

He states that he is a regular listener to KMZQ-FM (Henderson) and KFMS/KFMS-FM (Las Vegas) and that he would be seriously aggrieved if the petition is not granted. The licensee of KMZQ-FM argues that the declaration of the president of the Las Vegas Branch of the NAACP is insufficient to establish standing on his behalf, and subsequently, on behalf of the NAACP or its members, and that the NAACP's petition should be treated as an informal objection.² The licensee of KFMS/KFMS-FM does not challenge the NAACP's standing. We find that the statement of the president of the Las Vegas Branch of the NAACP meets the requirements for standing. Accordingly, we hold that the Idaho/Nevada/Utah State Conference of Branches of the NAACP and its affiliate branches have petitioner status against stations KMZQ-FM and KFMS/KFMS-FM. *American Legal Foundation, supra.*

5. The NHMC petition includes a sworn statement from Richard Martinez, a member of NHMC, who states that he resides in Tucson and listens to stations KTKT/KLPX-FM. The licensee of KTKT/KLPX-FM does not challenge the standing of NHMC and Mr. Martinez. We hold that the NHMC and Mr. Martinez have petitioner status against stations KTKT/KLPX-FM. *American Legal Foundation, supra.*

IV. DISCUSSION

6. *PRIMA FACIE CASE.* The NAACP and the NHMC derived their factual allegations from the licensees' EEO programs and annual employment reports. Review of the licensees' EEO records led us initially to conclude that the NAACP and the NHMC presented a *prima facie* case against the five stations demonstrating that unconditional grant of the renewal applications would have been inconsistent with the public interest. Section 309(d)(1) of the Communications Act of 1934, 47 U.S.C. § 309(d)(1). *Astroline, supra.*³ Further inquiry was therefore necessary. See *Beaumont Branch of the NAACP and the National Black Media Coalition v. FCC*, 854 F.2d 501, 506 (D.C. Cir. 1988)(*Beaumont*); *Bilingual.*

7. Review of the NAACP's and the NHMC's EEO allegations, as well as each licensee's renewal applications, opposition and inquiry response, leads us to conclude that there are no substantial and material questions of fact warranting designation for hearing. In addition, we find no evidence of employment discrimination. Thus, grant of each application will serve the public interest. 47 U.S.C. § 309(d)(2); *Astroline, supra.* However, we will grant renewal with appropriate remedies and sanctions.

8. Section 73.2080 of the Commission's Rules, 47 C.F.R. § 73.2080, requires that a broadcast licensee refrain from employment discrimination and establish and maintain an affirmative action program reflecting positive and continu-

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

9. When the renewal application indicates an absence of discrimination and a record of adequate EEO efforts, the application is granted, if otherwise appropriate. When it fails to evidence a record of adequate EEO efforts, the Commission may 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 application for 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*), petition for recon. pending; see also 4 FCC Rcd 1715 (1989)(request for clarification by the National Association of Broadcasters). See e.g., *Beaumont, supra*; *Bilingual, supra.*

KMZQ-FM, Henderson, Nevada⁴

10. Review of the licensee's consolidated opposition and inquiry response, as well as its renewal application, indicates that the licensee filled 35 full-time positions, including 27 upper-level job vacancies from December 28, 1988, to September 1, 1990. In its renewal application, the licensee indicates minority referrals from its contacts with the *Las Vegas Review Journal* (five), University of Nevada-Las Vegas (one), Women In Communications (one), and two minority referrals from its employees. In December 1990, the licensee filed an amended renewal application in which it reports an additional minority referral from the Nevada Employment Security Division, and seven minority referrals as a result of walk-in applicants and mailed-in resumes. In sum, the licensee reported 28 minority referrals, but could identify the referral sources for only 17 minorities. KMZQ-FM also used the following recruitment sources, but did not report any minority referrals from: *Latin American Press / Spanish News, Radio & Records*, National Broadcasting School, Clark County Community College, the NAACP, Indian Center of Las Vegas and the *Communicator*.⁵ After a review of its EEO program in May 1990, a month before it had to file its renewal application, the station added general and minority referral groups for a total of 32 recruitment sources which it identifies in its inquiry response as "List 2." Our review indicates that for

² KMZQ-FM states that after the NAACP filed its petition, the station met with the president of the Las Vegas branch of the NAACP and that he disavowed his statements as presented in his declaration. We find the licensee's representations on this issue unsubstantiated because neither the NAACP or its counsel has withdrawn the declaration.

³ The licensees were not challenged regarding their efforts directed toward women. Nonetheless, as is our practice in all cases, we reviewed each station's EEO efforts toward women and found them sufficient.

⁴ On December 28, 1988, Commonwealth Broadcasting of Northern California assumed the license for KMZQ-FM from

Pinnacle Communications Acquisition Corporation (File No. BALH-881104GJ). The license term under review ended on October 1, 1990.

⁵ Apparently, the licensee grouped its recruitment sources by separate lists. Seven of the licensee's recruitment sources comprise what it refers to as "List 1": Clark County Community College, University of Nevada-Las Vegas, NAACP, Indian Center of Las Vegas, National Broadcasting School, Employment Security Department and Women In Communications.

the 35 full-time jobs, the licensee conducted recruitment in this manner: no recruitment for 10 jobs;⁶ List 1 plus newspaper advertisements or an employment service for 10 jobs; *Radio & Records* for five jobs; advertisements in the *Communicator* for three jobs; List 2 for three jobs; List 1 for two jobs; List 2 plus newspaper advertisements for two jobs. Although the licensee did not provide information on the total number of applicants, it appears that KMZQ-FM attracted at least 28 minorities (13 Hispanics, 13 Blacks, 2 Asian-Pacific Islanders) in 13 applicant pools, seven of which were for upper-level jobs. It is unclear from the data how many minorities were interviewed. Most of the minorities were attracted to upper-level job pools after May 1990. Four minorities (three Hispanics, one Black) were hired, including two Hispanics for upper-level positions.⁷

11. The NAACP notes that the licensee's renewal application shows no minority referrals from KMZQ-FM's contact with the Indian Center of Las Vegas, and it claims that the local NAACP chapter has no record of receiving employment notifications from the station. Moreover, the NAACP objects to the station's reliance on the general circulation newspaper which produced only five minority referrals, saying that it limits minority participation at the station. Thus, the NAACP advocates use of more minority specific recruitment sources to attract applicants for each vacancy. Based on the renewal application, argues the NAACP, the inadequacy is evidenced by the hire of only one minority for an upper-level job in the last 12 months of the license term.

12. In response, the licensee states that it considers a strong affirmative action program a high priority because an Hispanic general partner controls more than 50% of the company. While stating that station records are incomplete, it submits copies of recruitment letters sent to the NAACP in Las Vegas and Baltimore, announcing a receptionist and sales vacancy. It further contends that reliance on the newspaper for applicants does not necessarily adversely affect minorities. In conclusion, the licensee states that it hired two minorities for upper-level positions during the renewal year, not one minority as asserted by the NAACP. The station explains that a male sales executive hired during the renewal year was a minority, a fact it was "unable to establish prior to the filing of the renewal application."

13. Further, the licensee states that it acquired the station 17 months prior to filing its renewal application and due to its many administrative and management concerns, "... was in no position to reevaluate its Affirmative Action Program at an earlier date." According to KMZQ-FM, it hired a business manager in May 1990 who reevaluated the station's EEO program, expanded the recruitment sources,

and mailed recruitment letters. The station indicates that the new sources have resulted in "numerous minority referrals for every position vacancy" that occurred after review of the employment procedures. It asserts that it has succeeded in increasing minority recruitment and employment during its tenure because only one minority was employed at KMZQ-FM when it was acquired.

14. Our investigation of the subject period record raises no substantial or material questions of fact warranting designation for hearing. See *Astroline, supra*. Likewise, it does not appear that the licensee engaged in employment discrimination. KMZQ-FM recruited, attracted and hired minorities during its tenure. Accordingly, grant of the station's renewal is warranted.

15. However, the licensee's recruitment efforts to attract qualified minorities were deficient because it failed to recruit so as to attract an adequate pool of minority applicants for at least 66% (23 jobs) of its 35 full-time positions. Our investigation indicates that minorities were included in only 13 (37%) of the applicant pools and 4 (11%) of the interview pools. Thus, minorities were absent from 63% of the applicant pools and 89% of the interview pools. Notwithstanding the absence of minorities from the applicant and interview pools as noted above, it does not appear that the licensee consistently engaged in efforts to attract minorities or otherwise conducted meaningful self-assessment of its program. In this regard, KMZQ-FM could not demonstrate that it affirmatively recruited for every vacancy. For example, for 18 of KMZQ(FM)'s 35 hiring opportunities, the licensee either failed to recruit or made minimal recruitment contact.⁸ Accordingly, a base forfeiture of \$12,500 and reporting conditions are warranted. See *Policy Statement, FCC 94-27* (released January 31, 1994).

16. In addition, an upward forfeiture adjustment of \$6,250 is appropriate due to the large number of hiring opportunities (35) during the license term. See *Policy Statement, supra*. Therefore, we will renew KMZQ-FM's license subject to reporting conditions and issue a Notice of Apparent Liability for \$18,750.

KFMS/KFMS-FM, North Las Vegas, Nevada⁹

17. Review of the licensee's renewal applications, opposition and inquiry response indicates that during the period May 1, 1987, to May 1, 1990, the licensee filled 28 full-time job vacancies, including 21 upper-level positions. The licensee reports the following minority referrals: *Radio & Records*¹⁰ (three), the National Broadcast School (one), a minority referral from an employee, and a minority walk-in applicant. As part of its recruitment efforts, KFMS/KFMS-FM indicates that along with placing adver-

⁶ For the ten jobs for which we conclude that the licensee did not conduct recruitment, the licensee either did not contact referral sources, listed "staff referral" as its sole recruitment effort, or listed recruitment as unknown.

⁷ KMZQ-FM is located in the Las Vegas, Nevada Metropolitan Statistical Area (MSA) with a labor force including 43.2% females and 18.3% minorities (8.4% Black, 7.1% Hispanic and 2.8% other). The 1989 Annual Employment Report listed 19 full-time employees, including one American Indian (5%). The upper-level staff of 16 employees included one American Indian (6%). The station's full-time staff decreased in 1990 to 16 employees, including one Hispanic (6%). The upper-level staff of 13 employees included one Hispanic (8%).

⁸ In addition, we note that KMZQ-FM submitted post-term recruitment and hire data. Post-term EEO performance is not

considered in the Commission's evaluation of a licensee's EEO record during a license term if that record, standing alone, is so deficient that it would merit denial of renewal or other sanctions. *Rust, 73 FCC 2d 39, 53 (1979)*. Here, we will not consider the licensee's post-term recruitment because, as we state, *infra*, we find that the licensee's EEO record during the license term warrants a sanction.

⁹ Effective February 1, 1988, the call sign for the AM station was changed from KRAM to KFMS(AM). We also note that KFMS-FM was assigned from Gilday Broadcasting, Company to Broadcast Associates, Inc. on October 1, 1986 (File No. BALH - 860916HN).

¹⁰ In an amendment to its renewal applications, the licensee states that the number of minority referrals from *Radio & Records* are estimates.

tisements in two local general circulation newspapers, it contacted, but did not receive minority referrals from, these sources: Economic Opportunity Board of Clark County, Mexican Patriotic Committee, the NAACP, Las Vegas Paiute Tribal Council, Nevada Association of Latin Americans, the *Gavin Report*, Las Vegas Chapter of Women In Communications, Inc., and the Vietnam Veterans of America. KFMS/KFMS-FM did not indicate whether these sources were contacted for each vacancy during the three-year period, or whether certain sources were contacted for particular positions. In this regard, it states that it has not retained records of the recruitment sources used for each position or the number of applicants referred by a particular source for jobs filled from November 1987 to September 1990. It appears that the licensee did not recruit for 13 of the overall 28 vacancies.¹¹ For four jobs, the licensee contacted a temporary employment agency and hired each of the temporary employees for permanent full-time jobs. For an additional four hires, the licensee recruited through *Radio & Records*. Advertisements were placed in a local newspaper for a further three vacancies. The stations contacted National Broadcasting School for two jobs. For one job, the licensee used Women In Communications and placed an advertisement in a local newspaper. A national computer service was contacted for an additional job.

18. The stations claim that during the license term, ten of its openings were for announcer positions, and that it was difficult to identify the race or national origin of candidates in those applicant pools because they submitted resumes and voice tapes. KFMS/KFMS-FM explains that it does not request announcer applicants to indicate their race on resumes and it does not conduct interviews for these positions. The only method for race identification, according to the licensee, is voice characteristics on the audio tapes which applicants submit. KFMS/KFMS-FM did not submit any applicant flow data based on the results of its review of the submitted audio tapes. The licensee reports 229 applicants for nine of the 28 full-time positions, including nine minorities (five Hispanics, two Blacks, one American Indian and one Asian-Pacific Islander) for seven of the 28 jobs. Seven minorities (four Hispanics, one Black, one American Indian, one Asian-Pacific Islander) applied for five upper-level positions. Further, the licensee did not indicate the number of interviewees. Of the 28 full-time hires, three were minorities: one Black, one Hispanic, one American Indian. The American Indian was hired for an upper-level job.¹²

19. The NAACP faults the licensee for failing to identify any minority organizations as recruitment sources on its renewal applications -- particularly given the results of the stations contacts with *Radio & Records* and general circulation papers. According to the NAACP, the licensee received only seven minority applicants and hired only one minority from use of those sources in the renewal year (May 1, 1989, to May 1, 1990). The NAACP charges that,

notwithstanding this lack of qualified minority applicants, the licensee "proposes nothing whatever to rectify its deficient EEO record."

20. KFMS/KFMS-FM responds that its failure to contact specific minority sources from May 1989 to May 1990 is not enough to challenge its renewal applications. The stations state that the NAACP has no basis on which to allege that it has no meaningful EEO program proposed for the next license term, and that such a program is not required. The licensee claims that the NAACP's argument regarding its "token employment" of one minority during the renewal year is unfounded. KFMS/KFMS-FM states that it hires the most qualified applicants, and that its minority hiring over the license term has been at 118% of parity of the minority labor force in the Las Vegas area.

21. Our review of the record discloses no substantial and material questions of fact warranting designation for hearing. See *Astroline, supra*. We also find no evidence of employment discrimination. Minorities applied, were interviewed and hired for full-time and upper-level job vacancies. Accordingly, grant of the renewal applications is appropriate.

22. However, the licensee's recruitment efforts to attract qualified minority applicants were deficient because it failed to recruit so as to attract an adequate pool of minority applicants for least 66% (18 jobs) of its 28 full-time vacancies. Our investigation indicates that minorities were included in seven (25%) of the 28 overall applicant pools and three (11%) of the 28 overall interview pools. Additionally, minorities were present in five (24%) of the 21 upper-level applicant pools and one (5%) of the 21 upper-level interview pools. Thus, minorities were absent from 75% of the overall applicant pools and 89% of the overall interview pools. Further, minorities were absent from 76% of the upper-level applicant pools and 95% of the upper-level interview pools. Notwithstanding the absence of minorities from the applicant and interview pools as noted above, it does not appear that the licensee consistently engaged in efforts to attract minorities or otherwise conducted meaningful self-assessment of its program. We note that the licensee failed to conduct affirmative recruitment for 13 vacancies, a significant number of hiring opportunities. Moreover, despite the low number of minority applicants, KFMS/KFMS-FM did not seek productive sources more likely to refer qualified minorities. Thus, a base forfeiture of \$12,500 and reporting conditions are warranted. See *Policy Statement, supra*.

23. In addition, the licensee's failure to recruit so as to attract an adequate pool of minority applicants for at least 33% of the overall and upper-four full-time positions indicates egregiousness, warranting an upward adjustment of \$6,250. Also, an upward adjustment of \$6,250 is appropriate due to the large number of hiring opportunities (28) during the license term. The combination of the foregoing deficiencies, justifies a total forfeiture of \$25,000. Given the number and types of deficiencies noted, a short term re-

¹¹ We note that for three of the 13 jobs, the stations rehired former employees and for one job, it explains that the employee came to volunteer at the stations from the National Broadcasting School and was hired for one of the 28 full-time vacancies.

¹² See note 7, *supra*, for Las Vegas MSA statistics. Two Blacks (11%) were reported on the licensee's 1987 full-time staff of 19 employees. The upper-level staff of 17 employees included one Black employee (6%). In 1988, one Black was reported on the

full-time staff of 20 employees (5%) and on the upper-level staff of 18 employees (6%). The stations' 1989 Annual Employment Report indicated one Black (5%) on the full-time staff of 20 persons, and on the upper-level staff of 18 employees (6%). In 1990, KFMS/KFMS-FM reported two minorities (10%), one Black and one Hispanic on its full-time staff of 20 employees. The Black employee (6%) was included on the upper-level staff of 18 employees.

renewal is also warranted. See *Policy Statement, supra*. Accordingly, we will renew the licenses for less than a full term subject to reporting conditions and issue a Notice of Apparent Liability for \$25,000.

KTKT/KLPX-FM, Tucson, Arizona¹³

24. Review of the licensee's renewal applications, opposition and inquiry response reveals the licensee filled 27 full-time positions, including 20 upper-level vacancies from May 1, 1987, to April 30, 1990. For those positions, the licensee reported receiving minority referrals from the *Arizona Daily Star* (five), an unidentified newspaper (three), the *Tucson Citizen* (three), employee referrals (one), and personal references (one). In addition, the stations indicate that it "biannually sought referrals" from ten personnel and job placement agencies, six educational organizations/institutions, seven minority organizations, six women's groups and two newspapers¹⁴ and attracted 68 minority referrals (55 Hispanics, eight Blacks, three Asian-Pacific Islanders, and two American Indians). KTKT/KLPX-FM did not report that the biannual contacts were for specific positions. The licensee indicates that all of its minority referrals completed applications, however, it did not maintain complete data on which of these minorities were interviewed. The stations report that two Hispanics and two Asian-Pacific Islanders were hired for upper-level jobs and two additional Hispanics for lower-level jobs.¹⁵

25. The NAACP asserts that KTKT/KLPX-FM failed to make meaningful contact with its sources¹⁶ as evidenced by the low number of minority referrals (six) during the reporting year (May 1, 1989, to April 30, 1990), and the low number of minority hires, only two out of 15, for lower level jobs. It concludes that these few minority referrals, "given what may be presumed to be a nearly all white non-affirmative action pool of ... applicants," indicates that minorities had few interviewing and hiring opportunities at the stations.

26. The NHMC also argues that the stations' EEO program is inadequate and that the licensee made "virtually no effort" to recruit minorities, particularly Hispanics. According to the NHMC, KTKT/KLPX-FM has not complied with the FCC's processing guidelines regarding employment of Hispanics, particularly for upper-level jobs. Finally, the NHMC argues that the licensee's failure to propose reforms in its minority recruiting program --de-

spite its lack of Hispanic hiring and few minority referrals -- indicates that KTKT/KLPX-FM failed to conduct any self-assessment, thereby violating our EEO Rule.

27. The licensee of KTKT/KLPX-FM responded in a joint opposition to the petitions of the NAACP and the NHMC. The stations did not specifically address the NAACP's contention that it did not abide by its 1983 proposed EEO program and further develop its recruitment contacts. However, the licensee asserted that, on the whole, it has taken appropriate steps to comply with its EEO-related obligations. Regarding its failure to report minority referrals from its minority and female recruitment sources, including the NAACP, the stations respond that the NAACP never referred anyone to KTKT/KLPX-FM for employment. Moreover, it adds, neither the NAACP nor the NHMC have suggested other organizations as recruitment contacts. The licensee does not address either the NAACP's or the NHMC's charges of low minority hiring rates in the renewal year. It states that it has recently implemented a procedure to maintain data for all vacancies and determine the race, gender and referral source of all applicants.¹⁷

28. Based on the foregoing, we find no substantial or material questions of fact to warrant a hearing. See *Asiroline, supra*. Moreover, we find no evidence in the record of employment discrimination. KTKT/KLPX-FM attracted, interviewed and hired minorities during the three-year review period. Thus, grant of the renewal applications is appropriate.

29. However, the licensee's recruitment efforts to attract qualified minorities were deficient because it failed to recruit so as to attract an adequate pool of minority applicants for at least 66% (18 jobs) of its 27 full-time hires. Our investigation reveals that minorities were included in six (22%) of the 27 overall applicant and interview pools. Also, minorities were included in only four (20%) of the 20 upper-level applicant and interview pools. Thus, minorities were absent from 78% of the overall applicant and interview pools and 80% of the upper-level applicant and interview pools. Notwithstanding the absence of minorities from the applicant and interview pools as noted above, it does not appear that the licensee consistently engaged in efforts to attract minorities or otherwise conducted meaningful self-assessment of its program. In this regard, we are troubled that the majority of KTKT/KLPX-FM's hires resulted from employee or personal referrals and few records

¹³ The current license term ended October 1, 1990.

¹⁴ Among the seven minority organizations identified by the licensee were the Pima County Council on Aging, the Boys & Girls Club of Tucson and the YMCA.

¹⁵ KTKT/KLPX-FM is located in the Tucson, Arizona Metropolitan Statistical Area (MSA) which includes 42.4% females and 23.5% minorities (2.5% Black, 18.4% Hispanic, .9% Asian-Pacific Islander and 1.7% American Indian). The licensee's 1984 Annual Employment Report indicated a full-time staff of 29 employees, including five Hispanics (17%). The upper-level staff of 27 employees included three Hispanics (11%). In 1985, KTKT/KLPX-FM reported a full-time of 18 employees, including three Hispanics (17%). On the upper-level staff of 17 employees, the stations included three Hispanics (18%). In 1986, the licensee reported an overall staff of 26 employees, including five Hispanics (19%). Its upper-level staff comprised 25 employees, four of which were Hispanic (16%). The overall staff decreased in 1987 to 22 employees, with four Hispanic (18%) employees reported. The upper-level staff of 21 employees in-

cluded three (14%) Hispanics. In 1988, the licensee reported 21 full-time employees, including two Hispanics (19%). The upper-level staff of 18 employees included no minorities. In 1989, one Hispanic (5%) and one Asian-Pacific Islander (5%) were reported on a full-time staff of 22 employees. Likewise, one Hispanic (5%) and one Asian-Pacific Islander (5%) were reported on an upper-level staff of 19 employees. Finally, the 1990 Annual Employment Report showed a full-time staff of 24 employees with four minorities: two Hispanics (8%), one Black (4%) and one Asian-Pacific Islander (4%). The upper-level staff of 20 employees included two minorities: one Black (5%) and one Asian-Pacific Islander (5%).

¹⁶ The NAACP states that it received only six job notices from the station in the renewal year. However, there were 15 position vacancies during this period.

¹⁷ The stations request that the Commission consider two post-term minority hires. However, based on the circumstances of the instant case, such consideration is inappropriate. See note 8, *supra*.

were available for self-assessment. Therefore, a base forfeiture of \$12,500 and reporting conditions are warranted. See *Policy Statement, supra*.

30. Additionally, the licensee's failure to recruit so as to attract an adequate pool of minority applicants for at least 33% of the overall and upper-four full-time positions indicates egregiousness, warranting an upward forfeiture adjustment of \$6,250. Also, an upward adjustment of \$6,250 is appropriate due to the large number of hiring opportunities (27) during the license term. The combination of the foregoing deficiencies, along with the large minority labor force (23.5%) justifies a further upward adjustment of \$6,250, for a total forfeiture of \$31,250. Given the number and types of deficiencies noted, a short term renewal is also warranted. See *Policy Statement, supra*.

31. However, we note that KTKT/KLPX-FM hired minorities during the review period from May 1, 1987, to April 30, 1990, at a rate equal to 50% of the minority representation in Tucson. Thus, a \$6,250 downward adjustment in the forfeiture is appropriate. See *Policy Statement, supra*. In light of the above, we will issue a Notice of Apparent Liability for \$25,000, renew the licenses for a short term and impose reporting conditions.

V. CONCLUSION

32. Upon review of the record, we find that grant of the renewal applications is justified in all cases. However, for Stations KFMS/KFMS-FM and KTKT/KLPX-FM renewal is granted for less than a full term, ending October 1, 1995. To ensure that better efforts are taken with respect to their EEO programs, we will impose reporting conditions on all licensees. Further, by this *Order*, we will issue Notices of Apparent Liability for \$18,750 against the licensee of Station KMZO-FM; \$25,000 against the licensee of Stations KFMS/KFMS-FM; and \$25,000 against the licensee of Stations KTKT/KLPX-FM.

VI. ORDERING CLAUSES

33. Accordingly, IT IS ORDERED that the Petition to Deny filed by the Idaho/Nevada/Utah State Conference of Branches of the NAACP and its affiliate branches IS DENIED.

34. IT IS FURTHER ORDERED that the Informal Objection filed by the Arizona State Conference of Branches of the NAACP IS DENIED.

35. IT IS FURTHER ORDERED that the Petition to Deny filed by the National Hispanic Media Coalition and its member Richard Martinez against the renewal applications of Arizona Lotus Corporation for renewal of licenses for Stations KTKT/KLPX-FM IS DENIED.

36. IT IS FURTHER ORDERED that the license renewal application for Station KMZO-FM IS GRANTED, subject to the reporting conditions specified herein, and pursuant to Section 503, a NOTICE OF APPARENT LIABILITY FOR FORFEITURE in the amount of \$18,750.

37. IT IS FURTHER ORDERED that the license renewal applications for Stations KFMS/KFMS-FM ARE GRANTED FOR A SHORT TERM ending October 1, 1995, subject to the reporting conditions specified herein, and pursuant to Section 503, a NOTICE OF APPARENT LIABILITY FOR FORFEITURE in the amount of \$25,000.

38. IT IS FURTHER ORDERED that the license renewal applications for Stations KTKT/KLPX-FM ARE GRANTED FOR A SHORT TERM ending October 1, 1995, subject to the reporting conditions specified herein, and pursuant to Section 503, a NOTICE OF APPARENT LIABILITY FOR FORFEITURE in the amount of \$25,000.

39. IT IS FURTHER ORDERED that the licensees of Stations KMZO-FM, KFMS/KFMS-FM,¹⁸ and KTKT/KLPX-FM submit to the Commission an original and one copy of the following information on June 1, 1995, June 1, 1996, and June 1, 1997:

(a) For each report, please make two lists divided by full-time and part-time job vacancies during the twelve months preceding the respective reporting dates, indicating the job title and FCC job category, date of hire, the race or national origin, sex and the referral source or 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:¹⁹

(b) A list of all employees as of the May 1, 1995, payroll period for the first report and as of the May 1, 1996, and May 1, 1997, payroll periods for the second and third reports by job title and FCC job category, 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 Due to the short term renewals ending October 1, 1995, for stations KFMS/KFMS-FM and KTKT/KLPX-FM, we will require only one year of an employment report for both licensees. Therefore, both licensees are to submit an employment report on June 1, 1995.

¹⁹ Such a list might start:

1) News Director: Officials and Managers: Full-time.

3 Applicants:	1 White female	A.W.R.T.
	1 Hispanic male	National Hispanic Media Coalition 1
		Black female
		NAACP

Sources contacted - Local newspaper, A.W.R.T., National Hispanic Media Coalition and NAACP

Selected - Hispanic male (08/19/91)

40. 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 all parties.

41. The reports are to be filed with the Acting Secretary of the Commission for the attention of the Mass Media Bureau's EEO Branch.

42. Should you have any questions regarding this action or require further information concerning employment reports, you may call the Mass Media Bureau's EEO Branch at (202) 632-7069. With respect to the forfeiture proceeding, the licensee may take any of the actions set forth in Section 1.80 of the Commission's Rules, 47 C.F.R. Section 1.80, as summarized in the attachment to this *Order*. Any comments concerning the ability to pay should include those financial items set forth in the attachment.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Concurring Statement of Commissioner James H. Quello

In Re Applications of Midland Broadcasters, Inc. et al.; Lotus Communications, Inc. and University of Southern California; Sun Mountain Broadcasting, Inc.; Commonwealth Broadcasting of Northern California et al.; Buckley Broadcasting Corp. et al.

With some consternation, I face yet again a series of Commission decisions designed to pit Big Brother against industry. With extreme reluctance, I concur in these items, recognizing that, for the most part, a sanction of some sort may be necessary in these cases due to the licensees' failure to comply with our equal employment opportunity rules. Most of these sanctions are against licensees in medium to large markets, where the resources to comply with our EEO rules are, presumably, more readily available than in small markets. In addition, several of the remiss licensees in these cases are located in markets with some of the highest concentrations of minorities in the country, thus providing further justification for sanctions.

Nonetheless, the severity of the sanctions in these cases compel me, yet again, to beseech my colleagues at the Commission to change their focus in ensuring compliance with these very important policies. Compliance could be encouraged -- I think more effectively than by means of harsh punishment -- through use of a "three strikes and you're out" policy. The first violation of our EEO or other rules (except for rules involving safety or intentional rule violations) would result in a warning and imposition of reporting conditions; a second violation would result in a fine and a short-term renewal; a third violation would result in a large fine or designation for hearing.

Another option to encourage, rather than painfully extract, compliance would be to allow broadcasters, as we currently allow common carriers, to settle cases where justified, entering into a consent decree with the Commission that is mutually beneficial to all the parties involved. The Commission would benefit from conserving resources, broadcasters would benefit from gaining prompt disposition of their applications, and minorities would benefit from the funds collected through consent decrees. In the consent decree or other context, I again urge that the Commission use monies collected through enforcement of EEO rules (and other rules as well) for constructive, positive, and practical affirmative purposes. Such purposes could include the funding of programs for educating and training minorities for careers in media, or for funding minority ownership of media properties.

I know that, right now, I am one of the few, but growing, voices for reform of our stepped-up enforcement scheme. But I will continue to be a voice -- persistent, balanced, and increasingly vocal -- supporting an innovative approach to ensuring equal opportunities for minorities. I remain convinced that the best way of ensuring equal opportunities is by working with, rather than against, the very industry that must provide these opportunities.