a licensee for failing to have the information. We recognize that, absent notice, Section 552(a)(1) of the Administrative Procedure Act (APA) requires that each amendment of the "description of forms available," "instructions," and "substantive rules of general applicability" be published in the Federal Register before any person may be adversely affected by a matter which should have been published but was not published.¹⁴ However, the data we are asking licensees to report should have been kept by licensees at least since 1976 to fulfill their reporting obligations as to recruitment as well as their self-assessment obligations. Having licensees report the source and number of minority and female referrals does not constitute a new requirement. The reporting of these data merely allows us to more accurately assess a licensee's EEO efforts and verify that the means for self-assessment actually exist as reflected in the EEO reported data.

9. We also dispute the suggestion that collecting information about the race and sex of applicants will subject licensees to liability under the civil rights laws. The Equal Employment Opportunity Commission has long recognized that information as to an applicant's race and sex can be collected pursuant to an affirmative action plan.¹⁵ Further, although some states appear to prohibit the collection of information about an applicant's race or national origin, our research indicates that those same states recognize that such information may be lawfully collected if the collection is pursuant to the requirements of a federal agency or in furtherance of a program to analyze whether recruitment or selection procedures have an adverse impact upon protected classes.¹⁶ The data collection we have mandated is for the purpose of allowing licensees to analyze whether their recruitment efforts are resulting in applicant pools which include qualified minority and female applicants. This purpose was articulated in 1976 and has remained unchanged. We, therefore, conclude that the model EEO program's required method of reporting data will not subject licensees to liability under state or federal antidiscrimination laws.¹⁷

10. With respect to the term "referral," we note that it appears in Section III of the new Form 396, which references recruitment efforts made to attract qualified minority and female applicants. Similarly, Section IV of the former Form 396 also referenced recruitment of qualified minority and female applicants. NAB states that licensees have included as referrals all who submit resumes or make telephone inquiries about job openings. Thus, no distinction would be made on the reporting form between women, males or minorities. As to this point, NAB seems to suggest that this type of non-specific reporting was all that was required by a licensee for EEO compliance purposes in the past. However, such an interpretation is obviously contrary to the stated intent, past and present, of our EEO rules, i.e., to ascertain the steps taken by licensees to recruit women and minorities (see paragraph 6, *supra*). Moreover, we do not see how a licensee, or the Commission, could possibly assess, as

required, whether a sufficient number of qualified women and minorities were applying for available positions, if the licensee had no idea as to how many, if any, women and minorities were applying for such positions.

11. In order to complete the referral section accurately a licensee needs to know whether the referral is a minority or a female. If that fact is not known because, for example, no follow-up was made on applications received by mail, the referral cannot be reported as a minority or female referral. We are aware of several methods that can be used to obtain information about an applicant's race and sex.¹⁸

12. Moreover, with respect to "qualified" applicants that is, those applicants who are actively considered for a particular position, licensees are in a position to observe and record the person's sex and race or national origin when the person is either interviewed or fills out an application at the station's personnel office.¹⁹ For those applicants interviewed by telephone, the sex of the person may be evident. Similarly, the sex of an applicant may be ascertained from an audio tape and the sex and race from a video tape. Thus, there should be no additional recordkeeping burden on licensees; the only difference is that the data collected will be reported separately for minorities and women, not together.²⁰

13. As far as reporting on the new Form 396 is concerned, those few licensees that may have misinterpreted our requirements or that have not been collecting and maintaining referral data by race and sex because of a belief that their collection and maintenance were unlawful or not required should be able to reconstruct those data by checking with their employees who interviewed prospective job candidates. We believe most licensees can provide this information.²¹ If a licensee cannot determine the race and sex of the persons it has interviewed, a question may be raised whether the licensee had sufficient information to analyze the effectiveness of its recruitment efforts, critical information for renewal purposes.²² On a case-by-case basis we will afford those licensees, who do not report the data as requested, an opportunity to reconstruct such data, by further checking as noted above. We will continue this case-by-case approach for one year following the release date of this order.

14. Accordingly, IT IS ORDERED, That the "Request for Clarification and for Suspension of Effective Date" filed by the National Association of Broadcasters IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

¹ In the *Report and Order* in this proceeding, the Commission adopted revisions to its Equal Employment Opportunity (EEO) rules. To focus additional attention on licensees' EEO efforts, the Commission replaced the then existing 10-point EEO Program Report with a new Broadcast Equal Opportunity Program Report (FCC Form 396). *Report and Order* in NIM Docket No. 85-350, 2 FCC Rcd 3467 (1987).

¹ A copy of the new FCC Form 346 is attached as Appendix A.

² Comments in support of NAB's petition were filed by the Broadcast Financial Management Association (BFM) and the law firms of Haley, Bader & Potts, and Leventhal, Senter & Lerman. Opposing comments were filed by the Citizens Communications Center, Institute for Public Representation, which filed on behalf of seven public interest organizations that had participated in this Rule Making. For a complete list of the commenters, see Appendix B.

³ Citing Section 552(a)(1)(C) of the Administrative Procedure Act, BFM claims that the Commission cannot sanction a licensee for having failed to compile data on referrals based on sex and race because licensees could not have known that such data were needed. The Citizens Communications Center argues that the new format does not add any new requirements and merely requires more precise reporting about an activity, i.e., recruiting, which has always been a critical part of a licensee's EEO program.

⁴ Section 73.2080 of the Commission's Rules.

⁵ *Nondiscrimination Employment Practices of Broadcast Licensees*, 23 FCC 2d 430 (1970).

⁶ See, e.g., *Pyle Communications of Beaumont, Inc.*, 2 FCC Rcd 1703, 1705-06 (1987); *KDEN Broadcasting Co.*, 55 RR 2d 1311 (1984); *Leflore Broadcasting Co.*, 65 FCC 2d 556 (1977); *Employment Policies and Practices*, 44 FCC 2d 1049 (1973).

⁷ See, e.g., *Carolina Christian Broadcasting, Inc.*, 3 FCC Rcd 1417, 1810 (1988); *Leflore Broadcasting Co.*, supra note 7 at 563.

⁸ *Nondiscrimination in Employment Practices (Broadcast)*, 61 FCC 2d 226, 236 (1976).

⁹ Keeping track of applicants by race and sex is not new to members of NAB. In 1980, NAB published *A Broadcasters Guide to Designing an Effective EEO Program*, which included instructions on how licensees should collect and maintain applicant flow data by race and sex. The book also recommends that only those individuals who actually fill out an application for employment be treated as job applicants. We find it ironic that NAB should now contend that licensees were not collecting this information and did not know how to do so.

¹⁰ E.g., *Richey Airwaves, Inc.*, 53 RR 2d 330 (1983).

¹¹ *National Capital Christian Broadcasting, Inc.*, 3 FCC Rcd 1419, 1920 (1988).

¹² E.g., *Baltimore Metropolitan Broadcast Stations*, 80 FCC 2d 1183, 1196 (1982).

¹³ See also, Section 553 of the APA, 5 U.S.C. Sec. 553.

¹⁴ See EEOC Decision No. 75-5-1114 (November 14, 1974). Moreover, in Sec. 1607.4 of the Uniform Guidelines on Employee Selection Procedures (1978), the EEOC states that:

A. Each user should maintain and have available for inspection records or other information which will disclose the impact which its tests and other selection procedures have upon employment opportunities of persons by identifiable race, sex, or ethnic group . . . to determine compliance with these guidelines. Where there are large numbers of applicants and procedures are administered frequently, such information may be retained on a sample basis, provided that the sample is appropriate in terms of applicant population and adequate in size.

B. . . . The race, sex, and ethnic classifications called for by this section are consistent with the Equal Employment Opportunity Standard Form 118, Employer Information Report EEO-1 series of reports. The user should adopt

safeguards to insure that the records required by this paragraph are used for appropriate purposes such as determining adverse impact, or (where required) for developing and monitoring affirmative action programs, and that such records are not used improperly.

¹⁵ The law firm of Leventhal, Senter & Lerman contend that numerous states have enacted laws which prohibit employers from making the inquiries that are mandated by Form 346's recruitment section. As examples, the laws of Maine, Michigan, Ohio and West Virginia are cited, and provisions of the Ohio law are quoted. However, our research has disclosed that each of the referenced states, by policy or rule, allows for the collection of data by race and sex under certain circumstances. For example, the Ohio Civil Rights Commission has adopted a policy guideline which states:

. . . Sec. 2. The Commission will not consider the making and maintenance of records of the race, religion or national origin of applicants for employment . . . to violate the purpose of R.C. Sec.4112.02(E) and 4112.02 (H)(7) where such records are: (a) Made in conformance with instructions from, or the requirements of, an agency . . . of the . . . federal government in connection with the administration of a program which serves to promote the elimination of discrimination: . . .

Sec. 3. The Commission will not consider the making and maintenance of records of the race, religion, or national origin of applicants for employment . . . to violate R.C. Sec.4112.02(E)(1) and (2) and 4112.02(H)(7) where: (a) Such recordkeeping is part of a bona fide systematic program to analyze whether recruitment, selection or other employment procedures have an adverse effect upon the classes protected . . .

Vol. 3, *Employment Practices Guide*, para. 26.055, pp. 4343-44 (1981).

The exceptions to the statutory prohibition for collecting data about the race and sex of job applicants are also repeated in Section 4112-5-44 of the rules of the Ohio Civil Rights Commission.

The Pre-employment Inquiry Guide issued by the West Virginia Human Rights Commission states:

"An employer may keep information that lists the race, sex and age of an individual if that information is maintained in a segregated filing system and is used only for legitimate reporting purposes and/or to monitor the progress of an employer's Affirmative Action Program, and not for any harmful discriminatory practice. It is advisable that questions pertaining to Race, Sex or Age appear on a separate sheet of the application form; or on a detachable section of the form."

See also, Sections 3.10B, 3.10B, and 3.11B of the employment regulations of the Maine Human Rights Commission; and the Pre-Employment Inquiry Guide issued by the Michigan Department of Civil Rights and Section 37.24 of the regulations of the Michigan Civil Rights Commission.

⑥

We also note that no licensee has ever reported that its collection of applicant data was sanctioned by the EEOC or the appropriate state human relations agency. However, if any state's law or policy does bar collection of the data we have directed licensees to obtain for their affirmative action programs, we will take that into account in evaluating the licensee's overall efforts.

¹⁸ See *supra* note 16's reference to the Pre-Employment Inquiry Guide issued by the West Virginia Human Rights Commission.

¹⁹ The licensee has full discretion to determine which applicants are actively considered and therefore which applicants are deemed to be "qualified."

²⁰ Referrals who are female minorities may and should be counted as both a female and a minority.

²¹ Nearly 40% of the first group to use the new Form 346 reported referral data in the manner requested.

²² When a licensee is unable to provide any referral data and the station's renewal application EEO program suggests that there were insufficient EEO efforts, we delegate to the Chief, Mass Media Bureau, the authority to impose a reporting condition for one year to monitor the licensee's implementation of an appropriate system of record keeping. To effect this change in authority, we will amend Section 0.243 of our rules. See Appendix C.

NAACP EXHIBIT 47

| Federal Communications Commission | |
|-----------------------------------|------------------------|
| Docket No. <u>94-10</u> | Exhibit No. <u>47</u> |
| Presented by <u>NAACP</u> | |
| Disposition | Identified <u>6/21</u> |
| | Received <u>6/22</u> |
| | Rejected _____ |
| Reporter <u>BARBARA WOOD</u> | |
| Date <u>6/21/94</u> | |

000-360 ①

ARNOLD & PORTER

1200 NEW HAMPSHIRE AVENUE, N. W.

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REED MILLER
DIRECT LINE: (202) 872-6826

June 21, 1989

Mr. Dennis Stortz
Acting General Manager
Station KFUD
801 DeMun Avenue
St. Louis, MO 63105

Dear Dennis:

We have written you in the past concerning the FCC's stricter enforcement of equal employment opportunity (EEO) requirements. Through the months, we have seen increasing numbers of cases in which the Commission has imposed penalties and/or granted conditional license renewals on EEO grounds, even in situations where no petitions to deny had been filed. Accordingly, we thought it might be useful to again summarize the key aspects of the Commission's policy in this area.

First, keep in mind that "good numbers" are no longer sufficient. In the past, licensees who employed minorities and women at a rate of at least half of their availability in the relevant labor market rightly considered themselves immune from further FCC inquiry. Now, however, licensees must be prepared to demonstrate that they consistently employ their best efforts to recruit, hire, train and promote minorities and females, even in cases where their employment numbers appear to be satisfactory.

Second, in order to demonstrate such best efforts, licensees should utilize both female and minority recruitment sources for each job opening at the station. This appears to be generally true even in situations where the station might otherwise choose to promote from within, unless the internal applicant pool includes reasonable numbers of female and minority applicants. Moreover, if the recruitment sources used by the station fail to turn up minority or female

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June 21, 1989
Page 2

applicants, the licensee must make efforts to determine why this is so, and attempt to develop more effective minority and female recruitment alternatives. The licensee's contacts with minority and female recruiters must be meaningful and genuine.

Third, licensees must maintain detailed records in order to demonstrate that they have recruited minority and female applicants. As such, licensees must develop a system for tracking the race and sex of all applicants, consistent with state or local anti-discrimination requirements, and for documenting the source of such applicants (i.e., from a minority recruitment source, off the street, etc.). The failure to maintain such documentation could result in a licensee's inability to demonstrate to the Commission that it has, in fact, made sincere EEO efforts.

The attached FCC news release describes a recent representative case in which the FCC imposed penalties for non-compliance with EEO requirements. The license renewals for two Maryland radio stations were granted for less than the full term, periodic reporting requirements were imposed, and a penalty of \$15,000 was assessed, even though no petitions to deny or informal objections had been filed against the station renewals. The Commission emphasized that the stations had failed to make serious ongoing efforts to recruit minorities for job openings.

Please let us know if you have any questions about the FCC's EEO requirements.

Very truly yours,



Reed Miller

Enclosure



NEWS

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET, N.W.
WASHINGTON, D.C. 20554

News media information 202 / 632-5050
Recorded listing of releases and texts
202 / 632-0002

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296745

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI • FCC. 315 F 2d 388 (D.C. Cir. 1975)

Report No. MH-396

MASS MEDIA ACTION

May 26, 1989

FCC CONDITIONALLY RENEWS THE LICENSES OF WSBY/WQHQ-FM, SALISBURY AND OCEAN CITY, MD; NAL ISSUED; ASSIGNMENT OF LICENSES GRANTED

The Commission has conditionally renewed the licenses of WSBY/WQHQ-FM, at Salisbury and Ocean City, MD. Although no petitions to deny or informal objections were filed against the station renewals, the Commission, after review of the stations' EEO program and performance, concluded that the renewals should be granted for less than a full-term and subject to periodic reporting conditions. Further because of the stations' repeated failures to comply with the FCC's EEO provisions, the Commission also determined that the licensee's performance warranted a Notice of Apparent Liability of forfeiture in the amount of \$15,000. Additionally, the Commission granted applications to assign the licenses of the stations from Woolfson Broadcasting Corporation of Salisbury/Ocean City, Inc. to HVS Partners.

Commission rules require that broadcast licensees refrain from employment discrimination and establish and maintain an affirmative action program reflecting positive and continuing efforts to recruit, employ and promote qualified women and minorities.

The Commission found that although the labor force of Wicomico County is 19.1 percent Black, review of the licensee's employment reports revealed an absence of Blacks on the stations' overall full-time staff. License term reports also revealed that the two blacks on the full-time staff in 1986 departed and the stations employed no Blacks on its staff of 27 full-time employees in 1987. In response to an inquiry sent by FCC staff concerning the stations' EEO efforts, Woolfson indicated that during a two year period, the stations had 33 full-time hiring opportunities and used minority recruitment sources for 14 of the 33 positions. The contacts resulted in only two minority referrals and no minority hires. Information received in response to a second inquiry by FCC staff concerning compliance indicated that the licensee did not focus attention on the stations' implementation of the EEO program until the final year of the license term. Specifically, throughout the license term, it neither regularly sought minority and female applicants nor engaged in ongoing self-assessment to evaluate the effectiveness of its EEO program. Consequently, the licensee repeatedly failed to comply with the affirmative action provisions set forth in the Commission's rules.

With respect to the assignment of license, the Commission found it to be in the public interest to grant Woolfson's request to assign the licenses to HVS Partners. The Commission emphasized that although the forfeiture would be imposed on Woolfson Broadcasting, HVS Partners would be obligated to comply with the reporting conditions.

(over)

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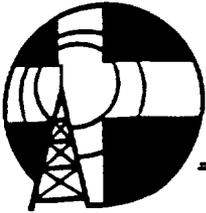
Action by the Commission May 23, 1989, by Direction Letter (FCC 89-165). Commissioners Patrick (Chairman), Quello and Dennis.

-FCC-

News Media contact: Patricia A. Chew at (202) 632-5050. Mass Media Bureau contacts: Pamela Hirston at (202) 632-7069.

NAACP EXHIBIT 48

| Federal Communications Commission | | | |
|-----------------------------------|---------------------|-------------|-----------|
| Docket No. | <u>94-10</u> | Exhibit No. | <u>48</u> |
| Presented by | <u>NAACP</u> | | |
| Disposition | Identified | <u>6/21</u> | |
| | Received | <u>6/22</u> | |
| | Rejected | | |
| Reporter | <u>BARBARA LORD</u> | | |
| Date | <u>6/21/94</u> | | |



KFUO 850 AM 99.1 FM
lutheran radio

85 FOUNDERS LANE, ST. LOUIS, MO 63105

003581

(314) 725-3030

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EEO Justification

RECORDS ACCURATE

In the petition to deny application for Renewal of License for KFUO-AM/FM, the facts recorded in Table 1, relative to the minority employment at KFUO, have been examined for the years of 1983-1989 from the station's records, and compare accurately with those submitted by Herbert Henderson and David Honig, Interim General Counsel for the NAACP and Counsel for Petitioners respectively.

NEW MANAGERS

The managers of both KFUO-AM and FM are new in their positions since October, 1989. There is no possible way that they could have known the problem of non-compliance other than a study of the present and past records, or to have been appraised of the same by either the staff or the Federal Communications Commission. The information came to both of the new general managers by way of the petition to deny application. It is the firm resolve of both station managers to bring both KFUO-AM and FM in compliance with the EEO program that KFUO has in its affirmative action plan.

HISTORY OF KFUO

Both KFUO-AM and FM were taken under the guiding arm of The Lutheran Church -- Missouri Synod at its delegate convention of 1986. That put the station, its philosophy of management, its objectives, its hiring practices, its programming and its theological outreach beneath the constitution and by-laws of The Lutheran Church -- Missouri Synod. The Lutheran Church -- Missouri Synod establishes the policy for hiring and job description for each position available at the station. The station management have some latitude in hiring, as long as its hiring practice coincides with the doctrine and practice of The Lutheran Church -- Missouri Synod.

FOCUS OF BOTH STATIONS

Since the AM became reality in 1924 and the FM in 1948, the focus in broadcasting either music or talk have been related to the theology and practice of The Lutheran Church -- Missouri Synod. The Ministry outreach has been of primary concern to the station management and the Synod Board of Directors. The primary focus of attention has not changed since 1924, but it



KFUO 850 AM 99.1 FM
lutheran radio

85 FOUNDERS LANE, ST. LOUIS, MO 63105

603682

(314) 725-3030

(2)

page 2

is now shared with great concern for support of both stations. In these changing economic times, how can the unchanging message continue to be delivered in a most efficient way, is the question under greatest scrutiny.

SUPPORT OF MINISTRY OF KFUO-AM/FM

For many of the years since 1924, KFUO has been supported substantially by wills and bequest dollars left to the stations. When those bequest dollars began to lessen (that has been the reality since 1985) the hottest focus of concern, other than doctrinal content of word and music...has been placed on the accumulation of dollar support to keep both stations in broadcast ministry. Since that moment in the history of KFUO, funding of ministry has been critical.

CHANGE OF MANAGEMENT

Change of management occurred at both KFUO-AM and FM 7 times during the years of to . That made it difficult to have continuity in ministry on both stations, to say nothing little about the concerns for Equal Opportunity Employment, especially since The Lutheran Church -- Missouri Synod controlled the personnel positioning of all incoming employees. Concern for compliance to EEO just slipped by the way...inadvertantly...while ministry and survival support became the primary concerns.

HIRING PRACTICES

KFUO-AM and FM is located on the Campus of Concordia Lutheran Seminary, the 4th largest seminary in the country. Students from across American and across the world come to the Concordia campus to be trained in doing ministry both in this country and abroad. Since the cost to attend seminary and support oneself during those 4 years can create indebtedness that ranges to over \$20,000, KFUO seeks to hire as many seminary spouses or seminary students as the stations can afford. No one is excluded from that solicitation practice. Presently there are 10 females in the 26 full-time employee positions.



KFUO 850 AM 99.1 FM
lutheran radio

85 FOUNDERS LANE. ST. LOUIS, MO 63105

603683

(3)

(314) 725-3030

page 3

MINORITY HIRING PRACTICES

REALITY

There are at the submission of this information 3 blacks on a staff of 26 full-time employees. That places KFUCO-AM/FM at 75% of minority employee needs. Our plan is to carefully monitor that percentage, and before the conclusion of 1990, hire an additional minority person on staff. Since most of the positions substantiate the need for the hired person to be a member of The Lutheran Church -- Missouri Synod, (the % of blacks in the LC--MS is %, the St. Louis area %, and on the Seminary Campus is %) almost all of those hired at KFUCO have that theological bias. As KFUCO searches for qualified people to fill the many positions that it will need to fill in the future, there will be no color barriers that block those positions, providing that they have the theological background to carry the responsibility. We will certainly seek those minorities who have that theological bias.

NAACP EXHIBIT 49

| <u>Federal Communications Commission</u> | |
|--|------------------------------------|
| Docket No. | <u>94-10</u> Exhibit No. <u>49</u> |
| Presented by | <u>NAACP</u> |
| Disposition | Identified <u>6/24</u> |
| | Received <u>6/22</u> |
| | Rejected _____ |
| Reporter | <u>BARBARA WARD</u> |
| Date | <u>6/21/94</u> |

6 ①
003584

CLASS 99
K E U O E M

PLEASE DELIVER THE FOLLOWING PAGES
TO:

Name Marcia Cranberg

Firm: Arnold & Porter

Location: Washington, D.C.

Total number of pages 9 including
cover page.

Date: 1/23/90

Time: _____

Sender's telephone number 314-725-0099

This transmittal from:

Dennis Stortz (Marcia: I am overnighting the originals
to you. Call us when your available)

Dennis

If you do not receive all of the
pages or the transmission is not
clearly legible, please call sender
as soon as possible.

35 FOUNDERS LANE
ST LOUIS MO 63105
(314) 725-0099



KFUO 850 AM 99.1 FM
lutheran radio

85 FOUNDERS LANE. ST. LOUIS, MO 63105

003585

(314) 725-3030

62

EEO RESPONSE

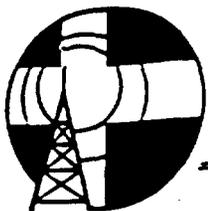
In the petition to deny application for Renewal of License for KFUO-AM/FM, the facts recorded in Table 1, relative to the minority employment at KFUO, have been examined for the years of 1983-1989 from the station's records, and compare accurately with those submitted by Herbert Henderson and David Honig, Interim General Counsel for the NAACP and Counsel for Petitioners respectively.

It is incorrect to conclude from the yearly employment chart that stations KFUO & KFUO-FM have knowingly attempted to discriminate or otherwise biased it's hiring in anyway. Let's examine the facts more closely:

From 1983 to 1987, as listed on the employee table, the stations consistently had either 17 or 18 employees. That means for the first five years, the employment turnover was minimal, one or two at most. In addition, from 1985 to 1987, when the stations had either one or two minorities, two important facts happened: one minority died, and the other quit. As well, two minority employees (black women) were hired by in house referrals in 1985 and never were reported in any employment report. They both accepted other positions that same year.

In addition, over the entire reporting period, eight employees and positions have remained unchanged: Chief Engineer & assistant chief, Director of Administration and assistant, Operations Manager, Program Director, and two classical music announcers. That is one half of the full time employees from 1983-1987. This indicates the stations have overall a limited number of job openings. In 1988 & 1989, when the full time employment jumped from 18 to 26, the increase in positions were either in announcing or sales, and the revolving door of station manager. There has been 7 managers in the 7 years of the reporting period. That has made it difficult to maintain a continuity for station operation.

At this point we should examine the format of each station. KFUO-AM's format is "religious", based on it's ownership, the Lutheran Church/Missouri Synod. Many of the job openings require direct knowledge of the doctrines of this church. As well, the station is non-commercial, operating on stringent means.



KFUO 850 AM 99.1 FM
lutheran radio

85 FOUNDERS LANE, ST. LOUIS, MO 63105

003586

(3)

(314) 725-3030

KFUO-FM's format is "Classical", with many of it's positions requiring a knowledge of classical music and foreign language, with a hope that the sales people can relate and talk knowledgeably about the format. These are not easy positions to fill.

It is further incorrect to assume that the stations have no meaningful EEO program. In the program submitted with licence renewal on October 1, 1989, and the additional information requested by the FCC in December of 1989, it was indicated that the stations do have a workable and effective EEO program, including the use of employment agencies, referrals, and publication advertisement. This is evident as of this date: the station still has 26 full time employees, including three blacks, with plans to add an additional minority in 1990. It is simply not correct to say that the stations' EEO program does not function.

KFUO-AM AND FM is located on the campus of Concordia Lutheran Seminary, the 4th largest seminary in the country. Students from across America and across the world come to the Concordia campus to be trained in doing ministry both in this country and abroad. Since the cost to attend the seminary and support one's self during those 4 years can create indebtedness that ranges to over \$20,000, KFUE seeks to hire as many seminary spouses or seminary students as the stations can afford. No one is excluded from that solicitation practice.

There are at this submission 3 blacks on the staff of 26 full time employees. That places the stations at 75% of minority parity. Our plan is to carefully monitor that percentage, and before the conclusion of 1990, hire an additional minority to staff. As KFUE & KFUE FM searches for qualified people to fill its employment needs, there will be no racial barriers to block any applicants. However, applicants must qualify for positions requiring theological or classical music backgrounds. We will certainly seek any minorities having that background. It is the firm resolve of both stations to be in compliance with the EEO program submitted.

NAACP EXHIBIT 50

| <u>Federal Communications Commission</u> | |
|--|------------------------------------|
| Docket No. | <u>94-10</u> Exhibit No. <u>50</u> |
| Presented by | <u>NAACP</u> |
| Disposition | Identified <u>6/21</u> |
| | Received _____ |
| | Rejected _____ |
| Reporter | <u>BARBARA LORD</u> |
| Date | <u>6/21/94</u> |

Hired

Categories

1983

Rev. Rodger Abatie 1/10 - Officials + Mgrs.
Ads placed in Lutheran Official Publications. Position required Lutheran Minister

Steve Benko 4/18 - Professional
Student walk-in from Concordia Seminary.

Ied Preuss 12/12 - Professional
This position of Director of Development required a Lutheran background.
Person was a walk-in applicant.

1984

(Black) Ruth Clerkley 7/30 - Office + Clerical
Referred by existing staff

Mary Wicklman 5/9 - " "
Walk-in applicant.

003588

1985

Note: Professional

(Black) Lula Hanks, dca
5/85

Eric Dingle - 5/28 - Professional
walk in applicant

Rev. Ron Lind, dca
7/8

Professional

Daryl Shake - 9/3 - Professional
walk in applicant

(Black) Lisa Harrison - 8/28 - Office + Clinical
Referred by existing staff

Susan Hash - 1/30 - Professional
Walk in applicant

Jerry Housholder - 6/17 - Managers
Walk in applicant

Phyllis Housholder - 6/17 - Managers
Walk in applicant

(Black) Helen Richardson - 3/26 - Office + Clinical
Referred by existing staff

John Clayton - 8/27 - Professional
Walk in applicant

★ Did not get into a reporting period.

1986

Ruth Gies 5/27 Office + Clerical
Walk-in, seminary spouse.

Jan Hutchison 9/29 Sales
Walk-in

Sandi McBride 4/3 Professional
Referred by existing staff

Chiara Wesemann - 1/20 Office + Clerical
Walk-in, seminary spouse