

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

In re Applications of

Buckley Broadcasting Corporation
File Nos. BR-910131VO
BRH-910131WL

For Renewal of Licenses of
Stations WSEN(AM)/WSEN-FM
Baldwinsville, New York

Buckley-WOR Broadcasting Corporation
File No. BR-910131WD

For Renewal of License of
Station WOR(AM)
New York, New York

Interstate Broadcasting Company, Inc.
File Nos. BR-910131WR
BRH-910131WI

For Renewal of Licenses of
Stations WQXR(AM)/WQXR-FM
New York, New York¹

Group W Radio, Inc.
File No. BR-910201XK

For Renewal of License of
Station WINS(AM)
New York, New York

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

Adopted: April 20, 1994;

Released: April 28, 1994

By the Commission: Commissioner Quello concurring in part, approving in part, and issuing a statement.

I. INTRODUCTION

1. The Commission has before it for consideration: (i) license renewal applications for the six captioned radio stations in New York; (ii) a Petition to Deny timely filed by the New York State Conference of Branches of the

National Association for the Advancement of Colored People and its Syracuse branch (NAACP) against WSEN(AM)/WSEN-FM;² (iii) Petitions to Deny timely filed by the National Hispanic Media Coalition (NHMC) against the other licensees captioned above; (iv) oppositions from the licensees; and (v) the licensees' responses to staff letters of inquiry. The NAACP and NHMC allege that the above stations violated the Commission's equal employment opportunity (EEO) Rule and policies toward minorities. The petitioners request that the Commission designate the licensees' renewal applications for hearing and deny the applications.

II. BACKGROUND

2. 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 Com. Co. Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) (*Astroline*); *Application of Dubuque T.V. Limited Partnership and Sage Broadcasting Corporation of Dubuque, Iowa for Assignment of Television License for KDUB-TV, Dubuque, Iowa*, 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. Filed with the NAACP's petition to deny was a declaration under penalty of perjury from the president of the Syracuse, New York branch of the NAACP, who claimed to be a regular listener to Stations WSEN(AM)/WSEN-FM. Filed with the NHMC's petitions to deny were declarations under penalty of perjury from an NHMC member who claimed to live in New York City and to be a regular listener to the four above-captioned New York City stations. We find that the declarations meet the requirements for establishing standing for the NAACP for WSEN(AM)/WSEN-FM and for the NHMC for WOR(AM), WQXR(AM)/WQXR-FM, and WINS(AM). See *American Legal Foundation v. FCC*, 808 F.2d 84 (D.C. Cir. 1987) (*American Legal*). Therefore, the challenges filed by the NAACP and NHMC constitute valid petitions to deny against the captioned stations.

III. PLEADINGS

4. The NAACP and NHMC derived their factual allegations from the licensees' EEO programs and annual employment reports. The licensee of WSEN(AM)/WSEN-FM argued that the NAACP failed to present a prima facie case demonstrating that the licensee had discriminated in its hiring practices. It asserted that the NAACP merely stated that the stations had no Black employees and that more was required in order to present a prima facie case. The licensee of WOR(AM) also argued that the NHMC failed to present a prima facie case, stating that NHMC's argument

¹ Station WQXR(AM) changed its call sign to WQEW(AM) on November 16, 1992. For consistency, we refer to it as WQXR(AM) throughout this document.

² The NAACP challenged the renewal applications of 16 radio

stations in New York. The current *Order* addresses the application of two of those stations, WSEN(AM)/WSEN-FM. We will address the applications of the remaining stations separately.

was based upon how many minorities were employed at WOR(AM). As is discussed below in the sections of this Order dealing with WSEN(AM)/WSEN-FM and WOR(AM), the NAACP and NHMC, respectively, presented several arguments regarding the licensees' EEO programs as well as their employment profiles. Review of the allegations against all of the licensees in this Order led us to conclude that the petitioners presented a prima facie case demonstrating that unconditional grant of the renewal applications would have been inconsistent with the public interest. Section 309(d)(1) of the Communications Act, 47 U.S.C. Section 309(d)(1).³ *Astroline, supra*. 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 Bicultural Coalition on Mass Media, Inc. v. FCC*, 595 F.2d 621 (D.C. Cir. 1978) (*Bilingual*).

5. However, review of the entire record, including the licensees' responses to further inquiries, indicates that there are no substantial and material questions of fact warranting designation for hearing. In addition, we find no evidence that any of the licensees engaged in discrimination. Thus, grant of each renewal application will serve the public interest. 47 U.S.C. Section 309(d)(2). *Astroline, supra*. Accordingly, the challenges against the licensees' renewal applications filed by the NAACP and NHMC are denied. The renewal application of WINS(AM) will be granted without condition and the renewal applications of the other licensees will be granted but with remedies and sanctions as noted. *infra*.

IV. DISCUSSION

6. 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, 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 Sections 73.2080 (b) and (c) of the Commission's Rules, 47 C.F.R. Sections 73.2080 (b) and (c).

7. When a 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) (hereinafter *Broadcast EEO*), petition for reconsideration pending; see also 4 FCC Rcd 1715 (1989) (request for clarification by National Association of Broadcasters) (hereinafter *Clarification of Broadcast EEO*). See e.g., *Beaumont, supra*; *Bilingual, supra*.

WSEN(AM)/WSEN-FM, Baldwinsville, New York

8. A review of the licensee's 1991 EEO Program Report, opposition to the petition to deny and response to our inquiry reveals that the licensee had 27 overall, including 25 upper-level, full-time hiring opportunities from February 12, 1988, through April 29, 1991.⁴ The licensee recruited for 22 of its vacancies, did not recruit for one, and does not know if it recruited for four positions because files are missing. It used general recruitment sources as follows: internal job postings (done for 22 vacancies), *Herald Journal/Post Standard* (21 vacancies), Women in Communications (19 vacancies), Syracuse University (14 vacancies), Onondaga Community College (12 vacancies), Mohawk Valley Community College (nine vacancies), National Organization for Women and the *Syracuse Banner* (seven vacancies each), and LeMoyne College (six vacancies). It used the following sources for five or fewer vacancies: 10 newspapers and magazines, three employment agencies, 20 colleges and other schools, the New York State Department of Labor, the Human Rights Commission of Syracuse and Onondaga Counties, and on-air ads on its own and three other stations. Its records on minority referrals are incomplete, but it reported eight minority referrals from general sources, six from the *Herald Journal/Post Standard* and two from the New York State Department of Labor.

9. The licensee used one minority recruitment source, the Urban League, which it contacted for five vacancies and from which it received five minority referrals. The licensee had records on the race of applicants for 20 applicant/interview pools. It reported that it received applications from at least 13 minority applicants and interviewed six minorities in a total of six interview pools (four upper-level) out of a total of 258 interviewees. Thus, minorities were absent from the interview pools for 21 of 27 positions. In one of the six pools, it invited a minority, who did not come, for an interview. The licensee hired no minorities.⁵

10. The NAACP notes that the licensee used only one minority recruitment source, received few minority referrals and hired no minorities. Consequently, the NAACP argues, the licensee's efforts are insufficient to obtain an adequate number of minorities in applicant pools. It also criticizes the licensee for proposing no changes to its EEO program despite a deficient record. The petitioner argues that the licensee's excuse for its deficient

³ The licensees were not challenged regarding their recruitment of women. Nonetheless, as is our practice in all cases, we reviewed the licensees' EEO efforts in this respect. We found them to be sufficient.

⁴ The license terms for all of the stations in this Order ended on May 31, 1991.

⁵ Baldwinsville, New York is included in the Syracuse, New York MSA, which is 42.8% female and 6.0% minority (4.2%

Black, 0.8% Hispanic, 0.5% Asian-Pacific Islander, and 0.5% American Indian). The licensee employed no minorities during the term. Its Annual Employment Reports for 1985-91 indicate that the licensee employed from 10 to 18 persons overall (nine to 16 upper-level) with an average of 14 overall (12 upper-level).

EEO performance, that it is located 20 miles from downtown Syracuse, is not a legitimate reason for an inadequate program.

11. The licensee responded that the NAACP failed to present any evidence that its EEO program was defective. The licensee noted that it continually updated and expanded a list of recruitment sources, ultimately contacting 50 sources over the term for openings. Although its records are incomplete, the licensee changed its record-keeping procedures and has complete records on all 16 openings filled after July 1989. The licensee argued that it has had difficulty attracting minority applicants because it has a small staff, the labor force has few minorities, and it cannot afford to pay wages which are competitive with Syracuse stations.

12. The licensee also argues that it should be allowed to use an alternative labor force, i.e., the city of Baldwinsville, and that commuting difficulties from Syracuse to Baldwinsville should mitigate any sanctions for the minority recruiting problems the stations have had. The licensee asserts that on "numerous occasions," Syracuse applicants of all races have refused to come in for interviews when they learn the location of the stations. It stated in response to a Commission inquiry that 11 of its 14 employees on June 1, 1991, lived within 10 miles of the stations, one lived in Syracuse, one lived 25 miles away, and another lived 35 miles away. The licensee further states that the 1980 census figures for Baldwinsville indicate a population that is 1.1% minority, including a total of 32 Blacks and 42 Hispanics.

13. After reviewing the record of Stations WSEN(AM)/WSEN-FM, we find no substantial and material questions of fact sufficient to warrant a hearing. See *Astroline, supra*. The licensee engaged in recruitment and interviewed minorities. We find no evidence indicating that the licensee engaged in discrimination.

14. However, the licensee's efforts to recruit minorities were deficient because it failed to recruit so as to attract an adequate pool of minority applicants for at least 66% (18) of its 27 full-time positions. Only six (22%) of the 27 overall applicant/interview pools and four (16%) of the 25 upper-level applicant/interview pools contained minorities. 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 engaged in meaningful self-assessment of its program. In this regard, the licensee failed to use minority sources for 22 vacancies. Accordingly, a base forfeiture of \$12,500 and reporting conditions are warranted. See *Policy Statement, FCC 94-27* (Released February 1, 1994).

15. Further, 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-level full-time positions renders its EEO efforts egregiously deficient warranting an upward forfeiture adjustment of \$6,250. Similarly, the combination of the above and its large number of hiring opportunities (27) warrants a further \$6,250 upward adjustment, for a total forfeiture of \$25,000. Given the number and types of deficiencies noted, a short term renewal is also warranted. See *Policy Statement, supra*.

16. Moreover, we find the licensee's argument for an alternative labor force to be without merit. The standard for such a request is a three-part test: distance of the station from areas with significant minority population in the MSA, commuting difficulties, and the lack of success of previous recruitment efforts. See *Applications of Certain Broadcast Stations Serving Communities in the Miami, Florida Area*, 5 FCC Rcd 4893, 4899 n.6 (1990); *Application of National Capital Christian Broadcasting, Inc. for Renewal of License of Station WTKK(TV), Manassas, Virginia*, 3 FCC Rcd 1919, 1922 n.9 (1988) (*Manassas*); and *Broadcast EEO, supra*, at 3973.

17. In *Manassas*, the licensee argued that it should be allowed to use the alternative labor force of the county in which its station was located and noted that it was 30 miles from the minority population center of its MSA. The Commission denied the request, noting that five of the 20 persons employed by the station in the last year of the term commuted more than 40 miles to work. *Manassas* at 1920. The Commission also noted that it would be appropriate to use an alternative labor force if a licensee could document that it was unable to obtain qualified applicants from areas of minority concentration despite "extensive recruitment involving use of minority referral sources." *Id.*

18. In the instant case, the stations are 20 miles from the minority population center and three of the licensee's 14 employees at the end of the license term lived 20 or more miles from the stations. In addition, the licensee used only one minority recruitment source. It was used for only five of the 27 vacancies. Further, the licensee used only general sources for 17 additional vacancies. These sources produced no minority referrals for 14 of the 17 referenced vacancies. Finally, no recruitment can be verified for five additional vacancies. The above does not qualify as "extensive recruitment" within the meaning of *Manassas*. Accordingly, the licensee has failed to justify use of Baldwinsville as an alternative labor force.

19. After consideration of all 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.

WOR(AM), New York, New York

20. A review of the licensee's 1991 EEO Program Report, opposition to the petition to deny and response to our inquiry reveals that the licensee had 14 overall, including six upper-level, full-time hiring opportunities from October 23, 1989, through February 2, 1991.⁹ The licensee recruited for 10 of its vacancies and used general recruitment sources for various numbers of openings as follows: In-house postings (eight openings), industry referrals (four openings), *New York Times* (three openings), employee referrals (three openings), *Newsday* (two openings), and New York Market Radio Association (one opening). It received three minority referrals, one each from industry referrals, employee referrals, and the *Times*. The licensee used minority recruitment sources as follows but obtained no minority referrals: *El Diario La Prensa* (seven openings), *Amsterdam News* (five openings), National Puerto Rican Forum (one opening), and Puerto Rican Family Institute (one opening).

⁹ The licensee has owned the station since September 1989.

21. The licensee reported that it received 61 minority applicants, who were present in six applicant pools (two upper-level). It interviewed 16 minorities in the same six pools. Of the 14 hires, three were minority -- two Hispanics and one Black, all hired for lower-level positions. In addition, the licensee reported that it promoted a minority part-time employee to a full-time position.

22. The NHMC argues that the licensee failed to implement an adequate program for employment of Hispanics and other minorities and failed to self-assess its deficient EEO program or propose needed improvements. It criticizes the licensee for obtaining few minority referrals and for having few pools with minority applicants. It states that labor force estimates from the Bureau of Labor Statistics indicate that Hispanics comprise 20.2% of the New York City labor force as of 1989 and that minorities comprise 50.3%. Citing this information, the NHMC criticizes the licensee for employing no Hispanics among its 54 upper-level employees in 1990 and few minorities overall in 1990. The NHMC used New York City estimated figures in its analysis of all four petitioned New York stations that are discussed in this Order. We note, however, that the Commission uses 1980 Census data for license terms ending in 1991 and that the applicable figures for New York City stations are found in the statistics for the entire New York City MSA -- not just the labor force of the city. These figures are listed in note 7, *supra*.

23. The licensee responded that it had its license for only the last 20 months of the license term and inherited a station whose EEO program was run through the previous licensee's offices and not directly at the station. Because of this, the current licensee stated, it had to establish a new EEO program for WOR(AM). It also noted that it hired only one person full-time between the time it obtained the station in late September 1989 and the time it filed its 1990 Annual Employment Report in March 1990. The licensee argues that the NHMC's criticisms are primarily based on the 1990 report, which the licensee asserts has little relevance because it had only one hiring opportunity before filing the report. In addition, the licensee asserts that the NHMC is alleging that the station has a deficient EEO program only because of how many minorities it employs. The licensee disagrees that it has had a deficient record of attracting minorities, noting that it lost no minorities and added two Hispanic employees (one in an upper-level position) and one Black at the same time it reduced its overall workforce by seven positions. It notes, also, that it inherited no Hispanics in upper-level positions from the previous licensee. Furthermore, it increased its upper-level minority employees from 1990 to 1991 by four while reducing its total upper-level workforce by five positions. The licensee also stated that it added sources, including minority sources, during the term.

24. After reviewing the record of Station WOR(AM), we find no substantial and material questions of fact sufficient to warrant a hearing. See *Astroline, supra*. The licensee

engaged in recruitment and hired and employed minorities and women. We find no evidence indicating that the licensee engaged in discrimination.

25. However, the licensee's efforts to recruit minorities were deficient because it failed to recruit so as to attract an adequate pool of minority applicants for at least 66% (nine) of its 14 full-time positions. Only six (43%) of the 14 applicant/interview pools contained minorities. 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, the licensee failed to recruit for four of 14 vacancies. In addition, it failed to use minority recruitment sources for seven vacancies. Accordingly, a base forfeiture of \$12,500 and reporting conditions are warranted. See *Policy Statement, supra*.

26. Furthermore, the labor force in the licensee's location is 37.8% minority which renders its EEO efforts egregiously deficient warranting an upward forfeiture adjustment of \$11,250. See *Policy Statement, supra*. In light of the above, we will issue a Notice of Apparent Liability for \$23,750 and renew the licenses subject to reporting conditions.

WQXR(AM)/WQXR-FM, New York, New York

27. A review of the licensee's 1991 EEO Program Report, opposition to the petition to deny and responses to our inquiries reveals that the licensee had 19 overall, including 10 upper-level, full-time hiring opportunities from February 17, 1988, through February 11, 1991. The licensee recruited for 13 of its vacancies and used the following general recruitment sources: *New York Times* (used for 10 openings) and miscellaneous industry sources (six openings). Used for one or two openings each were: three schools and colleges, two magazines, Christian Life Center, Mobil out placement, a temporary employment service, and employee referrals. It received nine minority referrals from the *Times*, five from the temporary agency, three from employee referrals, and two from miscellaneous industry sources. Minority sources contacted were: *Amsterdam News* (three openings), *El Diario* (three openings), Harlem School (two openings), Hispanic Policy Development Project (one opening), and the Community Service Council of Greater Harlem (one opening). It received two minority referrals from the *Amsterdam News* and two from *El Diario*. The licensee also reported 27 minority referrals from unknown sources.

28. The licensee stated that it gathered only partial records on the race of applicants because New York state law prohibits pre-employment inquiries as to the race of applicants. The licensee stated, however, that at least 49 Blacks and 19 Hispanic applicants applied for jobs at the stations and that minorities were in at least 13 applicant/interviewee pools (seven upper-level). It reported that it interviewed 36 Blacks and nine Hispanics out of 156

The labor force of the New York, New York MSA is 45.1% female and 37.8% minority (19.7% Black, 14.4% Hispanic, 3.6% Asian-Pacific Islander, and 0.1% American Indian). The licensee's Annual Employment Report for 1990 indicates that the licensee employed 68 persons overall (54 upper-level) with 11 minorities (16.2%). It employed nine Blacks (13.2%), one Hispanic (1.5%), and one Asian. In upper-level positions, it em-

ployed six minorities (11.1%) -- all Black. In 1991, the licensee employed 61 persons overall (49 upper-level) with 14 minorities (23.0%). It employed nine Blacks (14.8%), three Hispanics (4.9%), one Asian (1.6%), and one American Indian. In upper-level positions, it employed 10 minorities (20.4%) -- seven Blacks (14.3%), one Hispanic (2.0%), one Asian, and one American Indian.

total interviewees. Of the 19 overall and 10 upper-level hires, eight were minorities -- all Blacks, two of whom were hired for upper-level positions.⁸

29. The NHMC argues that the licensee failed to implement an adequate EEO program for Hispanics and failed to self-assess adequately. Because its petition is based on uncorrected annual employment reports, it claims that the station failed to employ Hispanics in any year of the license term and failed to hire Hispanics. It asserts that the licensee's EEO program includes virtually no efforts directed at Hispanics and that the licensee used only one Hispanic recruitment source. The NHMC argues that the licensee proposed no remedial changes to improve Hispanic recruitment deficiencies.

30. The licensee acknowledged that it has not done as well with Hispanic recruitment as it has with recruiting Blacks. It stated that part of its difficulty is due to a fairly low turnover in personnel. In addition, the licensee cited 1980 census data indicating that only 4% of Hispanics in the MSA are in jobs similar to upper-level broadcasting positions, a factor which the licensee stated makes its attempts at recruiting Hispanics for upper-level jobs more difficult. The licensee disagreed that its program is inadequate and noted that it specifically targeted Hispanics in part by using two Hispanic sources. It further noted that the *New York Times* and the *Amsterdam News* referred Hispanic applicants and, although it hired no Hispanics for full-time positions, it obtained 19 Hispanic referrals. In addition to specific recruitment for specific openings, the licensee said its personnel also try to recruit potential minority employees by attending an annual broadcast career workshop for minorities where 10 to 15% of students attending are Hispanic. It also contacts representatives of Hispanic organizations at quarterly community meetings conducted by the New York Radio Broadcasters' Association and has posted "numerous" openings at the Harlem School of the Arts. The licensee denied that it has failed to self-assess, and noted that it intensified its EEO program in 1990 and hired more minorities after that time, although all were Black.⁹

31. After reviewing the record of Stations WOXR(AM)/WOXR-FM, we find no substantial and material questions of fact sufficient to warrant a hearing. See *Astroline, supra*. The licensee engaged in minority recruitment, interviewed Hispanics and other minorities, and hired minorities. It also promoted an Hispanic employee from part-time to full-time. We find no evidence

indicating that the licensee engaged in discrimination. While the licensee failed to recruit for six of 19 vacancies and failed to use minority sources for 16 vacancies, we note that 68% (13 of 19) of the licensee's overall applicant/interview pools and 70% (seven of ten) upper-level applicant/interview pools contained minorities. We believe that its overall efforts were such that no forfeiture sanction is warranted. In this regard, in addition to obtaining minorities in a significant number of applicant/interview pools, the licensee hired eight Blacks, the dominant minority group in the labor force, -- two for upper-level positions. Thus, the licensee hired Blacks, who constitute 19.7% of the labor force, for 42.1% of overall and 20% of upper-level vacancies. Finally, it is clear that the licensee engaged in self-assessment, intensifying its program in 1990. Accordingly, renewal of the licenses is appropriate.

32. However, the licensee used only two Hispanic recruitment sources despite being aware of its difficulties in attracting Hispanics, who comprise 14.4% of the relevant labor force. Accordingly, we impose reporting conditions to ensure that the licensee engages in more efforts to recruit Hispanics.

WINS(AM), New York, New York

33. A review of the licensee's 1991 EEO Program Report, opposition to the petition to deny and responses to our inquiries reveals that the licensee had 48 full-time hiring opportunities (23 upper-level) from December 9, 1987, through October 2, 1990. The licensee has records indicating outside recruitment for 17 vacancies. It used general recruitment sources as follows: internal job postings (44 vacancies), employment agencies (14 vacancies), New York Department of Labor (12 vacancies), employee referrals (12 vacancies), and the National Association of Broadcasters (seven vacancies). Used for one to two vacancies were the *New York Times*, *Newsday*, a secretarial school, and three radio associations such as the Radio Advertising Bureau. It received 52 minority referrals from general sources as follows: 21 from employment agencies, 16 from employees, eight from internal postings, four from the N.Y. Department of Labor, and one each from the *New York Times*, a secretarial school, and a radio association.

34. The licensee used minority recruitment sources as follows: Urban League (12 vacancies), National Black Media Coalition (10 vacancies), National Puerto Rican Forum (NPRF) (nine vacancies), National Association of Hispanic Journalists (NAHJ) (seven vacancies), National Association

⁸ The labor force of the New York City MSA is as stated in note 7, *supra*. In every year of the license term, the licensee employed Blacks, but no other minorities, in upper-level positions. The licensee's Annual Employment Report for 1985 indicates that it employed 42 persons overall (32 upper-level) with seven minorities (16.7%) -- all Blacks, four (12.5%) of whom were in upper-level positions. In 1986, the licensee employed 41 persons overall (31 upper-level) with six minorities (14.3%) -- all Blacks, three (9.7%) in upper-level positions. In 1987, the licensee employed 38 persons overall (29 upper-level) with six minorities (15.8%) -- five Blacks (13.2%) and one Asian. Three Blacks (10.3%) were in upper-level positions. In 1988, the licensee employed 37 persons overall (31 upper-level) with six minorities (16.2%) -- five Blacks (13.5%) and one Asian. Three Blacks (9.7%) were in upper-level positions. In 1989, 1990, and 1991, the licensee's Annual Employment Reports mistakenly identified a female full-time lower-level employee as White when she was in fact Hispanic. The corrected figures are as

follows. In 1989, the licensee employed 38 persons overall (31 upper-level) with eight minorities (21.1%) -- six Blacks (15.8%), one Hispanic (2.6%), and one Asian. Four Blacks (12.9%) were in upper-level positions. In 1990, the licensee employed 44 persons (35 upper-level) with 10 minorities (22.7%) -- eight Blacks (18.2%), one Hispanic (2.3%), and one Asian. Three Blacks (8.6%) were in upper-level positions. In 1991, the licensee employed 40 persons overall (32 upper-level) with seven minorities (17.5%) -- six Blacks (15.0%) and one Hispanic (2.5%). Two Blacks (6.3%) were in upper-level positions.

⁹ Although no Hispanics are reported on annual employment reports, the licensee stated that, in 1984, it employed one Hispanic who left the stations before a new report was filed. It also stated that it hired an Hispanic woman for a lower-level position part-time in 1986 and promoted her to full-time after the 1988 annual employment report was filed. The licensee reported that it then mistakenly identified her as White on the next three reports.

of Black Journalists (NABJ) (six vacancies), Black Representative Association of New York (four vacancies), and the Minority Job Bank (four vacancies). It received three minority referrals from minority sources -- one each from the NPRF, NAHJ, and NABJ. The licensee interviewed all 92 minorities (59 Blacks, 23 Hispanics, and 10 Asians) who applied for openings at the station and minorities were present in 34 interview pools (14 upper-level). The licensee hired 13 minorities (nine Blacks, three Asians, and one Hispanic) overall, three of whom (two Asians and one Black) were hired for upper-level positions.¹⁰

35. The NHMC argues that the licensee has failed to implement an adequate EEO program for minorities, assess its deficient program, and propose needed improvements. It criticizes the licensee for using only two Hispanic sources and for obtaining few minority referrals. It also criticizes the licensee for employing too few Hispanics relative to their presence in the labor force.

36. The licensee responded that it has an adequate EEO program and that has assessed its program. It states that its assessment has led to the expansion of its source list, including the addition of three Hispanic sources. The licensee noted that it has frequently used internal job postings and that its encouragement of employee referrals has resulted in a number of minority referrals from employees. It also noted that it has hired a significant percentage of minorities in the last three years of the license term and throughout the term.

37. After reviewing the record of Station WINS(AM), we find no substantial and material questions of fact sufficient to warrant a hearing. See *Astroline, supra*. The licensee recruited, interviewed, and hired minorities during its license term. We find no evidence indicating that the licensee engaged in discrimination. While the licensee failed to recruit for 31 of 48 vacancies and failed to use minority sources for 36 vacancies, we note that 70.8% (34 of 48) of the licensee's applicant/interview pools contained minorities. We believe that its overall efforts were such that no forfeiture sanction is warranted. In this regard, in addition to obtaining minorities in a significant number of applicant/interview pools, the licensee hired 13 minorities, three for upper-level positions. Thus, the licensee hired minorities, who constitute 37.8% of the labor force, for 27.1% of vacancies. Further, we note that in all seven years of the license term overall and in five years upper-level, minorities were employed in excess of 50% of parity. Fi-

nally, it is clear that the licensee engaged in self-assessment, adding recruitment sources, including three Hispanic sources. Accordingly, renewal of the licenses is appropriate.

38. However, the licensee failed to recruit for most vacancies and hired only one Hispanic, despite the fact that Hispanics comprise 14.4% of the relevant labor force. Accordingly, we impose reporting conditions to ensure that the licensee engages in more efforts to recruit Hispanics.

V. CONCLUSION

39. After considering the information before us, we find that hearings are not warranted and the records of the licensees of WSEN(AM)/WSEN-FM, WOR(AM), WOXR(AM)/WOXR(FM), and WINS(AM) support grant of their renewal applications. The licenses of WSEN(AM)/WSEN-FM and WOR(AM) will be renewed subject to reporting conditions and Notices of Apparent Liability for \$25,000 and \$23,750 respectively, because of their deficient EEO recruitment efforts. In addition, the licenses of WSEN(AM)/WSEN-FM will be renewed for a short term. The licenses of WOXR(AM)/WOXR-FM and WINS(AM) will be renewed subject to reporting conditions because of the need to improve the stations' recruitment of Hispanics.

VI. ORDERING CLAUSES

40. Accordingly, IT IS ORDERED that the petition to deny filed by the NAACP against the licensee of WSEN(AM)/WSEN-FM IS DENIED.

41. IT IS FURTHER ORDERED that the petitions to deny filed by the NHMC against the licensees of WOR(AM), WOXR(AM)/WOXR-FM, and WINS(AM) ARE DENIED.

42. IT IS FURTHER ORDERED that the license renewal applications filed by Buckley-WOR Broadcasting Corporation for Station WOR(AM), Interstate Broadcasting Company, Inc. for Stations WOXR(AM)/WOXR-FM, and Group W Radio, Inc. for Station WINS(AM) ARE GRANTED subject to the EEO reporting conditions specified herein.

43. IT IS FURTHER ORDERED that the license renewal applications filed by Buckley Broadcasting Corporation for Stations WSEN(AM)/WSEN-FM ARE GRANTED FOR A SHORT TERM ending June 1, 1996, subject to reporting conditions as described herein and, pursuant to Section 503 of the Communications Act of

¹⁰ The labor force for WINS(AM) is as stated in note 7, *supra*. The licensee's Annual Employment Report for 1985 indicates that it employed 89 persons overall (70 upper-level) with 23 minorities. It employed 15 Blacks (16.9%), seven Hispanics (7.9%), and one Asian. In upper-level positions, it employed 15 minorities (21.4%) -- 11 Blacks (15.7%) and four Hispanics (5.7%). In 1986, the licensee employed 83 persons overall (65 upper-level) with 21 minorities (25.3%). It employed 16 Blacks (19.3%), four Hispanics (4.8%), and one Asian. In upper-level positions, it employed 13 minorities (20.0%) -- 11 Blacks (16.9%) and two (3.1%) Hispanics. In 1987, the licensee employed 90 persons overall (70 upper-level) with 21 minorities (23.3%). It employed 14 Blacks (15.6%), five Hispanics (5.6%), and two Asians. In upper-level positions, it employed 13 minorities (18.6%); 10 Blacks (14.3%), two Hispanics (2.9%), and one Asian. In 1988, it employed 93 persons overall (73 upper-level) with 22 minorities (23.7%). It employed 15 Blacks (16.1%), five

Hispanics (5.4%), and two Asians. In upper-level positions, it employed 14 minorities (19.2%) -- 10 Blacks (13.7%), three (4.1%) Hispanics, and one Asian. In 1989, the licensee employed 96 persons overall (75 upper-level) with 23 minorities (24.0%). It employed 14 Blacks (14.6%), six Hispanics (6.3%), and three Asians. In upper-level positions, it employed 13 minorities (17.3%); nine Blacks (12.0%), three Hispanics (4.0%), and one Asian. In 1990, it employed 93 persons overall (73 upper-level) with 25 minorities (26.9%). It employed 16 Blacks (17.2%), six Hispanics (6.5%), and three Asians. In upper-level positions, it employed 14 minorities (19.2%) -- nine Blacks (12.3%), three (4.1%) Hispanics, and two Asians. In 1991, the licensee employed 93 persons overall (73 upper-level) with 23 minorities (24.7%). It employed 13 Blacks (14.0%), six Hispanics (6.5%), and four Asians. In upper-level positions, it employed 15 minorities (20.6%); 10 Blacks (13.7%), three Hispanics (4.1%), and two Asians.

1934, as amended, 47 U.S.C. Section 503, a NOTICE OF APPARENT LIABILITY FOR FORFEITURE in the amount of \$25,000.

44. 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 in the amount of \$23,750 for the licensee of WOR(AM).

45. IT IS FURTHER ORDERED that the licensees of Stations WOR(AM), WOXR(AM)/WOXR-FM, and WINS(AM) file an original and one copy of the following information on February 1, 1995, February 1, 1996, and February 1, 1997, and that the licensee of WSEN(AM)/WSEN-FM file an original and one copy of the following information on February 1, 1995, and February 1, 1996:

(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, 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. The list should also note which recruitment sources were contacted;¹¹

(b) a list of employees as of the January 1, 1995, payroll period for the first report¹² and as of the January 1, 1996, and the January 1, 1997, 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 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.

46. 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 Notice of Apparent Liability to all parties.

47. 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 parties have any questions regarding this action, they may telephone the Mass Media Bureau's EEO Branch at 202-632-7069. Regarding the forfeiture proceedings, the licensees of WSEN(AM)/ WSEN-FM and WOR(AM) may take any of the actions set forth in Section 1.80 of the Commission's Rules, as summarized in the attachment to this Memorandum Opinion and Or-

der and Notice of Apparent Liability. Any comments relating to their ability to pay should include those financial letters set forth in the noted attachment.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

¹¹ 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 (12/19/94).

¹² The licensee of WSEN(AM)/WSEN-FM should provide a list of employees as of the January 1, 1995, payroll period for its first report due February 1, 1995, and as of January 1, 1996, for the second report due February 1, 1996. It is not required to file a third report.

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.