

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

In re

Applications of

TOLEDO
BROADCASTING,
INC.

File Nos.
BR-890530WF
BRH-890530VF

For Renewal of Licenses of
Stations WSPD/WLQR(FM)
Toledo, Ohio

MEMORANDUM OPINION & ORDER

Adopted: January 2, 1992; Released: January 23, 1992

By the Commission:

I. INTRODUCTION

1. Before the Commission is (i) a Petition to Deny filed by the Ohio State Conference of Branches of the NAACP and the National Black Media Coalition (NAACP/NBMC) against the above-noted renewal applications of stations WSPD/WLQR(FM), Toledo, Ohio; (ii) an opposition filed by the licensee; and (iii) the licensee's responses to Commission inquiries. NAACP/NBMC allege that the stations have violated the Commission's EEO Rule. They request that we investigate the stations' EEO program and then designate the renewal applications for a hearing.

II. PROCEDURAL MATTERS

2. In challenging an application pursuant to Section 309(d) of the Communications Act, a petitioner must demonstrate party in interest status. In addition, the 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 F.C.C. 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. The licensee of WSPD/WLQR(FM) asserts that, because NAACP/NBMC failed to file supporting affidavits, they have not established standing. NAACP provided a timely declaration from James Daniel, President of the Ohio State Conference of Branches of the NAACP. Mr. Daniel, however, does not indicate that he is a listener of the stations or a resident within the service areas of the stations. Accordingly, pursuant to Section 73.3584(b) of

the Commission's Rules, 47 C.F.R. Section 73.3584(b), NAACP's pleading will be considered as an informal objection.

4. With respect to NBMC, NBMC timely submitted a statement from Pluria Marshall, Chairman of NBMC and a resident of the Washington, D.C. area. The Commission, however, has previously held that the 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 Renewals*, 3 FCC Rcd 6944 (1988); see also *KDEN Broadcasting Co.*, 55 Rad. Reg. 2d (P&F) 1311, 1311-1312 (1984). Accordingly, we will consider NBMC's pleading as an informal objection.

III. DISCUSSION

5. 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).

6. 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 or 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*), *petition for reconsideration pending*; see also 4 FCC Rcd 1715 (1989)(request for clarification by National Association of Broadcasters). See e.g., *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 v. FCC*, 595 F.2d 621 (D.C. Cir. 1978).

7. Review of the licensee's EEO record leads us to conclude that NAACP/NBMC presented a *prima facie* case demonstrating that unconditional grant of the applications for renewal would have been inconsistent with the public interest. *Astroline, supra*.¹ Further inquiry was, therefore, necessary. See *Beaumont Branch of the NAACP v. FCC, supra*; *Bilingual-Bicultural Coalition, supra*.

8. Upon analysis of the licensee's opposition and responses to our inquiries, we conclude that no substantial and material questions of fact remain as to whether the licensee discriminated. *Astroline, supra*. Accordingly, designation for hearing is not warranted. Our review, however, indicates a record of inadequate efforts. We will, therefore, grant the renewal applications subject to reporting conditions as detailed herein.

9. Review of the licensee's 1989 EEO program, its opposition and its inquiry responses indicates that during the period December 11, 1986² to May 30, 1989, the licensee had 15 overall full-time hiring opportunities including 13 upper-level hiring opportunities.³⁴ The licensee contacted the following sources for referrals: eight community organizations;⁵ 12 educational institutions;⁶ two broadcasters' associations;⁷ two newspapers;⁸ two trade publications;⁹ and eight employment agencies.¹⁰ In addition, the licensee relied on employee referrals, walk-ins, "word of mouth" applicants, and former applicants or employees.¹¹ The licensee interviewed 162 applicants, including 13 minorities (six Blacks) for upper-level positions. Blacks appeared in four of the 13 upper-level interview pools.¹² The licensee hired no minorities for its 15 hiring opportunities.¹³ The licensee failed to make modifications to its program until less than one week before the license term expired, when it added additional sources to its recruitment list.¹⁴

10. NAACP/NBMC state that the licensee's "EEO program, on paper, is not unreasonable." However, they criticize the licensee's failure to hire any Blacks, the dominant minority group, for any upper-level position. In addition, they assert that the licensee appears to have attended to its EEO obligations only at the end of the license term.

11. The licensee counterargues that it has always made strong efforts to seek out qualified minority applicants. It states that it has contacted numerous minority and female recruiting sources for virtually every full-time job opening.¹⁵ The licensee also asserts that it encouraged present employees to refer minority and female job applicants and informed employees and applicants of its equal employment opportunity policy. With regard to its employment profile, the licensee asserts that it has improved minority representation at the stations since it took control in 1986.¹⁶ The licensee explains that the drop in minority representation in 1989 was due to the departure of two minority employees in 1988.

12. Review of the licensee's EEO record reveals that the licensee failed to direct sufficient efforts towards the recruitment of qualified Blacks, the dominant minority group, for upper-level vacancies.¹⁷ The licensee interviewed only six Blacks among 162 applicants for its 13 upper-level positions. In addition, the licensee did not include any Blacks in the interview pool for nine of its 13 upper-level job vacancies. Further, we note that the licensee did not hire Blacks or other minorities for any of its 15 full-time vacancies and did not employ Blacks in any full-time upper-level position from the time it acquired the stations until May 1989, when it promoted two Blacks to upper-level positions. Despite the small number of Blacks in the upper-level interview pool and the absence of Blacks from the licensee's upper-level hires and work force, the licensee failed to make any modifications to its EEO program until the very end of the license term, *i.e.*, September 25, 1989, six days before the license expiration date and 25 days after the petition to deny was filed.

13. This case is less egregious than *WROV Broadcasters, Inc.*, (*WROV*), 4 FCC Rcd 6157 (1989), *affd. on recon.*, 6 FCC Rcd 1421 (1991), in which we granted renewal subject to reporting conditions and imposed a \$5,000 forfeiture. Both stations were located in areas with similar Black labor forces with Roanoke having 9.9% and Toledo having 8.8%. Generally, both licensees failed to employ

Blacks in upper-level positions. In *WROV*, however, the licensee contacted recruitment sources for only two of its 42 upper-level job vacancies, whereas here WSPD contacted recruitment sources for 10 of its 15 positions. In addition, the licensee of *WROV*, which had 42 hiring opportunities, had a significantly greater number of hiring opportunities for which to recruit. Further, we note that the record for *WROV* showed an absence of Blacks in upper-level positions throughout the seven year license term. The licensee of *WSPD/WLQR*, however, acquired the stations less than three years before the license term expired and promoted two Blacks to upper-level positions, albeit late in the license term. Accordingly, *WSPD*'s record is considerably better than *WROV* and a forfeiture would be inappropriate in this case.

14. Based on the foregoing, we will grant renewal of the licenses and impose reporting conditions to ensure that the licensee makes sufficient efforts to attract black applicants and engages in meaningful self-assessment on a continuous basis, particularly with regard to its upper-level positions.¹⁸

IV. ORDERING CLAUSES

15. Accordingly, *IT IS ORDERED* that the informal objection filed by NAACP and the National Black Media Coalition against stations *WSPD/WLQR(FM)* *IS DENIED*.

16. *IT IS FURTHER ORDERED* that the applications for renewal of license filed by Toledo Broadcasting, Inc. for stations *WSPD/WLQR(FM)* *ARE GRANTED* subject to the reporting conditions described herein.

17. *IT IS FURTHER ORDERED*, that Toledo Broadcasting, Inc. submit to the Commission an original and one copy of the following information on June 1, 1992, June 1, 1993, and June 1, 1994:

(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 of each applicant for each job and the race or national origin and sex of the person hired. This list should also note which recruitment sources were contacted.¹⁹

(b) A list of employees as of the May 1, 1992 payroll period for the first report and as of the May 1, 1993 and May 1, 1994 payroll periods for the second and third reports 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.

18. 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 licensee have any questions

regarding this action or require further information concerning the employment reports, it may telephone the Mass Media Bureau's EEO Branch. ((202) 632-7069).

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

¹ 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 and found their record of efforts with regard to women to be sufficient.

² The licensee acquired the stations on December 11, 1986.

³ The licensee promoted one part-time Black employee to a full-time position as Public Affairs Director on May 29, 1989. In addition, the licensee promoted a Black female from FM "Traffic Clerk" to "Continuity Director" in May 1989. The license term ended October 1, 1989.

⁴ Our primary focus here is the licensee's efforts in the upper-four category because virtually all (13 of 15) of the hiring positions were in the upper-four category.

⁵ The licensee contacted the following community organizations: NAACP; NOW; AWRP; Women in Communications; University of Toledo, Center for Women; East Toledo Community Organizations; Catholic Diocese; and Ohio Hispanic Institute. The licensee contacted these organizations for ten of the 15 full-time positions. However, not all of the above organizations were contacted for each of the referenced ten full-time positions. For eight of the ten positions, the licensee contacted all of the sources on its list. For the two remaining positions, the licensee contacted the Toledo Branch of the NAACP and the Toledo Branch of Women in Communications.

⁶ The licensee contacted the following educational institutions: Ferris State College; Ohio State University; University of Michigan; Michigan State University; Central Michigan University; Ohio University; Kent State University; University of Toledo; Bowling Green State University; Eastern Michigan University; Monroe County Community College and Specs Howard Placement. The licensee contacted educational institutions for 14 of the 15 positions. It is unclear, however, which specific sources the licensee contacted for each of the 14 positions.

⁷ The licensee contacted NAB Employment Clearinghouse and Ohio Association of Broadcasters.

⁸ The licensee contacted *Toledo Blade Want Ads* and the *Columbus Dispatch*.

⁹ The licensee contacted *Broadcasting and Radio & Records*.

¹⁰ The licensee contacted the following employment agencies: Ohio Bureau of Employment Services; Job Exchange; Private Industry Council; Action; Renhill; Norrell; Guadalupe Center Employment Service; and Veterans Employment Services. These sources were used for eight positions; however, it is unclear which specific sources were used for each position.

¹¹ The renewal application reflected a total of 16 minority referrals, 14 of which were referrals of blacks.

¹² Overall, minorities appeared in eight interview pools for upper-level positions.

¹³ The Toledo MSA, in which the stations are located, has a 11.7% minority labor force (8.8% Black, 2.2% Hispanic, 0.5% Asian, 0.2% American Indian). The 1989 Annual Employment Report lists one (2.5%) Black, one Hispanic and one Asian among 40 full-time employees overall and one (2.9%) Asian among 35 upper-level employees. The 1988 and 1987 reports list three (7.1%) Blacks, one (2.4%) Hispanic and one Asian among 42 full-time employees overall and one (2.7%) Asian among 37 upper-level job employees. No Blacks are reflected in the licensee's 1987-1989 reports for upper-level positions.

¹⁴ The licensee submitted a list of the following sources which it added to its recruitment list on September 25, 1989: Imperial Talent Agency; Westwood Talent Agency; National Broadcast Talent Agency; Owens Technical College; Ashland College; Davis Junior College; Stautzenberger College; Primera Iglesia Bautista; St. Steven's African American Methodist Episcopal Church; Greater St. Mary's Missionary Baptist Church; Galilee Missionary Baptist Church; Calvary Baptist Tabernacle; and Family Baptist Church. Although most of these sources were not listed in the licensee's EEO Program Report, the licensee states that many of these sources have previously referred job applicants. We note that three of these sources (Owens Technical College, Davis Junior Business College and Stautzenberger College) were listed on the licensee's EEO program Report as sources it contacted during the renewal period.

¹⁵ The licensee notes that one of the sources it contacts is the Toledo Branch of the NAACP, a branch of one of the challenging parties. The licensee states that the NAACP has failed to refer any applicants for a full-time position during the time of the licensee's tenure as operator of the stations.

¹⁶ The licensee relies on the stations' 1986 employment profile as support for its assertion that it has improved minority representation. The 1986 Annual Employment Report lists two (5.0%) minorities among 40 full-time employees overall and no minorities among 35 upper-level employees. The 1987 and 1988 reports list three minorities overall (11.9%) and one minority, an Asian, in the upper-four category (2.7%).

¹⁷ Although we consider a station's overall minority employment in determining EEO compliance, we evaluate principally a station's efforts regarding the dominant minority labor force and non-dominant minorities that are present in the work force in significant numbers. See *Bilingual Bicultural Coalition, supra; Applications for Renewal of Licenses of WBBE(AM)/WMGB-FM, Georgetown, Kentucky*, 4 FCC Rcd 8255, 8256 (1989).

¹⁸ In this regard, we are mindful of pending assignment applications for stations WSPD/WLQR(FM) from Toledo Broadcasting, Inc. to Stratford Broadcasting Inc. The reporting conditions pass to the assignee as a matter of law upon the grant and consummation of the assignment.

¹⁹ 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)