

Commission, or that the information it has supplied contains any discrepancies of a serious nature. KFUD is prepared to respond to any additional questions the Commission might have concerning its filings to date or its employment practices, or to meet with Commission staff, subject to applicable ex parte rules, to resolve any confusion that might exist concerning KFUD's filings in this proceeding.¹²

¹² KFUD was so astonished at the Commission's letter that KFUD's counsel telephoned counsel for the NAACP soon after receipt of the Commission's letter, advising that it believed that the Commission had erred in its assessment of the record, and suggesting that a careful review of the record would confirm the error. Counsel for the NAACP promised to review the record and respond to KFUD, but has not done so.

**SECTION THREE -- DISCUSSION OF LEGAL ISSUES
PERTINENT TO KFUO'S RENEWAL APPLICATION,
INCLUDING WHETHER ANY LEGAL BASIS EXISTS FOR
DESIGNATING KFUO'S LICENSE RENEWAL
APPLICATION FOR HEARING**

**I. HOW HIRING OF SEMINARY STUDENTS COMPORTS WITH
KFUO'S EEO OBLIGATIONS.**

The Commission has requested KFUO to analyze how the hiring it has done through the Concordia Seminary comports with KFUO's EEO obligations.

As shown above, KFUO filled four full-time positions and ten part-time positions (to work an average of five to seven hours per week per employee) with Seminary students or their spouses.

Of these 14 employees with a tie to the Concordia Seminary, ten performed specialized jobs at KFUO-AM requiring a Lutheran theological background. Of the remaining four, one (a spouse of a Seminary student) was a part-time secretary who worked only an average of five to seven hours per week; only three were full-time employees who performed non-specialized work.

As KFUO has noted in previous pleadings, in recruiting for specialized positions requiring a Lutheran background, it is permitted to restrict its recruitment activities to those outlets reasonably calculated to reach persons with the necessary background. See Kings Garden, Inc. v. F.C.C., 498 F.2d

51 (D.C. Cir. 1974): "The Commission ... exempts [from its EEO regulations] employment connected with the espousal of the licensee's religious views". Id. at 53 (noting that this exemption is of a constitutional dimension).

Only very few of KFUE's full-time hires through the Seminary (three full-time and one part-time) were made for positions which did not require a Lutheran background. It should also be noted that these hires were made under an informal arrangement by which KFUE occupies buildings located on Seminary grounds and attempts, in turn, to occasionally hire Seminary students to work at KFUE. This arrangement is important to KFUE's financial well-being, since both KFUE-AM and KFUE-FM operate at a significant loss, and are unable to afford studio and office space in the greater St. Louis metropolitan area.¹³

In short, KFUE's hiring through the Seminary does not evidence a disregard for Commission equal employment opportunity concerns, since nearly all persons hired through the Seminary were for positions which are exempt from the Commission's employment requirements, and those few who were not, were hired not in order to avoid equal

¹³ KFUE will be happy to supply the Commission financial statements for the stations upon request.

employment opportunity requirements, but pursuant to important financial considerations.

KFUO expects that future hiring made through the Seminary would similarly be made nearly entirely for those positions for which Seminary students would be best suited: namely, those requiring a Lutheran background and which are therefore exempted from the Commission's equal employment requirements.

KFUO would be happy to provide further information to the Commission concerning its hiring of Seminary students.

II. THE NAACP MAY NOT HAVE STANDING TO PURSUE ITS PETITION TO DENY AGAINST KFUE

By a Memorandum Opinion and Order and Notice of Apparent Liability released December 16, 1992 in FCC 92-548 (FCC File Nos. BRH-890906UA and BRH-891002XK), the Commission ruled that the Missouri State Conference of Branches of the NAACP did not have standing to prosecute its Petition to Deny the license renewal application for Station KRJY-FM, St. Louis. The Commission noted that the President of the St. Louis Branch of the NAACP had originally properly filed an affidavit with that Petition to Deny establishing that he was a regular listener of KRJY-FM, but that the St. Louis Branch of the NAACP had subsequently withdrawn from the

proceeding, and no proper affidavit remained on file by the Missouri State Conference of Branches with respect to KRJY.

The same sets of affidavits are also on file in connection with the Petition to Deny pending against KFUE. If the St. Louis Branch of the NAACP has also withdrawn from the Petition to Deny proceeding involving KFUE, then the same analysis would apply, and the Missouri State Conference of Branches of the NAACP, the sole remaining Petitioner with respect to the KFUE application, has failed to file the required declaration of interest, and would not have standing to pursue its Petition against KFUE.

III. FIRST AMENDMENT IMPLICATIONS OF INQUIRY.

KFUE is concerned that the level of FCC scrutiny that has been brought to bear on its hiring practices, or that a hearing would necessarily entail, implicates serious First Amendment concerns. The demands for information that the FCC has made to date, particularly those pertaining to whether certain employment positions within the Lutheran Church do or properly should require theological training, injects the government into the Church's judgments concerning how and when theological training is appropriate, a domain that is arguably protected under the First Amendment from government

intrusion. Indeed, a strong argument exists that the Commission's equal employment opportunity regulatory scheme as a whole raises constitutional issues as applied to religious entities such as the Church, at least with respect to the nonprofit activities of religious entities. See Corporation of Presiding Bishop v. Amos, 483 U.S. 327 (1987) (in which the U.S. Supreme Court upheld an exemption to federal anti-discrimination laws for all non-profit activities of religious organizations on First Amendment grounds).

III. THERE IS NO LEGAL BASIS FOR DESIGNATING THE KFUE LICENSE RENEWAL APPLICATIONS FOR HEARING.

Section 309(e) of the Communications Act of 1934, as amended, authorizes designation of a license application for hearing only in cases where a "substantial and material question of fact is presented". The Commission has indicated through multiple inquiries to KFUE the areas in which it has sought additional information pertinent to KFUE's renewal application, to which KFUE has provided detailed responses. The Commission has a significant amount of information about KFUE's employment record before it. As noted, the Commission or the NAACP have only raised questions about the accuracy of this information in three respects; KFUE has provided all of the information that it has on these matters, and believes that it has

fully responded to these questions. In short, there are no "substantial and material questions of fact" requiring resolution by a hearing concerning KFUD's performance during the past license term.

The Commission has suggested that KFUD's filings in this proceeding contain "serious discrepancies" and "possible misrepresentations". KFUD has addressed this in some detail in the instant Response; KFUD has conceded that there have been some minor discrepancies in the information supplied to the Commission in this proceeding, but the record does not reflect any "serious" discrepancies. Nor is there any evidence in the record whatever to justify a conclusion that KFUD has made any intentional misrepresentations to the Commission.

The existence of minor discrepancies, in the absence of a prima facie case that the applicant is guilty of intentional misrepresentation, does not warrant designation for a hearing. See Hispanic Information and Telecommunications Network, Inc., 60 R.R. 2d 828, 833 (1986) ("misrepresentation and lack of candor both require an element of willfulness"); In re Application of Arnold L. Chase, 61 R.R. 2d 111, 135 (1986) (a representation of fact which turns out to be untrue does not give rise to a material and substantial question requiring a hearing because it is not made with

"intent to deceive"); Hispanic Information, supra, 60 R.R. 2d at 833. (a "credible" explanation "coupled with ... efforts to correct the mistake after it [is] discovered" eliminates any substantial question).

CONCLUSION

KFUO has supplied a substantial amount of information to the Commission concerning its employment record. Given that the staff at the KFUD stations is very small and comprised entirely of non-attorneys; the information that KFUD has been asked to provide is rather detailed and covers a substantial period several years in the past; and nearly all of the employees at KFUD during the past license term have since left the stations, it is natural that there have been some (for the most part rather insignificant) factual errors in the information supplied to the Commission, and KFUD regrets that these have occurred.

But KFUD most vigorously denies that it has ever intended to mislead the Commission, or to misrepresent the facts of its employment practices in its filings in this proceeding. Nor is there any substantial and material question of fact outstanding which would require a hearing prior to Commission action on KFUD's pending license renewal applications.

KFUO urges the Commission to recognize that KFUO's recruitment efforts were made in the context of a staff structure in which many of the positions at KFUO-AM required a Lutheran background and were thus exempt from EEO requirements, and in which financial considerations constrained KFUO to afford a preference for a very small number of employees affiliated with the Concordia Seminary. KFUO also urges the Commission to assess its performance in light of the fact that KFUO-AM and KFUO-FM are very small stations; that KFUO employed greater numbers of minorities than were reflected in its annual employment reports; and that the labor force availability figures relied upon by the Commission should take account of the fact that many of the positions at KFUO require very specialized skills.

KFUO has continued to increase its minority recruitment efforts since the conclusion of its past license term. KFUO's last Annual Employment Report (filed May 29, 1992, for the pay period ending January 31, 1992), reflects the full-time minority employment level at the stations at over 15 per cent -- just equal to the labor force availability for the St. Louis MSA.

KFUO accordingly urges the Commission to take positive and prompt action with respect to its pending license renewal applications; and, although it has already supplied a substantial amount of information to

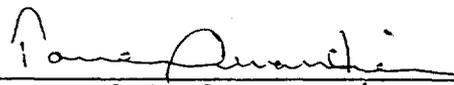
the Commission concerning its employment practices, it stands ready either to supply whatever additional information the Commission might request, or to meet informally with Commission staff (subject to applicable ex parte requirements), as appropriate.

Date: December 28, 1992

AFFIDAVIT OF REVEREND PAUL DEVANTIER

I, Reverend Paul Devantier, hereby affirm the following:

1. I am the Executive Director of the Board for Communications Services of the Lutheran Church/Missouri Synod.
2. In this capacity, I oversee and am responsible for all aspects of the operations of Stations KFUD-AM/FM. The Director of Operations of Stations KFUD-AM/FM, who oversees the day-to-day operations of the stations (and at present is Mr. Dennis Stortz), reports directly to me.
3. I have held this position since March 1, 1982.
4. I have carefully reviewed the foregoing Response to FCC Inquiry, and hereby declare, under penalty of perjury, that to the best of my knowledge and belief, all of the facts set forth therein are true and correct.


Reverend Paul Devantier

Date: Dec. 23, 1992

Notary: L. Rosalie Schmidt

My Commission expires: Jan. 12, 1995

L. ROSALIE SCHMIDT
NOTARY PUBLIC - STATE OF MISSOURI
MY COMMISSION EXPIRES JAN. 12, 1995
ST. LOUIS COUNTY

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TABLE OF ATTACHMENTS

1. Description of Structure of KFUO
2. KFUO-AM Program Schedule and Description
3. Application of Kenneth Lombardi, former KFUO Station Manager
4. Affidavit of Dennis Stortz, KFUO Director of Operations
5. Employment Application for Debbie Grimes, former KFUO-AM Announcer
6. Sample KFUO-FM Advertisements
7. Resume for Glynelle Wells, KFUO-FM Salesperson
8. Affidavit of Frank Wood, KFUO-FM Salesperson

A number of KFUD "re-organizations" have taken place since 1986 that have effected staffing, position qualifications and position titles.

Prior to 1986, KFUD was operated by the Board for Lutheran Radio, a Board directly accountable to The Lutheran Church--Missouri Synod with responsibility for the operation of KFUD and KFUD-FM (cf. Chart I). Prior to 1986, the "Chief Executive Officer" of the radio operations was the KFUD "General Manager." Because of the religious nature of the radio operations, the General Manager position (the top staff position) required theological education and expertise.

In 1986, the parent organization, The Lutheran Church--Missouri Synod, assigned responsibility for the radio operations of KFUD and KFUD-FM to its Board for Communication Services (cf. Chart II). Since that time, the "CEO" of KFUD and KFUD-FM has been the Executive Director of the Board for Communication Services, who is and has been since 1986 the Reverend Paul Devantier. Thus, since 1986, the requirement that the top staff position be filled by someone with theological education and expertise has been fulfilled through the Executive Director position.

With the new reporting and supervisory relationship established in 1986 came staff organizational changes at KFUD. The first major re-organization (1987) called for a Director of Broadcast Ministries and a General Manager for each radio station (cf. Chart III). Mr. Ken Lombardi became the Director of Broadcast Ministry in 1987. Mr. Tom Lauher became General Manager of KFUD-FM in 1987. The AM General Manager position remained vacant until filled by the Reverend David Schultz in 1989. The FM General Manager position was vacated by Mr. Tom Lauher in 1990 and remained vacant until the 1991 re-organization.

In 1991, the Board for Communication Services again re-organized KFUD and KFUD-FM (cf. Chart IV). This is the configuration in place as of this writing.

KFUO Organization

Chart 1 (pre-1986):

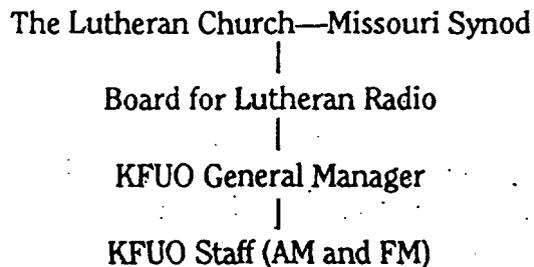


Chart II (1986-87):

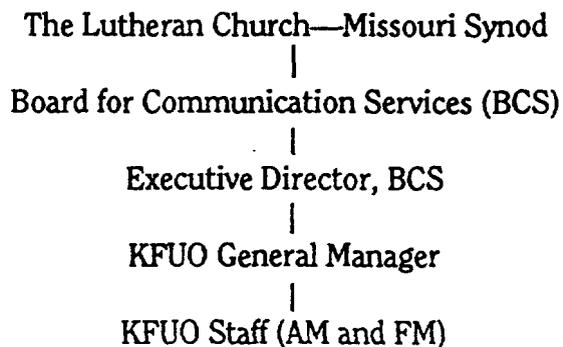


Chart III (1987-1991):

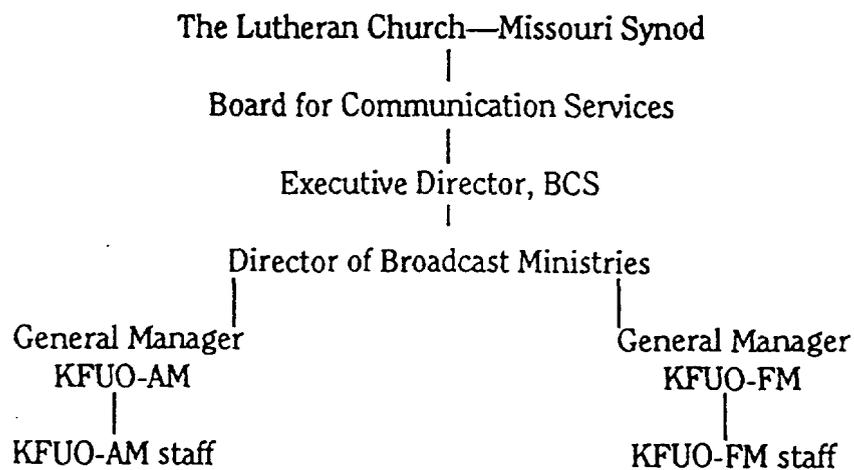
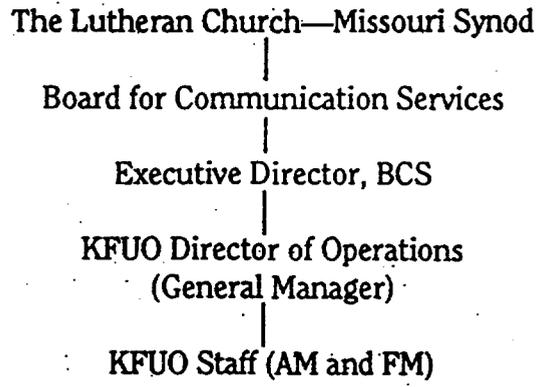


Chart IV (1991-Present)



KFUO-AM 850 PROGRAM GUIDE

JULY-SEPTEMBER, 1992

MONDAY-FRIDAY

7:00 Sign-On	10:00 News/Information	3:06 Notes of Praise
7:02 The Lord's Prayer	10:06 The Bible Study	4:00 News/Information
7:05 Morning Stats	11:00 News/Information	4:06 The Bible Study
7:09 Global Prayer Digest	11:06 Footprints	5:00 News/Information
7:10 News	11:30 Women To Woman	5:09 Money Minute
7:15 Family News/Focus	12:00 News/Information	5:10 Family Health
7:20 My Father's World	12:09 Money Minute	5:15 Speaking of Life
7:25 Creation Moment	12:10 Bible Quiz	5:20 Family Matters
7:28 Morning Stats	12:13 By The Way	5:25 News/Information
7:30 His Word	12:15 Family News/Focus	5:30 Family News/Focus
7:40 Morning Stats/Music	12:30 M-By Word & Prayer	5:45 News/Information
8:00 News	T-Sing For Joy	5:56 Creation Moment
8:02 Music	W-Lutheran Hour	6:00 Focus On The Family
9:00 News	TH-Chapel	6:30 Woman To Woman
9:02 Money Minute	F-Chapel	7:00 News/Information
9:03 Speaking of Life	1:00 News/Information	7:06 Issues, Etc.
9:05 News & Views	1:06 Issues, Etc.	8:00 News/Information
9:08 Family News/Focus	2:00 News/Information	8:06 Music
9:10 News & Views	2:06 Notes of Praise	
9:30 Focus on The Family	3:00 News/Information	

WE APPRECIATE YOUR COMMENTS!

Your letters provide KFUD with an invaluable resource when evaluating current programming and making plans for the future. Although most people speak up only when they disagree with something, it is actually more important to speak up when you are in agreement! This reinforces whatever it is that you like and makes it more likely to continue in the future. So if you really like something on KFUD don't assume that we know it...TELL US! Address your comments to: Program Director, KFUD-AM, 85 Founders Lane, Clayton, Missouri, 63105.

Beautiful Music and Talk You Can Trust...On The Gospel Voice. KFUD-AM 850

KFUO-AM 850 PROGRAM GUIDE

JULY - SEPTEMBER, 1992

SATURDAY

7:00 Sign-On
 7:02 The Lord's Prayer
 7:05 By The Way
 7:07 Weather/Almanac
 7:10 News/Information
 7:20 My Father's World
 7:30 His Word
 7:45 The Word Today
 8:00 We Kids
 8:30 Odyssey
 9:00 Woof!
 9:30 Focus On The Family

10:30 Allelu
 11:00 News/Information
 11:05 Allelu
 12:00 By Word & Prayer
 12:30 Aging In Perspective
 12:45 Family News/Focus
 1:00 Spanish Program
 2:00 News/Information
 2:05 Notes of Praise
 3:00 News/Information
 3:05 Notes of Praise
 4:00 News/Information

4:05 Music
 5:00 News/Information
 5:05 Music
 5:30 Aging In Perspective
 5:45 Family News/Focus
 6:00 Focus On The Family
 7:00 News/Information
 7:05 Music
 8:00 News/Information
 8:05 Music

SUNDAY

7:00 Sign-On
 7:02 The Lord's Prayer
 7:05 By The Way
 7:07 Weather/Almanac
 7:10 News/Information
 7:20 My Father's World
 7:30 His Word
 7:45 The Word Today
 8:00 Worship Service
 9:00 JOY
 10:00 Kid's Corner
 10:30 Science In Job
 10:45 Worship Service

12:00 Sing for Joy
 12:30 The Lutheran Hour
 1:00 News/Information
 1:05 Music
 2:00 News/Information
 2:05 Notes of Praise
 3:00 News/Information
 3:05 Notes of Praise
 4:00 News/Information
 4:05 JOY
 5:00 The Lutheran Hour
 5:30 Sing for Joy
 6:00 Refuge for the Weary

6:30 Worship & Praise
 7:00 News/Information
 7:05 Music
 8:00 News/Information
 8:05 Music

SIGN-OFF TIMES:

July: 9:00 p.m.

August: 9:00 p.m.

September: 8:00 p.m.

YOU HEARD IT HERE FIRST!

When you write to one of the ministries that produces programs for KFUD it is very important that you remember to tell them that you heard their program on KFUD-AM, St. Louis. Media ministries like to know what stations their friends are listening to and sometimes make decisions to remove a program from a station if there is no response from listeners. So, when you write, always say, "I heard it on my Good News Station, AM-850, KFUD, St. Louis!"

KFUA AM religious programs, produced internally.

Monday - Friday

7:15a Sign On

7:20a MY FATHER'S WORLD....Five minute devotional based on daily scripture reading.

7:30a MY WORD...15 locally read scripture reading.

8:15a BIBLE QUIZ...Short question/answer program about Bible facts.

9:03a SPEAKING OF LIFE...Commentary supporting Pro-Life activities.

9:06a NEWS & VIEWS...Caller interaction based on a daily religious topic, hosted by staff Pastor.

10:05a THE BIBLE STUDY...Rev. mark Spitz hosts guest pastors in a discussion of God's Word. Listeners may call-in with questions and comments about the text.

11:30a WOMAN TO WOMAN...Daily program discussing religious topics as it affects women.

1:00p ISSUE, ETC...This daily call-in program examines issues facing the church. Rev. Don Matzat interviews authors, counselors, and others to deal with topics from a Christian perspective.

2:05p NOTES OF PRAISE...Seven days a week, Rev. Mark Hawkinson shares music and devotional thoughts appropriate for all ages.

(These are station produced programs. Other programs in the KFUA program guide are religious or Lutheran based programs, but are produced elsewhere and sent to the station.)

Saturday

10:30a ALLELU...Devotional readings and inspirational music.

12:00n BY WORD & PRAYER...Devotional program based on the week's liturgical scripture and Psalm reading.

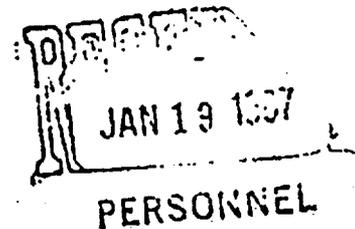
1:00pm SPANISH PROGRAM...An hour of time donated to the Christian Spanish community for worship time.

Sunday

8:00a WORSHIP SERVICE...A local live church service.

9:00a JOY..an hour of sacred classical music.

January 13, 1987



Director of Personnel
The Board for Communications Services
THE LUTHERAN CHURCH - MISSOURI SYNOD
1333 S. Kirkwood Road
St. Louis, Missouri 63122-7296

Dear Sir or Madam:

Enclosed please find my resume' in response to your notice in the January, 1987 issue of LUTHERAN WITNESS indicating your current search for a Director of Broadcast/General Manager, KFYO Radio.

You specified that you are seeking an individual who possesses practical experience in fields related to broadcasting and/or administration. During the past six years I have been deeply involved in the commercial broadcast industry. In my present position as San Francisco Branch Manager of GIRVIN CONRAD & GIRVIN ADVERTISING I have been directly responsible for three San Francisco broadcast clients -- KIOI-FM (Adult Contemporary format/2.4 share/400,000 12+ cume); KRQR-FM (CHR format/3.1 share/320,000 12+ cume); KFRC-AM (Nostalgia format/2.7 share/350,000 12+ cume). As the Senior Management Representative for the advertising and marketing agency servicing these three radio stations, I have been intricately involved with the strategic decision points affecting their programming, sales, promotional and marketing plans.

Prior to joining GIRVIN CONRAD & GIRVIN I enjoyed three years as Director of Marketing Services at KFRC-AM. At that time, KFRC was AOR formatted, enjoying a 4+ share of the San Francisco Metro Survey Area, with a 12+ cume audience approximating 750,000. In this position I had direct responsibility for all sales and marketing direction, audience promotional development and execution, on-air activities, and community involvement.

In addition to these six years of intense involvement in the broadcast industry, I have enjoyed over 20 years of progressively responsible management positions, demonstrating the administrative talents which you seek. Likewise, my management experiences, coupled with my teaching and public speaking activities, have assisted me in honing my communication talents.

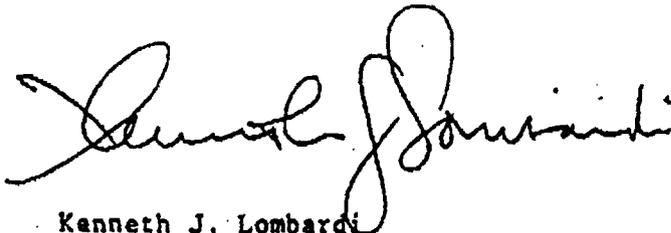
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Your profile also cited the necessity of the person you select as your Director of Broadcast/General Manager, KFUC Radio to be active in and supportive of THE LUTHERAN CHURCH - MISSOURI SYNOD. This is where my excitement regarding this position really peaks!

My wife, Lorna, and I, as well as our two adult children, are long time members of THE LUTHERAN CHURCH - MISSOURI SYNOD. We presently attend OUR SAVIOR LUTHERAN CHURCH in Fremont, California, where I am privileged to serve as a Member of the Board of Elders; and Lorna is active in the Choir and in Church Decorum. We are as faithful to the Holy Scriptures and the Lutheran Confessions as the Lord will allow our fallible humanism to be. We are also very supportive of the Synod's constitution, bylaws and policies -- with a stance which would typically be defined as "traditional" or "conservative".

The prospect of applying for a position which would be so Christ-centered overwhelms me. I pray that, after you have reviewed my qualifications, we can discuss your opening for Director of Broadcast/General Manager, KFUC Radio at greater length.

Yours In Christ,



Kenneth J. Lombardi
240 Carmelita Place
Fremont, California 94539
(415) 490-3462

/enclosure

AFFIDAVIT OF DENNIS STORTZ

My name is Dennis Stortz. I hereby state the following:

1. I am the Director of Operations of Stations KFUE-AM/FM in St. Louis, Missouri. In this capacity, I oversee all aspects of the day-to-day operations of KFUE-AM/FM. I report directly to the Reverend Paul Devantier, the Executive Director of the Board for Communications Services of the Lutheran Church/Missouri Synod.

2. I have been employed at KFUE since 1975 in varying capacities. These have included Station Engineer from 1975-1978, Operations Manager from 1978-1991, Acting General Manager of both radio stations from July 1986 to May 1987 (while simultaneously serving as Operations Manager), and Director of Operations from 1991 through the present.

3. During the period I served as Acting General Manager of the radio stations in 1986-1987, and since being named Director of Operations in 1991, I have had direct day-to-day responsibility over the hiring and personnel practices of the stations. As a 17-year employee at the stations, I am quite familiar with the stations' recent history, including throughout the

entire period of the stations' previous license term, to which our pending renewal applications pertain.

4. Throughout the past license term, as at present, the number of employees at the stations has been low. The total number of employees at both stations was generally somewhere from the teens through the mid- to upper-twenties during the years of our past license term. As a consequence, over the years I have been able to develop relatively close relationships with many of the employees who have worked at the stations. Even in cases in which I have not become quite as close to particular employees, I have often nevertheless learned a fair amount about them and their backgrounds by virtue of working closely with them in the relatively friendly and relaxed environment at KFUD.

5. I hold a Bachelor of Arts degree in Communications from Southern Illinois University. I attended a private Lutheran school for several years, and am a lifelong member of the Lutheran Church/Missouri Synod.

6. It is not the general practice of the stations to retain resumes of former employees, although we do have some. For that reason, it is difficult to provide substantial detail about the precise background and qualifications of certain former KFUD employees. Nevertheless, I do recall that Angela Burger, former

Assistant Director for Development, had been educated at a private Lutheran school, and had previously been employed at a social services agency run by the Lutheran Church.

7. Likewise, while we do not possess resumes for Steve Myrick and Debbie Grimes, two former announcers at KFUD-AM, I do recall that Steve worked at one time as a volunteer at the New Life Evangelistic Center, a church-based social center for the homeless and hungry, and that Debbie had been employed at the International Center of the Lutheran Church prior to joining KFUD, where she produced videos about various aspects of the Lutheran Church. I also know from firsthand experience that they both were knowledgeable about the doctrines of the Lutheran Church. This was evident in the manner in which they carried out their on-air host duties at KFUD-AM, which entailed moderating discussions about Lutheran theology, interviewing Lutheran ministers about issues of concern to the Lutheran Church, and hosting biblical study and similar programs produced by KFUD.

8. It would be impossible for anyone to have served as an announcer on KFUD-AM during the past license term (other than perhaps to read the news) without being knowledgeable about the Lutheran Church and its teachings. In this sense, it might be confusing to non-station staff to refer to such employees as