

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

In re Applications of

WINFAS, INC. File No. BRH-880718YA

For Renewal of License of
Station WKO0(FM)
Formerly Station WRCM(FM)
Jacksonville, North Carolina

TAR HEEL File Nos. BR-88075UK
BROADCASTING BRH-880725YJ
SYSTEM, INC.

For Renewal of License of
Stations WRRF/WDLX-FM
Washington, North Carolina

BD File Nos. BR-880729UT
COMMUNICATIONS BRH-880729YJ
CO., INC.

For Renewal of License of
Station WBTB
Beaufort, North Carolina and
Station WZYC-FM
Newport, North Carolina

DICK File No. BRH-880801B7
BROADCASTING
COMPANY, INC.

For Renewal of License of
Station WKRR(FM)
Asheboro, North Carolina

**MEMORANDUM OPINION AND ORDER
AND NOTICES OF APPARENT LIABILITY**

Adopted: June 13, 1990;

Released: August 10, 1990

By The Commission:

1. The Commission has before it for consideration: (i) an informal objection¹ filed November 1, 1988, by the National Black Media Coalition, the North Carolina State Conference of Branches of the NAACP, and various local NAACP branches (hereafter "NBMC/NAACP")² against the above-captioned renewal applications; (ii) oppositions from the licensees; (iii) NBMC/NAACP's reply; and (iv) the licensees' responses to staff letters of inquiry. NBMC/NAACP allege that the above-captioned stations violated the Commission's EEO rules and policies.

NBMC/NAACP request that the Commission investigate the stations' employment practices and designate the applications for hearing.

2. Section 73.2080 of the Commission's Rules requires that a broadcast licensee 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. When evaluating EEO performance at renewal time, the Commission focuses on the licensee's efforts to recruit, employ and promote qualified women and minorities and the licensee's on-going assessment of its EEO efforts. The latter enables the licensee to take corrective action if, for example, qualified women and minorities are not present in the applicant pool. The Commission also focuses on any evidence of discrimination by a licensee.

3. When the renewal application reveals no evidence of discrimination and a record of adequate EEO efforts, it is granted if otherwise appropriate. When the application indicates evidence of a record of inadequate EEO efforts, the Commission may impose a variety of sanctions or remedies, such as reporting conditions, the submission of a modified EEO program, renewal for less than a full-term, a forfeiture, or a combination thereof. Further, if substantial and material questions of fact exist or if we otherwise cannot find that grant of the application would be consistent with the public interest, we designate the application for hearing. 47 U.S.C. Sec. 309(d)(2); *Beaumont Branch of the NAACP v. FCC*, 854 F.2d 501, 506 (D.C. Cir. 1988) ("*Beaumont*"); *Bilingual - Bicultural Coalition on the Mass Media, Inc. v. FCC*, 595 F.2d 621 (D.C. Cir. 1978) ("*Bilingual*"); *Amendment of Part 73 of the Commission's Rules Concerning Equal Employment Opportunity in the Broadcast Radio and Television Services*, 2 FCC Rcd 3967 (1987) ("*Broadcast EEO*").

4. Review of each licensee's EEO record leads us to conclude that petitioners have presented a *prima facie* case against each challenged station, so that unconditional grant of the applications for renewal would be inconsistent with the public interest. *Astroline Communications v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) (*Astroline*). Each station's records evidenced an EEO program which reflected inadequate EEO efforts.³

5. Review of each licensee's opposition and response to our inquiry leads us to conclude that no substantial and material questions of fact remain with respect to each of the challenged licensees. Thus, grant of each application will serve the public interest. 47 U.S.C. Sec. 309(d)(2). *Astroline, supra*. Accordingly, appropriate sanctions and/or remedies will be imposed. Our analysis of each licensee's EEO efforts follows.

WKO0 (FM),⁴ Jacksonville⁵

6. The station's EEO program reflects that, during the reporting year, *i.e.*, the 12 months prior to the filing of the renewal application, 13 minority referrals were obtained for the 18 jobs filled following contacts with two schools, two organizations, two personnel agencies, the state employment commission, and advertisements in three newspapers. All were for positions in the upper-four job categories.⁶ Among the hires were nine women and three minorities. However, the licensee acknowledges that the station has experienced difficulty in attracting minority applicants in the past, which it attributes to the station's country and western format.⁷

7. Additional information supplied by the licensee reveals that, during a three year period (July 1985 to July 1988), the licensee had 31 full-time hiring opportunities, 30 of which were for positions in the upper-four job categories. Five of the persons hired were minorities, all for upper-level positions. Only seven minorities were among the persons interviewed. In 13 instances (three involving minorities), the person hired was the only person interviewed. Use of the local minority newspaper directed to the minority community, contacts with colleges with high minority enrollments, and other efforts geared toward attracting potential minority job applicants did not begin until the summer of 1988.

8. We find that the licensee's record does not warrant designation for hearing because it does not raise any substantial and material questions of fact about the licensee's employment practices. The licensee employed minorities during most of the license term. However, with one exception noted above, recruitment efforts did not include use of sources likely to produce qualified minorities until the summer of 1988, shortly before the filing of the station's renewal application.⁸ As a result, only seven minorities were interviewed during a three-year period in which the station filled 31 full-time jobs. Had appropriate self-assessment occurred, the licensee would have discovered before the summer of 1988 that its recruitment efforts needed modifications. Accordingly, to assure ourselves that the licensee's recruitment and self-assessment comports fully with our rules, we will impose reporting conditions.⁹ See *South Carolina Renewals*, supra, n.8. (*WODE/WNOK-FM*). See also *Station WFBR*, 3 FCC Rcd 5913, *erratum*, 3 FCC Rcd 7145 (1988); *Media Com, Inc.*, 55 RR 2d 1291 (1984).

WRRF/WDLX-FM, Washington

9. The stations' EEO program reports that contacts with nine educational institutions, eight minority or women's organizations, and the state employment security commission yielded 22 minority referrals for the 12 jobs filled during the reporting year. (It was later revealed, however, that 12 of the minority referrals were for two clerical jobs.) Three of the new hires were minorities. Ten of the new hires were for positions in the upper-four job categories; one of those hires was a minority. The licensee asserts that its rural location and competition for employees from the nearby Raleigh-Durham market have placed the stations at a "disadvantage" in attracting minority job candidates. Nonetheless, it contends that the stations' program is now having positive results.¹⁰

10. NBMC/NAACP characterize the stations' EEO program as "marginally acceptable" but criticize the stations for not achieving parity during the license term despite "a very high turnover rate." The licensee claims it has made repeated attempts to recruit minorities, and it supplies copies of letters sent to various organizations and schools in May and July, 1987 and January and November, 1988. The 1987 letters advise that the stations are an equal opportunity employer, while the 1988 letters solicit applicants for specific jobs. NBMC/NAACP label the licensee's efforts as "sporadic" because the correspondence the licensee furnished refers to "three or four" jobs although the stations filled 12 jobs during the reporting period. In addition, NBMC/NAACP question whether the stations view the processing guidelines¹¹ as quotas because

a licensee letter to counsel suggests that employment of minorities at or above the guidelines is a requirement of the Commission.

11. Additional information supplied by the licensee reveals that, over a nearly four year period (January 1, 1985 to December 1, 1988), the stations hired 26 persons for full-time positions. The 26 positions included 23 upper-level jobs. The recruitment contacts generated minority applicants for 12 of the 26 jobs. At least one minority appeared in the applicant pools for each of the 23 upper-level jobs. Two minorities were hired for lower-level positions and two for upper-level positions.

12. We conclude that the record before us does not raise a substantial and material question of fact warranting designation of the applications for hearing. Although the stations did not consistently contact minority recruitment sources, they made some recruitment efforts with respect to virtually all full-time jobs filled, maintained adequate records of recruitment contacts and applicant pools, hired minorities for a variety of positions, and employed at least one minority in an upper-level position throughout the license term.

13. However, considering the sizable minority presence in the local labor force and the apparent lack of success in obtaining minority applicants, particularly in the upper-level jobs, it was incumbent on the licensee to use additional recruitment efforts which could result in qualified minority applicants.¹² In our view, the licensee's submissions indicate that such efforts did not occur consistently.¹³ Accordingly, to ensure that the licensee will make appropriate recruitment efforts for every job filled, we will impose reporting conditions. *Applications for Certain Broadcast Stations Serving Communities in the State of Texas*, 4 FCC Rcd 6685 (1989) (*KVII-TV*); *Carolina Christian Broadcasting, Inc.*, 3 FCC Rcd at 1910.

WBTB, Beaufort and WZYC, Newport

14. The stations' inquiry response indicates that from December 1985 (when the licensee acquired the stations) through May 1988, the stations' hired¹⁴ 27 full-time employees.¹⁵ Between December 1985 and July 1987, the licensee contacted general recruitment sources for 15 vacancies. Beginning in July 1987, the recruitment sources contacted (when recruitment occurred) included at least one source directed toward minorities. During the reporting year, i.e. the 12-month period prior to filing of the renewal application, the stations contacted various recruitment sources including three newspapers, two colleges, the National Organization for Women (NOW), the NAACP, two military offices, and the state employment security commission. The stations received six minority referrals from these sources as well as receiving four minority referrals from station employees. The station interviewed more than one person for 14 of the 27 jobs, but only one of the persons interviewed was a minority. Of the 27 full-time employees hired by the station, none were minorities.

15. NBMC/NAACP question whether the licensee actually contacted NOW and the NAACP for recruitment. NBMC/NAACP also note that neither of the two minorities hired during the EEO reporting period appeared on the stations' 1988 Annual Employment Report, concluding that they were employed for only a short time. Finally, comparing the number of hires (25 full-time and part-time) during the 12 month reporting period with the number of employees at the stations (29 full-time and

part-time) and noting the increase in the number of full-time employees during the licensee's tenure (from 13 to 22), NBMC/NAACP conclude that the stations have hired few minorities despite many hiring opportunities.

16. The licensee responds that it contacted all of the referral sources listed in its EEO program "on numerous occasions." As for the two minority hires reflected in the stations' EEO program, the licensee explains that both were hired after the payroll period used for the 1988 Annual Employment Report. While the licensee acknowledges that one of the minorities left after six weeks of employment, it notes that the other was still employed at the stations as of December 1, 1988. In addition, the licensee points out that the stations hired another minority in September 1988, more than a month before the instant informal objection was filed. The licensee concedes that its early minority recruitment efforts were not successful. However, the licensee contends that it implemented a new recruiting program in August 1987 and that its performance should be judged on the basis of its more recent efforts.¹⁶ Finally, the licensee states that it has added four North Carolina colleges to its recruitment list and that it hopes to add an intern program.

17. In our view, the instant record does not warrant designation for hearing. The stations' submissions reflect some efforts, beginning in July 1987, to contact potential sources of minority employment. In addition, in 1988, the stations hired two minorities for full-time jobs. Both minorities were hired toward the end of the license term but before NBMC/NAACP filed their informal objection. Accordingly, we conclude that the licensee's record does not raise a substantial and material question of fact about discrimination. Cf. *Robert A. Dwyer*, 4 FCC Rcd 6178 (1989); *Florida Renewals*, 3 FCC Rcd 1930, 1931 (1988) (WTCL-TV). But Cf. *Beaumont*, supra; *Bilingual*, supra.

18. However, we find that the licensee's EEO efforts were inadequate. The stations did not make any attempts to contact minority recruitment sources between December 1985 and July 1987, and contacted only one sporadically thereafter. As a result, the stations did not hire a minority for a full-time job until the waning months of the license term and interviewed a minority for only one of the 27 full-time jobs filled between December 1985 and May 1988.¹⁷ Considering the belated and inconsistent nature of the licensee's efforts to recruit minorities and the virtual absence of minority employees, hires, and interviewees for full-time positions during most of the licensee's tenure, we conclude that both prospective remedies and sanctions are warranted. In a similar situation, where a licensee in an area with a 16% minority labor force had, for example, no minority hires and few minority interviews for 26 full-time jobs over a 30 month period, we imposed a forfeiture of \$5,000 and required submission of EEO reports. *South Carolina Renewals*, supra, n.8. (WSPA/WSPA-FM). Accordingly, we will impose reporting conditions and a forfeiture in the amount of \$5,000 for repeated violations of Section 73.2080(b)(3), (b)(5), (c)(2), and (c)(5) of the Commission's Rules.

WKRR (FM), Asheboro

19. The station's EEO program indicates that, during the reporting year, it obtained four minority referrals from contacts with two colleges and solicitations of employees. However, none of the station's seven hires during the reporting year was a minority. The licensee attributes its recruiting difficulties to the relatively small percentage

of minorities in the Randolph County Workforce, claimed by the licensee to be 6.1% and the presence of "more attractive employment opportunities" in the textile and furniture fabrication industries. The licensee states that after using local organizations, schools and newspapers, it broadcast recruitment messages and contacted the referenced colleges as well as a black-formatted station in the area. The licensee plans to advertise in the Greensboro and Winston-Salem newspapers and contact additional colleges and minority organizations, including the local chapter of the NAACP.¹⁸

20. NBMC/NAACP contend that the licensee's claims about the textile and furniture industries and its use of the Randolph County labor force (rather than the MSA labor force) are intended to divert attention from the licensee's deliberate failure to comply with the Commission's EEO rules. NBMC/NAACP note that the WKRR(FM) program did not report use of minority organizations or media for recruitment, and they charge that the 1988 employment reports at sister stations in Tennessee¹⁹ reflect no or low minority employment in upper-level jobs. NBMC/NAACP conclude that the licensee's failure to follow the EEO rules, not local market conditions, is the cause of the station's record.

21. The licensee submits that the renewal challenge is premised on statistics, and it argues that the station's apparent shortfall in minority employment is insignificant. The licensee acknowledges that its use of county labor force data rather than MSA labor force data was error, but it contends that mistake did not detract from its recruitment efforts. In addition to the contacts referenced in its EEO program, the licensee states that it contacted Winston-Salem State University, a school with a predominantly black enrollment, and that it initiated an intern program. While the licensee asserts that it sought interns from a number of colleges, it acknowledges that only one college provided them. One of the interns was black. The licensee plans to expand its sources to include another predominantly black college.

22. The licensee repeats its contention that its efforts to employ minorities were hampered by the local textile and furniture industries, citing the loss of a female employee to a furniture manufacturer. The licensee also submits that low unemployment in the area contributed to the station's difficulties in hiring minorities. With respect to its sister stations, the licensee notes that both have employed minorities both overall and in upper-level positions in 1988 as well as in prior years. The licensee concludes that its lack of results in employing minorities is not the result of an intent to discriminate or a lack of efforts to recruit.

23. Additional information submitted by the licensee, however, reveals that the station's recruitment efforts were not substantial or continual. Hiring data show that the station filled 22 full-time positions between April 1, 1985 and May 1988. Seventeen were upper-level jobs; five were lower-level jobs. No minorities were hired. The station advertised in *Radio & Records* for three on-air positions and "nationally" for an on-air/production job, used a search firm for one other on-air job, advertised over-the-air for a receptionist, notified two schools with respect to the traffic director's job, contacted a state employment services agency for two clerical jobs, and recruited for a salesman. However, in only three instances does it appear that minority sources were used. The records also reflect that for nine of the hires only one applicant was consid-

ered. Moreover, only three of the applicant pools had blacks. None of the candidates for an upper-level position was identified as black.

24. We find that the instant record does not warrant designation for hearing because no substantial and material question of intentional discrimination is raised. The licensee did make some efforts to seek referrals, including minority referrals, and varied those efforts over time. In addition, the station did have one black intern. Finally, the licensee recognized, albeit belatedly, that its methods of recruitment required substantial modifications, and it proposed, prior to the NBMC/NAACP renewal challenge, to contact different sources for minority applicants. Accordingly, we do not believe a hearing is warranted.²⁰ Cf. *Beaumont, supra*; *Bilingual, supra*.

25. However, we also find that the licensee did not make positive and continuing efforts to recruit minorities. For the majority of the jobs filled, the licensee did not demonstrate any nexus between its claimed minority recruitment contacts and particular job hires. The list of recruitment sources used for each hire reflects that the station recruited for only 10 of 22 hires and used minority sources for only three of those hires. In the three instances where minority sources were used, the applicant pools had blacks. None of the other applicant pools contained blacks. Hence, we conclude that the licensee failed repeatedly to comply with Section 73.2080 (c)(2) of the Commission's Rules, 47 C.F.R. Section 73.2080.

26. In addition, the licensee's self-assessment for most of the license term appears to have been erroneous. Regardless of whether reference was made to Randolph County, the county of license, or Guilford County, where the station's studio was actually located, see *Michigan and Ohio TV Stations*, 3 FCC Rcd 6944, 6945 (1988), the licensee should have ascertained that the labor force in the Greensboro - Winston Salem - High Point MSA was the relevant one for self-assessment. Moreover, we reject the licensee's explanation that the local furniture and textile industries had any impact on its minority recruitment. There is no logical connection between the loss of one female employee to a furniture manufacturer and the licensee's conclusion that recruitment of minorities was hampered by the presence of industries totally unrelated to broadcasting. Similarly, there is no support for the belief that low unemployment in the area rendered recruitment of minorities more difficult.²¹ Thus, the licensee's self-assessment was not premised on our rules.

27. In our recent decision involving the renewal applications of various South Carolina radio stations, we granted a short-term renewal and imposed reporting conditions and a \$10,000 forfeiture on three licensees which had EEO deficiencies similar to those of WKRR(FM). The licensees of WKZQ/WKZQ-FM, Myrtle Beach, and WGSN/WNMB(FM), North Myrtle Beach, are located in a county that included 19.4% minorities (17.9% blacks) in the labor force. WKZQ/WKZQ-FM went six and one-half years without a black in an upper-level job and recruited for only 12 of the 39 upper-level jobs filled during the license term. WGSN/WNMB(FM) went close to four years without a black applicant for 27 full-time jobs filled, recruited for only 11 of those jobs, and did not propose to modify their program until NBMC/NAACP challenged their EEO practices. WSCQ(FM) did not recruit, hire or interview a black person for the 20 full-time upper-level positions filled during the license term in an area where

the labor force included 25.8% minorities (24.1% blacks). *South Carolina Renewals, supra*. In the instant case, the licensee of WKRR(FM) recruited sporadically, made few efforts to seek out minority applicants despite having no minorities on its staff and few minority applicants during a 31 month period and being located in an area that includes 17.8% minorities (16.8% blacks) in the local labor force. Accordingly, we believe similar sanctions and remedies are warranted. Thus, we will grant renewal for less than a full-term and require the submission of EEO reports. Also, for the apparent repeated failures to contact potential sources of minority applicants as required by Section 73.2080(c)(2) of the Commission's Rules, we will impose a forfeiture in the amount of \$10,000.

28. Accordingly, *IT IS ORDERED*, that the informal objection filed by the NBMC/NAACP *IS DENIED*.

29. *IT IS FURTHER ORDERED*, that the license renewal applications for Stations WKOQ(FM), WRRF/WDLX-FM, and WBTB/WZYC-FM *ARE GRANTED*, subject to the EEO reporting conditions specified herein.

30. *IT IS FURTHER ORDERED*, that the license renewal application of WKRR(FM) *IS GRANTED FOR A SHORT-TERM* ending August 1, 1992, subject to the EEO reporting conditions specified herein.

31. *IT IS FURTHER ORDERED*, that, pursuant to Section 503 of the Communications Act of 1934, as amended, 47 U.S.C. Section 503, this document constitutes a Notice of Apparent Liability for forfeiture of \$5,000 for the licensee of Stations WBTB/WZYC-FM, and \$10,000 for the licensee of Station WKRR(FM).²²

32. *IT IS FURTHER ORDERED* that the licensees of the above stations submit to the Commission an original and one copy of the following information on August 1, 1991, August 1, 1992, and August 1, 1993:

(a) For each report, a list of all job vacancies during the 12 months preceding the respective reporting dates, indicating the job title and full or part-time status of the position, date of hire, the race or national origin, sex and the referral source for each applicant for each job and the race or national origin and sex of the person hired. The list should also note which recruitment sources were contacted.²³

(b) a list of employees as of the July 1, 1991, payroll period for the first report and as of the July 1, 1992 and July 1, 1993 payroll periods for the second and third reports, by job title, indicating part-time or full-time status (ranked from the highest paid classification), date of hire, sex, and race or national origin;

(c) details concerning the station's efforts to recruit minorities for each position filled during the 12-month period 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 relevant information with regard to the station's EEO performance and efforts thereunder.

33. *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 Notices of Apparent Liability to the licensees as well as counsel for the National Black Media Coalition, the NAACP and each of the licensees.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

¹ The pleading filed by the National Black Media Coalition *et al.* was styled a Petition to Deny. However, the pleading did not include affidavits or declarations under penalty of perjury from individuals who were listeners of the above-captioned stations or residents of the stations' service areas. Thus, the pleading was not filed by a "party in interest" and does not qualify as a petition to deny. Section 309 (d)(1) of the Communications Act of 1934, as amended, 47 U.S.C. Section 309 (d)(1). Accordingly, we will treat the renewal challenge as an informal objection. *Broadcast Stations Serving the State of Florida*, 3 FCC Rcd 1930 (1988) ("*Florida Renewals*").

The Petition to Deny was directed against 35 radio stations located in the States of North Carolina and South Carolina. The challenged stations not addressed in this document either have been or will be addressed in other Commission or staff documents, as appropriate. *E.g.*, *Stations WGBR and WEQR*, 4 FCC Rcd 1621 (1989); *Certain Broadcast Stations Serving Communities in the State of South Carolina*, 5 FCC Rcd 1704 (1990) (*South Carolina Renewals*).

² The National Black Media Coalition ("NBMC"), headquartered in Washington, D.C., describes itself as a national association of black organizations and persons seeking additional employment, program service and ownership in the media.

³ None of the stations were challenged regarding their recruitment of women. Nonetheless, as is our practice in all cases, we reviewed each station's EEO efforts towards both women and minorities.

⁴ Station WRCM(FM) changed its call letters to WKOQ(FM) on October 1, 1989.

⁵ NBMC/NAACP withdrew their informal objection by letter dated March 31, 1989. However, for the reasons noted herein, we find that imposition of prospective remedies to assure future compliance is warranted.

⁶ The Jacksonville MSA labor force includes 48.7% women and 19.9% minorities (15.8% Blacks). The station's Annual Employment Reports for the license term reveal that, in 1982, 1984-85, and 1987, the staff of 21 full-time employees included one (4.8%) minority. The 19 upper-level employees for those years did not include a minority in 1982 but did include a minority (5.3%) in 1984, 1985 and 1987. In 1983, the staff of 19 had one minority (5.3%), who was not among the 17 upper-level employees. In 1986, the station reported 20 full-time employees, of whom two (10%) were minorities. Both (11.1%) were among the 18 employees who held upper-level jobs. However, none of the 20 full-time (18 upper-level) employees listed on the station's 1988 report was a minority.

⁷ As the Commission stated in *Leflore Broadcasting, Inc. v. FCC*, 66 FCC 2d 734, 784-85 (1975), a station's format has no bearing on its EEO obligations.

⁸ Yet, if a licensee obtains a meaning pool of referrals and applicants from *e.g.*, *exclusive* reliance on general sources, it will not be faulted for failing to contact minority specific sources.

Applications of Certain Broadcast Stations Serving Communities in the State of South Carolina, 5 FCC 1704, 1709 n.8 (1990) (*South Carolina*).

⁹ Licensees should engage in self-assessment periodically throughout the license term, not just at the end of the term. The frequency with which licensees should engage in self-assessment will vary according to factors including, but not limited to, the length of the licensee's tenure, the number of hiring opportunities and the demographics. At such times, licensees should review the productivity of their recruitment sources in producing qualified female and minority applicants, and if not productive, modify their efforts as appropriate, until productive results are obtained.

¹⁰ Washington is located in Beaufort County. Its labor force includes 42.5% women and 27.5% minorities (27.1% blacks). The stations' Annual Employment Reports show that in 1982, there were 11 full-time employees and 10 upper-level employees. In 1983 and 1984, the stations had 10 full-time employees, eight of whom were in upper-level jobs. Subsequently, the number of full-time employees increased from 12 (10 upper-level) in 1985, to 14 (13 upper-level) in 1986, to 16 (15 upper-level) in 1987, and to 17 (16 upper-level) in 1988. The reports reveal that the stations employed one minority in an upper-level job during each year of the license term, and an additional minority in a clerical position in 1988. Thus, the percentages of minorities at the stations initially rose from 9.1% overall and 10% for upper-level jobs in 1982 to 10% overall and 12.5% for upper-level jobs in 1983 and 1984, then declined to 8.3% overall (10% upper-level) in 1985, 7.1% (7.7% upper-level) in 1986, and 6.3% overall (6.7% upper-level) in 1987. In 1988, the overall percentage of minorities rose to 11.8% but decreased in upper-level jobs to 6.3%.

¹¹ See *EEO Processing Guidelines*, 46 RR 2d 1693, *recon. denied*, 79 FCC 2d 922 (1980).

¹² See note 8, *supra*.

¹³ Moreover, to the extent the licensee's comments reflect a belief that we require employment of any group at a particular level relative to its local presence, the licensee is mistaken. As we have repeatedly emphasized, "the processing guidelines are not quotas nor do they establish upper limits for minority and female employment." *Catawba Valley Broadcasting Company, Inc.*, 3 FCC Rcd 1913, 1916 (1988). A licensee's efforts to recruit, employ, and promote minorities and women are to occur regardless of the extent of their presence at the station. *Carolina Christian Broadcasting, Inc.*, 3 FCC Rcd at 1907, 1910.

¹⁴ One of the employees noted as a full-time hire was a transferee from the licensee's parent company. Our discussion of the licensee's hiring activities does not include this transfer.

¹⁵ Beaufort and Newport are located in Carteret County. That county's labor force includes 41.4% women and 9.2% minorities (7.8% black). The licensee acquired the stations in December 1985. The stations' Annual Employment Reports for the years 1986, 1987 and 1988 show an increase in the number of full-time employees from 13 in 1986 to 19 in 1987 and to 22 in 1988. All but two of the employees for the 1986 and 1988 and all but three in 1987 are listed in the upper-four job categories. The three reports reflect that none of the listed full-time employees were minorities.

¹⁶ A declaration under penalty of perjury from the former general manager of the stations and a "statement" from the present general manager explain in greater detail the various recruitment efforts undertaken since August 1987. While contacts and advertisements in 1987 did not lead to minority applicants, those in 1988 led to the three noted minority hires and interviews with several other minorities. However, the present

general manager concedes that the stations did not advertise for 10 of the 18 full-time hires that occurred between July 1987 and July 1988. The licensee previously provided information which indicated that recruitment did not take place for 12 positions from 1985 to 1988.

¹⁷ See note 8, *supra*.

¹⁸ Asheboro is located in Randolph County, which is part of the Greensboro Winston Salem - High Point MSA. That MSA's labor force is 45.3% women and 17.8% minorities (16.8% blacks). The licensee acquired the station's license on April 1, 1985. In 1986, the Annual Employment Report for WKRR(FM) included employees assigned to WKXR, a co-owned AM station. In August 1986 the license for WKXR was assigned to Randolph Broadcasting, an entity separate from the licensee of WKRR(FM).

The licensee's Annual Employment Reports for the years 1986, 1987 and 1988 reflect that the number of full-time employees was 23 in 1986, 17 in 1987 and 20 in 1988. The number of employees in upper-four job categories was 21 in 1986, 16 in 1987 and 18 in 1988. None of the employees were minorities.

¹⁹ The licensee of WKRR(FM), Asheboro and the licensee of WIVK(AM-FM), Knoxville and WKDA/WKDF-FM, Nashville are separate corporations under common control.

²⁰ We also conclude that NBMC/NAACP have made no showing that the employment records of WKRR(FM)'s sister stations in Tennessee are relevant. The staff reviewed their EEO records during the processing of the renewal applications of Tennessee radio stations, and took appropriate action based on those records.

²¹ We note that the licensee's own exhibit reflects that the unemployment for blacks was nearly twice the overall rate for the area, indicating that blacks were *more* available than whites for *any* job.

²² In regard to the forfeiture, the licensees may take any of the actions set forth in Seciton 1.80 of the Commission's Rules, as summarized in an attachment to this *Memorandum Opinion and Order and Notices of Apparent Liability*. Any comments relating to ability to pay should include those financial items set forth in the noted attachment.

²³ 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 (03/15/91)