

SURREBUTTAL TESTIMONY OF  
DENNIS STORTZ

Church Ex. 11

DOCKET FILE COPY ORIGINAL

1. I am providing this testimony in response to the Declaration of Otis D. Woodard dated June 15, 1994. At paragraph 3 of his Declaration, Mr. Woodard quotes language from the Church's Opposition to Petition to Deny dated February 23, 1990. Specifically, Otis Woodard quotes the following:

Finally, KFUE 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 KFUE.

2. This statement was made on the basis of information which I gave to the Church's lawyer, Marcia Cranberg. I based my information on a document which was in the files of KFUE and which I reviewed in order to prepare the Opposition. That document is contained at page 24 of Attachment 15 to my initial testimony. See KFUE Document No. 003661 attached hereto.

3. The document I reviewed is an "EEO Recruitment Program" form used by KFUE in connection with its hires in January 1990. The form stated that on January 17, 1990, an organization called "Outreach Ministries", through a contact named "Kathy Woodward", had been informed of openings for "both receptionist and maintenance jobs". The form also stated that the organization had "[r]eferred prospective candidates (sic), [but] none chose to fill out applications". In reviewing the form, I believed the term "Outreach Ministries" to refer to an outreach ministry in north St. Louis run by Otis Woodard, whom I thought was a Lutheran minister. Mr. Woodard had been to our station prior to 1990 and I was aware of his outreach ministry. Accordingly, I

Federal Communications Commission

Docket No. 94-10 Exhibit No. 11

Presented by CHURCH

Disposition { Identified 6/24  
Received 6/24  
Rejected \_\_\_\_\_

Reporter BARBARA LORD

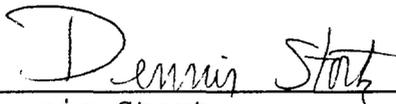
Date 6/24/94

provided the information to Ms. Cranberg which she used to draft the statement quoted in paragraph 1 above.

**DECLARATION**

I, Dennis Stortz, have read the foregoing Lutheran Church-Missouri Synod Exhibit entitled "Surrebuttal Testimony of Dennis Stortz," and I declare under penalty of perjury that it is true and correct to the best of my knowledge and belief.

Executed this 24th day of June 1994.

  
Dennis Stortz

6, 9

003561

STATION KFUO

000024

EEO RECRUITMENT PROGRAM

MONTH OF January 1990

1) MINORITY AND WOMEN'S ORGANIZATIONS

ORGANIZATION Outreach Ministries PERSON CONTACTED \_\_\_\_\_

Kathy Woodward DATE CONTACTED 1/17/90

RESULT Informed organization of both receptionist and maintenance jobs.

Referred prospective candidates, none chose to fill out applications.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ORGANIZATION \_\_\_\_\_ PERSON CONTACTED \_\_\_\_\_

DATE CONTACTED \_\_\_\_\_

RESULT \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ORGANIZATION \_\_\_\_\_ PERSON CONTACTED \_\_\_\_\_

DATE CONTACTED \_\_\_\_\_

RESULT \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DUPLICATE

Church Ex. 12  
RECEIVED  
FEB 5 - 1990  
Federal Communications Commission  
Office of the Secretary

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

In re: )  
)  
Applications for Renewal of )  
License of the Following ) FCC File No. BRH-890906UA  
Missouri Radio Stations: )  
KFUO-AM-FM, Clayton )  
KARO-FM, Columbia )  
KRJY-FM, St. Louis )  
)

OPPOSITION TO PETITION TO DENY AND  
RESPONSE TO REQUEST FOR INFORMATION

Communications Fund, Inc. ("Communications Fund"), licensee of Station KRJY(FM), St. Louis, Missouri, opposes the petition filed January 2, 1990, by the Missouri State Conference of Branches of the NAACP and various branches of the NAACP, seeking denial of Communication Fund's application for renewal of its license, and responds to a letter, dated January 4, 1990, by Glenn A. Wolfe, Chief, EEO Branch, Enforcement Division, requesting information about Communications Fund's EEO program.<sup>1/</sup>

Contrary to the assertions of the petition, the licensee has exceeded the old 50% parity guidelines for minority employment throughout the license term, and the licensee's minority recruiting practices have fully complied with the Commission's requirements. Thus, it is not surprising that at

<sup>1/</sup> On January 30, 1990, Jane Hinckley informed counsel for the licensee that this combined pleading could be filed on February 5, 1990. The information requested in Mr. Wolfe's letter is set forth in attachments to, and discussed in, this pleading. See Exhibit 1, 2.

Federal Communications Commission

Docket No. 94-10 Exhibit No. 12

Presented by CHURCH

Disposition { Identified 6/24  
Received 6/24  
Rejected \_\_\_\_\_

Reporter BARBARA WALKER

Date 6/24/94

least one member of the Executive Committee of the St. Louis Branch questions whether the petition should have been filed.<sup>2/</sup> Communications Fund respectfully requests that the Commission grant its application for renewal without further investigation of Communications Fund's compliance with the Commission's EEO requirements.

Employment of Minorities During the License Period

While Communications Fund recognizes that employment of minorities at 50% of parity with the available labor force does not represent a safe harbor, see In re Amendment of Part 73 of the Commission's Rules Concerning Equal Employment Opportunity 2 FCC Rcd 3967, 3974 (1987), Communications Fund met that target throughout the seven-year license term. From 1983 through 1989, the station employed 20 to 25 full-time employees, with 15 to 17 holding Upper Four positions. Minorities represent 15.6% of the population of the St. Louis MSA. For years such as 1985 and 1989 when the staff was largest, 50% parity calculations yield a target of 1.95 minority employees (7.8% x 25), and 1.326 Upper Four minority employees (7.8% x 17). Throughout the seven-year period, the station always employed at least two or three minority individuals, with at least one in an Upper Four position:

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<sup>2/</sup> See Exhibit 3 (Letter of Celestine E. Evans, Branch Secretary, St. Louis NAACP (Jan. 25, 1990)).

<u>Year</u>	<u>Upper 4</u>	<u>Full-Time</u>	<u>Upper 4</u>		<u>Full-Time</u>	
	<u>Minorities/Employees</u>	<u>Minorities/Employees</u>	<u>50% Goal</u>	<u>Actual</u>	<u>50% Goal</u>	<u>Actual</u>
1989	1/17	3/25	1	1	2	3
1988	1/17	3/23	1	1	2	3
1987	1/16	3/20	1	1	2	3
1986	2/17	3/22	1	2	2	3
1985	1/17	3/25	1	1	2	3
1984	1/15	2/21	1	1	2	2
1983	1/15	3/21	1	1	2	3

The petition to deny the renewal of the license presents less appealing parity calculations by failing to take into account the fact that 50% parity calculations for Upper Four positions yield goals ranging from 1.17 persons to 1.326 persons during the license period. The Commission, of course, does not expect licensees to hire fractions of employees, and goals are rounded to whole numbers. Telephone Conversation with Jane Hinckley, EEO Office (Jan. 12, 1990). Communications Fund therefore actually met the 50% mark during every year. In 1989, for example, the NAACP states that Upper Four employment was only 38% of parity. In fact, 50% of parity is 1.326, and Communications Fund employed one Black in an Upper Four position.<sup>3/</sup>

The petition argues that Communications Fund failed to conduct the self-analysis required when there is a significant statistical disparity. Given the lack of underrepresentation of

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<sup>3/</sup> The petition also inexplicably states that in 1984, Upper Four employment was at 0% of parity, even though the NAACP chart correctly shows that a minority individual held an Upper Four position.

minorities among the station's employees, this argument fails. The petition also argues that investigation is required if there is "substantial statistical disparity." Petition to Deny at 1-2 (quoting Bilingual Bicultural Coalition on Mass Media v. FCC, 595 F.2d 621, 629 (D.C. Cir. 1978) (en banc). Here, however, there is no substantial disparity, and the Commission, by requesting information regarding Communications Fund's EEO program, has already investigated to some extent. Although the petition argues that the "zone of reasonableness" will contract over time, Petition to Deny at 2 (citing Los Angeles Women's Coalition for Better Broadcasting v. FCC, 584 F.2d 1089 (D.C. Cir. 1978)), the court's reference to contraction of the "zone" was made in an era in which the Commission had just begun to require 50% parity, rather than 29% or 25% parity, see Bilingual, supra, 595 F.2d at 627 n.16, 629 n.33, 631 n.41. Rather than continuing to reduce the "zone of reasonableness," the Commission has reduced its reliance on statistical guidelines. See Amendment of Part 73, supra, 2 FCC Rcd at 3974.

As the petition admits, Communications Fund's EEO program "is adequate in demonstrating the productive use of recruitment sources" "[o]n paper." Petition to Deny at 5. The employment statistics and the recruiting practices described below demonstrate that the program is also adequate in practice and that it is superior to those of some licensees who have obtained license renewals.<sup>4/</sup> See, e.g., Letter to John Mackin

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<sup>4/</sup> Communications Fund's commitment to the Black community is also demonstrated by its presentation of minority-oriented programming such as "Black Issues Forum," a weekly interview

Ade, President, Specter Broadcasting Corp. (Mass Media Bureau June 19, 1989) (granting renewal subject to reporting conditions where Blacks were absent or underrepresented among the licensee's employees throughout most of the license term); Allan W. Roberts, 66 R.R.2d 830 (FCC Mar. 29, 1989) (renewing license subject to reporting conditions where licensee employed no minorities during the two years it operated the station).

Hiring of Minorities During the Three-Year  
Period from August 1, 1986 to August 1, 1989

A. Hiring Statistics

The attached hiring log demonstrates that Communications Fund is succeeding at recruiting qualified minority applicants. Minority hiring during the three-year period met or exceeded actual parity with the population at large. Of the 43 positions filled, 11 blacks (25.6%) were hired, and this pattern extends into the Upper Four positions.

<u>Aug 1, 1986- Aug 1, 1989</u>	<u>Total</u>	<u>Black</u>	
Positions Filled	43	11	25.6%
Full-Time	28	8	28.6%
Part-Time	15	3	20%
Upper Four Positions Filled	29	6	20.7%
Full-Time	16	4	25%
Part-Time	13	2	15.4%

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program. The program, whose supervising producer is the director of the Afro-American Studies Institute of St. Louis University, ran from 1982 to 1985, when the producer became too busy to produce it, and will begin running again on February 4, 1990.

B. Recruiting Techniques

Communications Fund recognizes its obligation to make continuous efforts to recruit qualified minority applicants. Its record is especially impressive given obstacles such as candidates' unwillingness to relocate to St. Louis and the station's 1987 change to a satellite format (which considerably reduced staffing requirements). As the attached background information sheets show, the station has approached recruiting in a variety of ways.

First, four positions (1 full-time and 3 part-time) were filled by former station interns. The licensee participated in the Human Development Corporation's Ralston Purina internship program from 1978 until 1985, when the Corporation, which was formed to help inner-city Black youths, went out of business.<sup>5/</sup> Although the program required only that the station provide the interns an opportunity for exposure to the business, Communications Fund went above and beyond that requirement by providing valuable hands-on experience which benefitted the program participants. For example, Andrea Williams, a Black 1982 Human Development Corporation intern, was hired as a sales secretary in June of 1983 and promoted to traffic bookkeeper in February 1984. In April of 1986, she accepted a position as traffic manager at another St. Louis station.<sup>6/</sup>

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<sup>5/</sup> The program lacked funding, and did not send interns to the station, in 1981.

<sup>6/</sup> See Exhibit 4 (letter of Andrea Williams (Jan. 30, 1990)).

The licensee also has always made internships available to interested individuals of all races. For example, Glenise Cloudy, a Black woman who worked as an intern in 1985, was hired as a receptionist in July of 1986. She advanced to the sales promotion area, and she left the station in May of 1988 to take a position as promotions director at a larger station. Because its internship program has been a successful minority recruiting tool, Communications Fund plans to focus particular effort in this area in the future.

A second major source of minority referrals was the Broadcast Center, a technical school which has a predominantly minority student body. Because the station changed to a satellite delivery format in 1987, the hiring of board operators represented a significant portion of recruiting efforts. Many of those positions were filled from Broadcast Center referrals, and many of the Broadcast Center applicants were Black individuals. Beginning this year, the station will fund a \$2500 scholarship for a minority student at the Broadcast Center. The scholarship will be administered by the Black Media Coalition.

A third good source of minority referrals was advertising in the St. Louis Post Dispatch. The Post Dispatch weekday edition reaches 51.2% of the St. Louis black population, and the weekend edition reaches 59.3% of the black population, according to the paper's circulation department. As the attached background sheets show, Post Dispatch advertisements resulted in interviews with many minority applicants.

Fourth, the station contacted colleges and minority organizations generally and with regard to specific openings. Whenever such institutions and organizations provide referrals, the licensee interviews all of the candidates suggested. While the licensee has, during the three-year period, contacted organizations such as the NAACP; Job Search, a minority-oriented state agency; United Minority Media; Image, Inc., a Hispanic organization; and Women's Programs, the licensee acknowledges that these particular contacts have not been fruitful. The NAACP (a party to the Petition to Deny), for example, did not even acknowledge the licensee's four letters to it. More fertile sources of minority referrals were the Missouri State Job Service, the St. Louis and Meremec Community Colleges, the Hickey School (a business college with many minority students), and Jobs Partnership, a city-run organization. Communications Fund will continue to use these good sources and will persist in efforts to develop other sources.

During the three-year period, the licensee filled 14 full-time positions without active recruiting by consulting resumes on file, hiring individuals who applied just before an opening became available, hiring former employees, accepting the recommendations of an affiliated company or of other companies in the industry, or seeking the recommendations of employees. This approach was often motivated by a need to hire individuals familiar with the station who could work effectively immediately. Still, four of the 14 full-time employees hired this way (28.6%)

were Black. Thus, even in these circumstances, the percentage of minorities hired by the station exceeds parity.

#### CONCLUSION

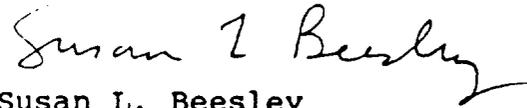
Although the substance of its EEO effort is strong and in compliance with Commission guidelines, Communications Fund nevertheless intends to improve its program. The company is currently working with the local Black Media Coalition on improving the effectiveness of its EEO program and, as previously mentioned, it intends to expand its internship efforts and to offer a minority scholarship this year. It will also try to solidify relations with minority organizations that have not provided referrals in the past.

While the effectiveness of Communications Fund's EEO program can be improved, there is simply no evidence even suggesting that the program failed to comply with Commission requirements during the license term. In fact, the evidence shows that Communications Fund pursued its EEO program with reasonable diligence and, more importantly, that those efforts succeeded in creating opportunities for minorities.

Accordingly, the Petition should be dismissed without

further consideration and Communications Fund should be promptly granted a renewal of its license for KRJY.

Respectfully submitted,



Susan L. Beesley  
LATHAM & WATKINS  
1001 Pennsylvania Avenue, N.W.  
Suite 1300  
Washington, D.C. 20004-2505  
(202) 637-2000

Counsel for  
Communications Fund, Inc.

DATED: February 5, 1990

CERTIFICATE OF SERVICE

I, Patricia M. Smith, on this 5th day of February, 1990, hereby certify that I have mailed first-class, postage pre-paid, copies of the foregoing Opposition to Petition to Deny and Response for Information of Communications Fund, Inc., to each of the following:

Herbert H. Henderson  
Interim General Counsel  
National Association for the  
Advancement of Colored People  
4805 Mt. Hope Drive  
Baltimore, Maryland 21215

David Honig  
1800 N.W. 187th Street  
Miami, Florida 33056  
  
(Counsel for Petitioners)

(Served by hand):

Glenn Wolfe  
Chief, EEO Branch  
Enforcement Division  
Mass Media Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

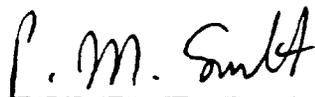
  
\_\_\_\_\_  
Patricia M. Smith

EXHIBIT 1

HIRING LOG

Hiring Log 8/1/86-7/31/89

<u>Hire Date</u>	<u>Position</u>	<u>Race/Gender</u>
<u>Full-Time</u>		
10/1/86	Office/Clerical	W/F
10/11/86	Professional	B/M
10/19/86	Office/Clerical	W/F
12/9/86	Officials and Managers	W/M
3/3/87	Service Workers	B/M
3/9/87	Professional	W/F
3/16/87	Professional	W/M
5/2/87	Technical	W/F
5/22/87	Technical	B/M
8/17/87	Sales Workers	W/M
9/28/87	Officials and Managers	W/F
12/28/87	Office/Clerical	W/F
12/29/87	Technical	B/M
1/4/88	Office/Clerical	B/F
2/13/88	Professional	W/M
2/25/88	Office/Clerical	W/F
2/29/88	Professional	W/M
3/16/88	Office/Clerical	W/F
5/2/88	Office/Clerical	B/F
5/5/88	Professional	B/F
5/16/88	Professional	W/F
7/19/88	Office/Clerical	W/F
8/18/88	Office/Clerical	B/F
9/8/88	Office/Clerical	W/M
11/7/88	Sales Workers	W/F
11/11/88	Sales Workers	W/F
12/12/88	Office/Clerical	W/F
7/10/89	Professional	W/F
<u>Part-Time</u>		
10/22/86	Office/Clerical	W/F
2/13/87	Technical	W/M
3/11/87	Office/Clerical	B/F
3/26/87	Technical	B/M
5/12/87	Technical	W/M
5/15/87	Technical	W/M
7/23/87	Technical	W/M
11/2/87	Technical	W/M

Part-Time cont'd

3/26/88	Technical	B/M
5/13/88	Technical	W/M
5/21/88	Technical	W/M
8/19/88	Technical	W/M
11/27/88	Technical	W/M
5/12/89	Technical	W/M
7/27/89	Technical	W/F

EXHIBIT 2

BACKGROUND INFORMATION

**Hire Date:** October 1, 1986  
**Position:** Full-time Receptionist  
**Classification:** Office/clerical  
**Race/Gender:** W/F  
**Referral Source[s]:** Contacted: St. Louis Post Dispatch, Missouri State Job Service  
**Explanation:** Seventy-five resumes were received from the St. Louis Post-Dispatch ad. This employee was hired from that ad. At least one female Job Service applicant was interviewed. Our records do not indicate her race.

**Hire Date:** October 11, 1986  
**Position:** Full-time D.J.  
**Classification:** Professional  
**Race/Gender:** B/M  
**Referral Source:** Former employee  
**Explanation:** This employee worked for the station from 1979-82 and then went to other stations in the market. When he became available our program director hired him immediately.

**Hire Date:** October 19, 1986  
**Position:** Full-time Administrative Assistant  
**Classification:** Office/clerical  
**Race/Gender:** W/F  
**Referral Source:** Personal contact  
**Explanation:** This woman was employed by another company in the same building as the radio station. Management met her through that company and soon hired her. Shortly after she was hired the old Administrative Assistant was let go. The General Manager couldn't advertise the position because the employee he was replacing was responsible for interviewing applicants.

**Hire Date:** October 22, 1986  
**Position:** Part-time Bookkeeper  
**Classification:** Office/clerical  
**Race/Gender:** W/F  
**Referral Source:** St. Louis Post Dispatch  
**Explanation:** We received over 87 resumes from the Post-Dispatch for this part-time position. We interviewed 3 black women and 2 white women. This applicant was chosen because of her prior radio experience.

**Hire Date:** December 9, 1986

**Position:** Full-time Sales Manager

**Classification:** Officials and Managers

**Race/Gender:** W/M

**Referral Source:** Advertising Agency

**Explanation:** This manager was strongly suggested to us by the president of one of the largest ad agencies in St. Louis. Because of the time of year (many large accounts were getting ready to buy), employment negotiations took place while the old manager was still working. The former manager was released the same day this employee began work.