

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

In re Applications of:

L.M. COMMUNICATIONS, INC.  
File Nos. BR-890403WX  
BRH-890403WY

For Renewal of Licenses of  
Stations WLXG/WCOZ(FM),  
Lexington, and Paris,  
Kentucky

MEMORANDUM OPINION AND ORDER

Adopted: December 30, 1991; Released: January 27, 1992

By the Commission:

1. The Commission has before it: (i) a Petition to Deny filed July 3, 1989, by the Kentucky State Conference of Branches of the NAACP, the respective branch of the NAACP operating within the service area of the radio stations, and the National Black Media Coalition against the license renewal applications for stations WLXG/WCOZ(FM), Lexington, Kentucky filed on April 3, 1989 by L.M. Communications, Inc. (licensee) (NAACP/NBMC);<sup>1</sup> (ii) an opposition to the petition to deny filed by the licensee; and (iii) the licensee's response to a Commission letter of inquiry. NAACP/NBMC allege that the challenged stations violated the Commission's EEO Rule. Accordingly, they request that we investigate the stations' employment practices and designate the renewal applications for hearing.

2. **PROCEDURAL MATTERS.** In challenging an application pursuant to Section 309(d) of the Communications Act, a petitioner must demonstrate party in interest status. In addition, a petitioner must, as a threshold matter, submit, "specific allegations of fact sufficient to show . . . that a grant of the application would be prima facie inconsistent with (the public interest, convenience and necessity)." 47 U.S.C. Section 309(d)(1); *Astroline Communications Co. v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) (*Astroline*); *Dubuque Limited Partnership*, 4 FCC Rcd 1999 (1989). The allegations, except for those of which official notice may be taken, must be supported by the affidavit of a person with personal knowledge of the facts alleged. 47 U.S.C. Section 309(d)(1).

3. NAACP filed a timely declaration from Jesse Crenshaw, President of the Lexington Branch of the NAACP. Accordingly, NAACP will be considered as a petitioner against this station. With respect to NBMC, NBMC timely submitted a statement from Pluria Marshall, Chairman of the NBMC and a resident of the Washington, D.C. metropolitan area. However, the Commission has previously held that a statement of a person who does not claim to be a listener of the stations nor a resident of the service area of the challenged stations, does not satisfy the requirements of the Act. See *Michigan/Ohio*

*Broadcast Renewal*, 3 FCC Rcd 6944 (1988); see also *KDEN Broadcasting Co.*, 55 Rad. Reg. 2d (P&F) 1311, 1311-1312 (1984). Accordingly, we hold that NBMC lacks standing to petition against the stations in question and, therefore, will be treated as an informal objector.

4. **DISCUSSION.** Section 73.2080 of the Commission's Rules, 47 C.F.R. Section 73.2080, 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, the Commission focuses on the licensee's efforts to recruit, employ and promote qualified women and minorities and the licensee's ongoing assessment of its EEO efforts. Such an assessment enables the licensee to take corrective action if qualified women and minorities are not present in the applicant pool. The Commission also focuses on any evidence of discrimination by the licensee. See Section 73.2080 (b) and (c) of the Commission's Rules, 47 C.F.R. Sections 73.2080 (b), 73.2080 (c).

5. When a renewal application indicates a record of adequate EEO efforts, the application is granted, if otherwise appropriate. If the application indicates a record of inadequate EEO efforts, the Commission will impose a variety of sanctions and remedies, such as reporting conditions, renewal for less than a full term, forfeiture, or a combination thereof. Further, the Commission will designate the renewal application for a hearing if the facts so warrant. *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 Report and Order*), petition for reconsideration pending, see 4 FCC Rcd 1715 (1989) (request for clarification by National Association of Broadcasters). See also *Beaumont Branch of the NAACP and the National Black Media Coalition v. FCC*, 854 F.2d 501 (D.C. Cir. 1988) (*Beaumont*); *Bilingual-Bicultural Coalition*, *supra*.

6. Review of the licensee's EEO record leads us to conclude that NAACP/NBMC have presented a *prima facie* case demonstrating that unconditional grant of the applications for renewal would have been inconsistent with the public interest. *Astroline*, *supra*. The stations' own record evidenced inadequate efforts.<sup>2</sup> Further inquiry was, therefore, necessary. See *Beaumont Branch of the NAACP v. FCC*, *supra*; *Bilingual-Bicultural*, *supra*. Upon analysis of the licensee's opposition and response to our inquiry, we conclude that no substantial and material questions of fact remain as to whether the licensee discriminated. *Astroline*, *supra*. Accordingly, designation for a hearing is not warranted for the renewal applications. We will, however, impose sanctions and/or prospective remedies as detailed herein.

7. A description of the licensee's EEO efforts is detailed in the stations' 1989 EEO Program Report, their opposition and their response to our inquiry letter. During the period from March 1, 1986 to February 28, 1989, the licensee had 50 overall hiring opportunities, including 48 upper-level hiring opportunities, for full-time employees. The licensee used recruitment sources for 43 positions. The licensee used the following referral sources for 39 positions: University of Kentucky; Urban League Employment Program (two minorities); Kentucky Department of Employment Services; Transylvania University; Alternatives for Women; Women's Neighborly Organization; Bluegrass Community Services; and Women Inc. Feminist

Center. In addition, the licensee's record indicates that it used the NAACP for 31 full-time positions; *Lexington Herald Leader* for 18 positions; *Broadcasting* for four positions; and on-air announcements for 13 positions.<sup>3</sup> The licensee interviewed a minority for six of the 50 openings. The licensee's inquiry response indicates that no minorities were hired for the 50 full-time positions filled during the period March 1, 1986<sup>4</sup> to February 28, 1989.<sup>5</sup> However, in its opposition, the licensee states that it hired a Black male salesperson and a Black male sales manager in September and October 1985 respectively. These employees, however, did not remain at the stations long enough to be included in the stations' annual employment reports. The licensee also states that it made two offers of employment for upper-level positions to Black candidates in 1988 who did not accept the offers. In addition, the licensee states that it hired a Black male News Director in August 1989 -- within one month after the license term expired.<sup>6</sup> Furthermore, the licensee indicates that in March 1989, it added *Bourbon County Citizen*, the *Lexington, Kentucky Mayor's Office of Employment and Training*, *Bourbon Times*, and the Lexington Branch of the NAACP to their list. The licensee states that the two newspapers have a substantial minority circulation and that the Mayor's office emphasizes employment and training of minorities and women. In addition, the stations maintained adequate records for self-assessment.

8. NAACP/NBMC assert that WLXG/WCOZ(FM) did nothing to correct its failure to obtain a sufficient number of minority employees during the license term. NAACP/NBMC contend that only the daily newspaper and one minority organization accounted for minority candidates during the renewal period. The licensee counterargues that its EEO program complied with the Commission's EEO Rule. The licensee asserts that it sends to its recruitment sources notices of job openings and information about each specific opening prepared for posting. The licensee also asserts that it has interviewed every minority candidate referred during the license term. The licensee attributes its inability to obtain minority employees to the low number of minorities available in the Lexington, Kentucky MSA, coupled with the small size of the stations, and competition with larger stations. The licensee argues that, nevertheless, it has made concerted efforts to attract minorities from other markets. The licensee indicates that, in 1988, it began advertising job openings in *Broadcasting Magazine*. In addition, in 1987 and 1988, the stations' general manager spent significant time canvassing other Kentucky radio stations for job applicants. Although these efforts produced applicants, they failed to turn up minority applicants. Regarding NAACP/NBMC's criticism that the stations only used one minority referral source, the licensee states that it notified NAACP of various positions. It, however, had difficulty locating a branch of the NAACP which would provide referrals.<sup>7</sup>

9. Upon analysis of the licensee's opposition and inquiry response, we conclude that no substantial and material questions of fact remain to be resolved. *Astroline, supra*. In addition, our review of the licensee's EEO program does not reveal any evidence of discrimination. Accordingly, designation for a hearing is not warranted. However, although we find that grant of its renewal applications will serve the public interest, we have noted areas of the program which can be improved. Specifically, we admonish the licensee to assess its EEO program on a

more regular basis and to modify its use of sources as needed to obtain a more diverse pool of referrals for job openings. Such modification is needed particularly where sources used are repeatedly unproductive. In this regard, we note that it was not until a month prior to filing the renewal applications that the licensee added sources such as *Bourbon County Citizen* and *Bourbon Times* which had not been used previously.<sup>8</sup>

10. Nonetheless, this case appears less egregious than those cases in which we have imposed reporting conditions. See e.g., *Applications of Certain Broadcast Stations Serving Communities in Michigan and Ohio*, 3 FCC Rcd 6944 (1988); *Applications of Certain Broadcast Stations Serving Communities in the Miami, Florida Area*, 5 FCC Rcd 4893 (1990) (*WQAM/WKIS (FM)*). In those cases, we imposed reporting conditions where stations failed to maintain adequate records for self-assessment. However, no such sanction is warranted in the instant case because the licensee did maintain adequate records. Moreover, the licensee's overall efforts here are significantly better than those cases where reporting conditions were imposed for deficient efforts. See e.g., *Applications for [R]enewal of License of Certain Broadcast Stations Serving Melbourne, Florida & Other Communities in the Florida Area*, 5 FCC Rcd 6738 (1990) (*WPAP-FM and WCOA(AM)/WJLQ-FM*).

11. Accordingly, IT IS ORDERED that the petition to deny filed by the NAACP IS DENIED.

12. IT IS FURTHER ORDERED that the informal objection filed by the National Black Media Coalition IS DENIED.

13. IT IS FURTHER ORDERED that the license renewal applications filed by L.M. Communications, Inc. for WLXG/WCOZ(FM), Lexington, Kentucky ARE GRANTED.

#### FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy  
Secretary

#### FOOTNOTES

<sup>1</sup> In their petition, NAACP/NBMC also challenged the renewal applications of WAXU/WTKT(FM), Georgetown, KY (formerly WBBE/WMGB-FM), (File Nos. BR-890331XY and BRH-890331XZ) filed by Maycourt Company on March 17, 1989; WFIA/WZKS(FM) (formerly WXLN(FM)) Louisville, KY (File Nos. BR-890303UB and BRH-890303UA) filed by Radio 900, Inc. (former licensee) on March 3, 1989; WQKS/WZZF-FM, Hopkinsville, KY (File Nos. BR-890317UH and BRH-890317UF) filed by Pennyrite Broadcasting Company on March 17, 1989. In addition, NAACP/NBMC challenged the applications for assignment of WFIA/WXLN(FM) (File Nos. BTC-890512HP and BTCH-890512HQ) from Radio 900, Inc. to Jim Kincir.

NAACP/NBMC withdrew their challenge against WAXU/WTKT(FM) pursuant to a settlement agreement. The Commission subsequently granted the licensee's renewal applications subject to reporting conditions and a \$18,000 forfeiture by letter dated November 29, 1989. See *Applications for Renewal of License of Stations WBBE(AM), WMGB-FM, Georgetown, KY, Letter*, 4 FCC Rcd 8255 (1989). NAACP/NBMC also

withdrew their challenge against stations WQKS/WZZF-FM on May 24, 1990 and the Commission granted these stations' renewal applications on July 12, 1990. In addition, NAACP/NBMC withdrew petitions challenging assignment applications for WFIA/WXLN(FM) and the Commission granted these stations' renewal applications on February 14, 1990.

<sup>2</sup> The stations were not challenged regarding their recruitment of women. Nonetheless, as is our practice in all cases, we reviewed the stations' EEO efforts toward both women and minorities. We find the stations' record of recruiting women sufficient.

<sup>3</sup> The licensee relied upon on-air announcements as the only referral source for four of the 43 positions for which it used recruitment sources. The licensee did not use any referral sources for seven out of 50 full-time positions filled during the subject period.

<sup>4</sup> The licensee acquired the AM station on October 5, 1985. The 1985 report, therefore, consists of the employment profile of only WCOZ(FM).

<sup>5</sup> The Lexington, Kentucky PMSA, in which the stations are located, has an available labor force which is 10.5% minority (9.2% Black, 0.6% Hispanic, 0.6% Asian/Pacific Islander, 0.1% American Indian). The stations' 1989 Annual Employment Report lists no minorities among 15 full-time overall and upper-level employees. The 1988 report lists no minorities among 17 overall employees. The 1987 report lists no minorities among 14 overall employees. The 1986 report lists one (5.6%) Black among 19 overall employees and one (5.6%) Black among 18 upper-level employees. The 1985 report lists no minorities among 12 full-time employees.

<sup>6</sup> Because this hire apparently occurred after August 1, 1989, it is a post-term hire and generally would not be considered as part of the licensee's efforts during the license term. However, the licensee indicates that it began recruiting for this position in February 1989. The position was offered to and rejected by a Black male applicant in March 1989. In March 1989, the licensee re-posted this position and eventually hired a Black male to fill the position in August 1989. Thus, this hire is an apparent outgrowth of the licensee's license term program and efforts. See *Rust Communications Group, Inc.*, 73 FCC 2d 39 (1979).

<sup>7</sup> The licensee alleges in its opposition that shortly after it acquired the stations, it began sending notices of job openings to the NAACP's national office in Washington, D.C. This office did not refer any minority candidates and upon contacting the NAACP, the licensee's general manager was informed that there was an office in Lexington, Kentucky. Accordingly, the licensee began sending job notices to this branch, but to no avail. The Lexington office became inactive in 1988. The general manager then began sending job notices to the Louisville branch, also to no avail. The licensee indicates that shortly before filing its renewal applications, it received the name and address of an individual associated with the Lexington branch of the NAACP. The licensee has added the name of this individual to its recruitment list.

<sup>8</sup> The stations used *Broadcasting* for one full-time position May 1986. They apparently stopped using this source in June 1986. They did not send any more notices to *Broadcasting* until June 1988 and then discontinued using this source as of October 1988. The stations used the *Lexington Herald Leader* for 18 positions. The newspaper was used for five positions in May 1986 and then was not used again until October 1986. It was used regularly for full-time positions until September 1987 and re-added to the list in February 1988. It was once again dropped as a source in October 1988. WLXG/WCOZ(FM) was used as a source during July 1986. It was used as a source again in

December 1987 until January 1988. It was used again during October 1988. Other than these modifications, it appears that the stations used the same recruitment sources throughout the subject period.