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February 24, 1999

VIA HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

In re: MM Docket No. 98-204 (NPRM, Equal Employment Opportunity Rules and Policies

Dear Ms. Salas

On behalf of Golden Orange Broadcasting Co., licensee of television station KDOC, Anaheim, California, there are herewith transmitted an original and five copies of its "Comments" in the above-referenced proceeding.

Yours very truly

Robert B. Jacobi

RBJ:btc

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE

Federal Communications Commission

In the Matter of	)	
	)	
Review of the Commission's	)	
Broadcast and Cable	)	MM Docket No. 98-204
Equal Employment Opportunity	)	
Rules and Policies	)	
and	)	
Termination of the EEO	)	MM Docket No. 96-16
Streamlining Proceeding[1/]	)	

COMMENTS OF GOLDEN ORANGE BROADCASTING CO., INC.

Golden Orange Broadcasting Co., Inc. (hereinafter "Golden Orange") is the licensee of television station KDOC, Channel 56, Anaheim, California. Golden Orange, by and through its counsel, hereby respectfully submits its Comments in the above referenced proceeding.

1. Anaheim, California is located in Orange County. Hispanics are the largest single ethnic group in Orange County and Hispanics and Asians are the only ethnic groups which constitute 5% or more of the work force.[2/] The licensee's 1998 Annual Employment Report reflected 33 full-time employees.

1/ *Streamlining Broadcast EEO Rule and Policies*, MM Docket No. 96-16, 11 FCC Rcd. 5154 (1996) (*Streamlining*).

2/ The civilian labor force demographics for Orange County are as follows:

Hispanics	21.5%
Asians	9.2%
Blacks	1.6%
American Indians	0.4%

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2. Paragraph 64. Golden Orange supports the concept of an outreach program which would afford each licensee the discretion to determine how to conduct recruitment efforts. The Commission historically has relied upon licensee discretion to make decisions as to, for example, format, audience to be targeted, program content, issues/problems lists and the programming responsive to such issues/problems. Indeed, the Commission has affirmatively avoided substituting its opinion for licensee judgment, especially in areas involving local matters. The matter of how to conduct recruitment efforts is no different; the licensee surely is in a better position than the Government to determine the best way to attract job applicants, including minority job applicants. Recruitment efforts require consideration of purely local factors, factors which do not remain static, are not the same throughout the country and are not within the expertise of "beltway" regulators. Recruitment efforts should properly remain within the discretion of each licensee. Golden Orange, however, takes exception to the statement in paragraph 64 ". . . as long as they can demonstrate that their efforts attract a broad cross section of qualified applicants." Consistent with the Court of Appeal decision, the thrust of any EEO program should be focused upon outreach efforts, not the results of the outreach program. The failure to "attract a broad cross section of qualified applicants" does not necessarily mean that the licensee lacks a meaningful EEO program. The emphasis on "results" creates the "pressure" -- which the Court of Appeals found to be offensive.

3. Paragraphs 65 and 66. Golden Orange opposes the specification of a minimum number of recruitment sources and, especially, a minimum number of minority recruitment sources. In the KDOC 1997 license renewal application, the overwhelming number of minority job applicants for the 12-month period preceding the filing of the renewal application came from general recruitment sources. Indeed, none of the 39 minority job applicants came from the numerous (but unproductive) minority sources.

It is the "hands-on" experience of Golden Orange that the most productive sources for minority job applicants are general recruitment sources. To require a minimum number of recruitment sources, general or minority, is "window dressing," frivolous.[3/] Meaningful sources are the sources which consistently produce job applicants. Examples of the type of sources that can be used include the following:

Newspapers of regional significance

Major minority newspapers (circulation of at least 5% of the population)

Local Universities and Colleges

Industry Publications

Job Trak on the Internet

Local Broadcasters Associations

Job Fairs

The Inclusion of EEO-oriented matters at all regularly scheduled management staff meetings

The methodology of how to conduct recruitment efforts (including the number of sources to be contacted) should be left to the discretion of each licensee.

4. Paragraph 67. Golden Orange agrees with the Commission proposal set forth. However, Golden Orange submits that the term "internal promotion" should include part-time employees, interns and former station employees. Additionally, the Commission should not require the implementation of the EEO program to 100% of all job openings. Various factual situations arise wherein having to comply with a recruitment program is unrealistic;

3/ Should the Commission nevertheless require a minimum number of minority recruitment sources, such requirement should extend only to relevant ethnic groups which, respectively, constitute 5% or more of the work force.

for example, having to replace on-air personnel who leave without notice; talk show hosts with a particular political orientation (i.e., Rush Limbaugh); foreign language programming. While it not possible to anticipate every factual circumstance rendering recruitment unrealistic, it would be both realistic and prudent for the FCC to take into account that such situations do occur and, accordingly, specify a reasonable guideline -- something less than 100%.

5. Paragraph 68. The Commission should not specify a minimum number of recruitment sources; it should not determine or have to determine what types of sources should be considered general and minority and female-specific sources; it should not be concerned with the number of applicant pools, minority/female job applicants or minority/female job interviewees. Evaluation of a licensee's EEO program should be singularly focused on recruitment sources and overt discriminatory practices (if any).

6. Paragraphs 72 and 73. Self-assessment is a convenient method by which the licensee can evaluate the results of its EEO program. Self-assessment, however, should not be mandated by a government entity -- other than to conduct an outreach program and to maintain records of recruitment sources contacted as to each job vacancy. Government mandating as to self-assessment and record keeping gives rise to a regulatory scheme which will promote "pressure" on broadcasters to adopt racial preferences in hiring (see NPRM, par. 20).

7. Paragraph 77. Implicit or explicit, the type of information proposed to be included in various FCC forms constitutes the very "pressure" which the Court of Appeals condemned. If the licensee conducts a meaningful outreach recruitment effort, the license renewal should be granted irrespective of the number of minority/female employees, minority/female job applicants, minorities/females found in interviewee pools. It is the

recruitment efforts, not the results, which should underlie the government determination as to compliance.

8. In paragraph 14 of the NPRM, the Commission acknowledges that part of the Court of Appeals decision which held that the ". . . Commission had introduced no evidence linking low-level employees to programming content." Irrespective of the cited Court position, the Commission asserts (par. 33, NPRM) as a basis for including low-level employees as a part of the licensee EEO program its "belief" that Congressional endorsement of any program intended to deter racial, ethic and gender discrimination supports the application of the proposed EEO rules to all employees. Such "belief" is not a substitute for the necessity to establish a "link" between low-level employees and program content. The information contemplated by the Forms described in paragraph 77 are subject to future misuse. If the Forms as described in paragraph 77 are adopted, such Forms should not require information as to low-level employees -- in the absence of evidence establishing a "link" between low-level employees and programming content.

CONCLUSION

Pragmatically, Commission interpretation (and thereby, enforcement) of its rules depends upon the viewpoints of individual Commissioners and the viewpoints of individual staff members responsible for enforcing Commission rules. Nowhere in Section 73.2080 of the Commission rules is there a reference to terms such as "applicant pools," "interviewee pools." Nevertheless, these "terms" evolved into "absolute" standards utilized to evaluate compliance. While the matter of future interpretation may not be avoidable, the rules to be adopted as the result of this rulemaking proceeding should be consistent with the intent of

the Court of Appeals decision and should not be based upon "beliefs" or self-serving principles advanced by Commissioner or staff-level individuals.

Respectfully Submitted

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Date: February 24, 1999