

renewal application. It notes that neither its local chapter nor Lincoln University's Placement Office, which are listed on the renewal application, has any record of requests for referrals from KARO (FM).¹³

18. In its opposition, the licensee argues that it has engaged in good faith efforts to recruit and hire qualified minority employees. It notes that its Hispanic employee is of mixed Black and Hispanic heritage and thus, when considered as a Black for purposes of responding to the EEO program, puts the station's employment near parity with Columbia's Black labor force. The licensee also notes that it never has had an employment discrimination complaint filed against it and that it has hired Blacks on a level well in excess of Columbia's Black labor force.¹⁴ In addition, it states that two Blacks participated in its internship program and that a Black sales intern was offered and declined a full-time position with the station. The licensee argues that its difficulty recruiting Blacks and other minorities is due to the small minority labor force, competition from other stations in the area and in larger nearby markets for

¹³ In addition to NAACP and Lincoln University, other sources listed in the renewal application but not in the first inquiry response for specific vacancies include: League of Women Voters, UMC Womens' Center and Missouri Division of Employment Security. In response to our second inquiry on this issue, the licensee explained that in completing its EEO Program Report, it relied on summary records which indicated that no referrals were received from these sources, but did not reveal when these sources were contacted. Although it states that it contacted these sources orally for most vacancies, it states that in preparing the first inquiry response, it discovered that it "was unable to document these oral contacts and to determine for precisely which job openings such oral contacts were made," and consequently, they were not "ident[ified] as having been contacted for a particular job opening in the first response." Regarding Lincoln University, it states that due to a lack of success receiving referrals in the early 1980's and because of the geographical distance from the school, efforts with this source were curtailed. However, it states that it "endeavored to keep the lines of communication open," because it had an application pending before the Commission to expand its signal over Jefferson City where Lincoln is located. With respect to Missouri Division of Employment Security, it states that this source was contacted orally when an office/clerical position became available. The licensee states that, in the future, it will make specific contact with all these sources, in writing.

¹⁴ This assessment is based on the station's part-time hires and its double counting of a full-time employee with a racially mixed background.

minority applicants,¹⁵ the unavailability of interested minority students from local colleges, the station's small size and its relatively stable workforce.¹⁶ In addition, the licensee argues that its efforts to employ minorities during the license term should be evaluated in light of the fact that for much of the term, the Commission was suggesting to licensees that a 50% of parity standard was sufficient to assume EEO compliance and that the "new" EEO requirements were not enunciated until 1987. In this regard, it notes that from 1983 to 1986, it had 13 or fewer full-time employees. Thus, it argues that its failure to list a Black employee is "hardly surprising" and that only in the past two or three years, with its full-time staff approaching a reasonably sufficient size to expect Black recruitment efforts to realistically impact its workforce percentages, can the station be appropriately judged on the effectiveness of its EEO program.¹⁷ Nonetheless, the licensee acknowledges that it "has relied too heavily on special situations, as well as upon employee referrals, and upon walk-in hiring situations, to

¹⁵ Comparing its number of minority hires to other stations in Columbia, the licensee states that it has shown significant progress in the hiring of minorities. We remind the licensee that our primary focus is on a station's overall efforts and that the fact that a station has hired one minority, in and of itself, does not mean that it has an effective EEO program.

¹⁶ We reject these arguments. Competition from other stations, the station's small size and stable workforce are factors which would affect a licensee's ability to attract all applicants, minority and non-minority alike. Regarding the unavailability of interested minority students at local schools, we remind the licensee that when a station finds that it is not attracting a sufficient pool of minorities from its referral sources, it is expected to try new sources.

¹⁷ This argument also lacks merit. Our EEO Rule, which has been in effect throughout the license term, has required licensees to refrain from employment discrimination and to establish and maintain an affirmative action program for qualified minorities and women since 1970. See Nondiscrimination Employment Practices of Broadcast Licensees, 23 FCC 2d 430 (1970). The changes in the rule made in Broadcast EEO in 1987 did not alter the basic requirements of the then existing EEO Rule. See Amendment of Part 73 of the Commission's Rules Concerning Equal Employment Opportunity in the Broadcast Radio and Television Services, 4 FCC Rcd 1715 (1989) (request for clarification by National Association of Broadcasters).

fulfill immediately arising hiring needs"¹⁸ and that it will "make specific contact upon every hiring opportunity (even when particularly qualified individuals are otherwise known to be available) with the referral sources listed in its EEO Program."

19. Upon analysis of the licensee's EEO record, we conclude that no substantial and material questions of fact remain warranting designation for hearing. Astroline, supra. We find no evidence that the licensee engaged in employment discrimination and note that it in fact hired minorities. We do, however, find that the licensee failed to make sufficient efforts to attract minorities and that this behavior occurred throughout the review period. We will, therefore, grant renewal subject to reporting conditions and issue a Notice of Apparent Liability for \$4,000.

20. The licensee acknowledges that it did not actively recruit for most of its 16 vacancies. It contacted general recruitment sources for no more than eight of the 16 vacancies. It also attracted a total of seven minority applicants. Six minorities were attracted for two of the eight positions for which it contacted general sources. The seventh minority attracted was for one of the eight positions that was not subject to general recruitment. Further, we are concerned that the licensee apparently waited until the reporting year to engage in any self-assessment of its program, notwithstanding its previous lack of success in minority recruiting. See paragraph 16. Indeed, it apparently was unaware that it lacked documentation indicating contacts with some of the sources listed in its renewal application until after the license term expired and it was preparing its first inquiry response.

21. This case is similar to, but more egregious than, Stations WVNA (AM)/WVNA-FM, Applications of Renewal of Certain Broadcast Stations Serving Communities in the States of Alabama and Georgia, 6 FCC Rcd 5968 (1991), in which we granted renewal subject to reporting conditions and issued a Notice of Apparent Liability for forfeiture in the amount of \$3,000. In that case, the licensee recruited for only six of 13 vacancies, attracted minorities for three positions¹⁹ and hired one minority for a lower-level position. Despite this record, the licensee did not meaningfully assess its EEO program.

¹⁸ "Special situations" are defined as "when a particularly sought-after and experienced individual working for a competitive station is available for hiring at KARO(FM)...."

¹⁹ WVNA/WVNA-FM submitted applicant pool data for 10 jobs.

22. Similarly, station KARO(FM) recruited for eight vacancies, attracted minorities for three applicant pools, hired one minority for a lower-level position and did not meaningfully self-assess its EEO program. However, KARO(FM) is more serious in two respects. First, KARO(FM) had 16 full-time vacancies and, therefore, it had more hiring opportunities for which to recruit. Second, unlike WVNA/WVNA-FM which reported minority full-time employment throughout most of the license term, KARO(FM) reported minority full-time employment only in the last year of the license term. Accordingly, we find that imposition of reporting conditions and a forfeiture in the amount of \$4,000 is appropriate in this case.

V. CONCLUSION

23. After reviewing the evidence and arguments submitted by NAACP and the licensees in the instant case, we find no hearings are warranted and the records of the licensees support the granting of all of their renewal applications. With respect to Station KRJY(FM), we admonish the licensee to contact sources for every vacancy. Because of repeated failures to comply with our EEO Rule during the previous license term and concerns regarding future compliance, renewal subject to reporting conditions and a Notice of Apparent Liability for Forfeiture in the amount of \$4,000 are warranted for Station KARO(FM).

VI. ORDERING CLAUSES

24. Accordingly, **IT IS ORDERED**, that the petition to deny filed by NAACP against Station KRJY(FM) **IS DISMISSED**.

25. **IT IS FURTHER ORDERED**, that the informal objection filed by NAACP against Station KRJY(FM) **IS DENIED**.

26. **IT IS FURTHER ORDERED**, that the petition to deny filed by NAACP against Station KARO(FM) **IS DENIED**.

27. **IT IS FURTHER ORDERED**, that the renewal application filed by Communications Fund, Inc. for Station KRJY(FM) **IS GRANTED**.

28. **IT IS FURTHER ORDERED**, that the renewal application filed by Columbia FM, Inc. for Station KARO(FM) **IS GRANTED** subject to the reporting conditions specified herein and, pursuant to Section 503 of the Communications Act of 1934, as amended, 47 U.S.C. Section 503, a **NOTICE OF APPARENT LIABILITY FOR FORFEITURE** in the amount of \$4,000.

29. **IT IS FURTHER ORDERED**, that the licensee of Station KARO(FM) submit to the Commission an original and one copy of the following information on October 1, 1993, October 1, 1994 and October 1, 1995:

- (a) For each report, a list of all job vacancies during the 12 months preceding the respective reporting dates, indicating the job title; FCC 395-B job classification and full or part-time status of the position, date of hire, the race or national origin, sex and the referral source of each applicant for each job and the race or national origin and sex of the person hired. This list should also noted which recruitment sources were contacted;²⁰
- (b) A list of employees as of the September 1st payroll period for each annual report by job title, indicating full-time or part-time status (ranked from highest paid classification), date of hire, sex, and race or national origin; and
- (c) Details concerning the station's efforts to recruit minorities for each position filled during the 12-month periods specified, including identification of sources used and indicating whether any of the applicants declined actual offers of employment. In addition, the licensee may submit any information it believes relevant regarding the station's EEO performance and its efforts thereunder.

30. The reports are to be filed with the Secretary of the Commission for the attention of the Mass Media Bureau's EEO Branch. Should the parties have any questions regarding this action, they may telephone the Mass Media Bureau's EEO Branch at 202-632-7069. Regarding the forfeiture proceedings for KARO (FM) the licensee may take any of the actions set forth in Section 1.80 of the Commission's Rules, as summarized in the attachment to this Memorandum Opinion and Order and Notice of Apparent Liability. Any comments relating to its ability to pay should include those financial letters set forth in the noted attachment.

²⁰ Such a list might start:

(1) News Director; Officials and Managers; Full-time
 3 Applicants: 1 White female A.W.R.T.
 1 Black male Urban League
 1 Black female NAACP
 Sources contacted: Local Newspaper, A.W.R.T., Urban League, and NAACP.
 Selected: Black male (03/15/92)

31. IT IS FURTHER ORDERED, that the Mass Media Bureau send by Certified Mail -- Return Receipt Requested -- one copy of this Memorandum Opinion and Order and Notice of Apparent Liability to all parties.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary