

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

MM Docket No. 91-204

In re Applications of

CENTER FOR STUDY AND APPLICATION OF BLACK ECONOMIC DEVELOPMENT File No. BRED-900131UA

For Renewal of License of Station KUCB-FM Des Moines, Iowa

and

IOWA ACORN BROADCASTING CORPORATION File No. BPED-900102MB

MINORITY COMMUNICATIONS, INC. File No. BPED-900116MA

For a Construction Permit for a New FM Station Des Moines, Iowa

Appearances

Alfredo Parrish, Esq., and *Elizabeth Kruidenier, Esq.*, for Center for Study and Application of Black Economic Development; *Steve Bachmann, Esq.*, for Iowa Acorn Broadcasting Corporation; *Mark E. Fields, Esq.*, for Minority Communications, Inc.; *Charles E. Dziedzic, Esq.*, *Y. Paulette Laden, Esq.*, and *Gary P. Schonman, Esq.*, for the Chief, Mass Media Bureau.

DECISION

Adopted: February 27, 1995; Released: March 17, 1995

By the Review Board: MARINO (Chairman) and GREENE. Board Member GREENE issuing a Statement.

Board Chairman MARINO:

1. Following a trial-type hearing, Administrative Law Judge Richard L. Sippel (ALJ) granted the construction permit application of Minority Communications, Inc. (Minority) for a new noncommercial educational FM station at Des Moines, Iowa. See *Initial Decision*, 8 FCC Rcd 2116 (1993). The renewal application of Center for Study and Application of Black Economic Development (Center), licensee of noncommercial educational Station KUCB-FM, Des Moines, Iowa, and the application of Iowa Acorn

Broadcasting Corporation (Acorn) were denied by the ALJ. Center was disqualified for "intentional misrepresentation" of material facts in its renewal application, false testimony "given in open court" at the hearing, and taking Station KUCB-FM off the air for two years without Commission knowledge or authorization. Acorn was disqualified for being financially unqualified. Exceptions to the *Initial Decision (I.D.)* have been filed by Center and Acorn challenging their respective disqualifications, and by Minority and the Mass Media Bureau urging additional grounds for Center's disqualification. Oral argument was not requested by any of the parties. The decisional issues presented on appeal are: (a) whether Center lacks the requisite character qualifications because it did not satisfy the high standard of candor required of a broadcast licensee, see, e.g., *Swan Creek Communications, Inc. v. FCC*, 39 F.3d 1217, 1221-1223 (D.C. Cir. 1994); and, (b) whether Acorn has failed to establish that it is financially qualified to construct and operate a new FM station, see *CHM Broadcasting Ltd. v. FCC*, 24 F.3d 1453, 1455, 1457 (D.C. Cir. 1994). Based on our own review of the factual record, in the light shed by the written arguments of the adversaries, we affirm the ALJ's denial of Center's license renewal and Acorn's application, and his grant of Minority's application for a new station.

CENTER'S CANDOR

2. *Background:* Center's renewal application and related ownership report were filed with the Commission on January 31, 1990. These documents appeared to the Commission to have been completed, signed, and filed by Jamal Long, who was listed as "Vice-President." *Hearing Designation Order (HDO)*, 6 FCC Rcd 4622, 4623 ¶ 12 (1991). Question 6 of Center's renewal application asked whether any adverse finding had been made against "the applicant or any of its parties" in any "criminal proceeding" involving "any felony" since the filing of its last major application. Despite the "no" response in Center's renewal application, the Commission recited, in its *HDO* at ¶ 12, that information had come to its attention that:

Charles Knox, who is listed in the renewal application as the Center's 'President,' was convicted in 1987 in the United States District Court for the Western District of Texas of two felony counts... Also, Knox was convicted in 198[9] in the United States District Court for the Northern District of Illinois of three felony counts... None of these convictions was disclosed by the Center to the Commission.

Therefore, the Commission specified a basic qualifying issue:

To determine whether [Center] misrepresented material facts to, and/or concealed material facts from, the Commission in connection with its answer to Question 6 of its instant license renewal application.

Id. at ¶ 16. After he had heard the evidence on this issue, the ALJ held first, that Center intentionally misrepresented when it responded to Question 6 in the renewal application, *I.D.*, ¶ 98; and, second, that this misconduct was aggravated when at the hearing Center's Vice-President and

board member Jamal Long, and other witnesses, attempted to cover up incriminating circumstances. *Id.* at ¶¶ 53 and 103.

3. On the first point, the ALJ found it was undisputed that, before the renewal application was filed, Charles Knox had been convicted of several felonies in 1987 and 1989; that Charles Knox was identified as Center's President in the 1987, 1988, and 1990 ownership reports; that Knox prepared the 1990 renewal application, and the accompanying ownership report; and that Knox signed Jamal Long's name to those documents and mailed them to the FCC. *I.D.*, at ¶¶ 49-50, 55. From "the totality of the circumstantial evidence," the ALJ concluded that: "certainly Knox knew... he had multiple felony convictions that were required to be disclosed in Question 6" of the renewal application; and that "Long knew that Knox had the two felony convictions when Center prepared and filed its renewal application in January of 1990." *I.D.*, ¶ 98.

4. In his second major conclusion, the ALJ held that the "candorless testimony in open court" at the evidentiary hearing, taken together with Knox's misrepresentation in Question 6 of Center's renewal application, made this an even stronger case for denying license renewal. *Id.* at ¶ 103. He found: (a) "Long [a Center director and vice-president] had misrepresented that he had prepared the renewal application and that he had signed his name"; (b) "Long also attempted by his false testimony to create an appearance that Knox had withdrawn from his position as director and officer of Center" at the time of the 1990 renewal filings, and of the ownership reports of May 1987 and April 1988; (c) Knox "misrepresented in his testimony the status of his resignation in order to avoid an adverse finding against Center with respect to Knox's convictions"; (d) "Samad [a Center director and station manager] also testified falsely that the board of directors decided in 1989 to remove Knox"; and (e) "Long and Samad ... testified falsely that they had no knowledge of Knox's convictions until after January 1990." *Id.* at ¶¶ 101-102. Accordingly, the ALJ held that (*id.* at ¶ 103):

The fact that the misrepresentation in Question 6 was intentional rather than a rushed mistake is further established by the continuing misrepresentations in the testimony of Long and Knox.... An applicant may be disqualified on the basis of its principals' candorless testimony in open court and the issue need not be specifically designated as a hearing issue because "truth and candor are always in issue." *Old Time Religion Hour, Inc.*, 95 F.C.C. 2d 713, 719 (Rev. Bd. 1983), citing *RKO General, Inc. v. F.C.C.*, 670 F.2d 215, 234 (D.C. Cir. 1981). Certainly the affirmative misrepresentation in the renewal application when considered with the additional misrepresentations of the principals at the hearing makes an even stronger case for denying Center's renewal.

5. *Center's Exceptions.* Center contends that the ALJ "improperly" resolved the misrepresentation issue because "there was nothing in the evidence presented which would indicate that [it] misrepresented material facts, and/or concealed material facts from the Commission." Center's Br. at 19. It disputes the ALJ's finding that its board members had knowledge of Knox's felony convictions when preparing the renewal application and argues that the ALJ misunderstood the record testimony concerning Knox's signing of Jamal Long's name on the renewal application. *Id.* at

19-20. Center asserts there was "absolutely nothing to be gained by including Dr. Knox's name on the application" and that the evidence shows "once the knowledge of the convictions of Dr. Knox became known [after his renewal application was filed in January of 1990], a prime objective was to openly accept the resignation of Knox and to exclude his name from any further actions taken by Center or KUCB. It was due to the lack of information regarding his convictions and the uncertainty of his capacity within the organization by some officers that erroneous information appeared in Center's application for renewal." *Id.* at 21. Both the Bureau and Minority support the ALJ's resolution of the misrepresentation and candor issues; they have filed exceptions urging additional grounds for Center's disqualification. Thus, the Bureau contends that the ALJ should also have disqualified Center on an ineptness issue and the effects of Charles Knox's criminal convictions on Center's basic qualifications. Minority argues that Center should have also been disqualified on the unauthorized transfer of control issue. *See I.D.*, ¶ 2 for designated issues. We need not reach these exceptions because we have concluded that the ALJ's disqualification of Center on the more critical issue of candor is firmly supported by the record evidence and decisional.

6. *Discussion:* In its *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1231-32 (1989), the Commission indicated that the fundamental purpose of the character inquiry about an applicant's qualifications is "to make a predictive judgment relating to the applicant's propensity to deal honestly with the Commission and to comply with [its] rules and policies." *See California Public Broadcasting Forum v. FCC*, 752 F.2d 670 (D.C. Cir. 1985); *KQED, Inc.*, 3 FCC Rcd 2821, 2826-27 at ¶¶ 24-25 (Rev. Bd. 1988) (denial of non-commercial license renewal for misrepresentations) (subsequent history omitted). Misrepresentations or omissions at hearing can, by themselves, result in disqualification. *See Swan Creek*, 39 F.3d at 1222, quoting from *Old Time Religion Hour, Inc.*, 95 FCC 2d 713, 719 (Rev. Bd. 1983). Complete candor is essential. "If the Commission cannot believe and rely on what applicants and licensees tell it, it cannot maintain the integrity of its processes." *Standard Broadcasting, Inc.*, 7 FCC Rcd 8571, 8573 (Rev. Bd. 1992), because of the Commission's exceedingly limited budget and staff compared with the enormous industries and thousands of licensees under its purview. *Id.* at 8573 n.7.

7. The Board has reviewed the record regarding Center's misrepresentation and lack of candor "in open court" with special care and due deliberation, as requested by Center, *see* Center Br. at 26, and mandated by the Commission. *Nancy Naleszkiwicz*, FCC 95-33, at ¶ 4, released February 3, 1995. Our review was based primarily on Center's exceptions, its proposed findings of fact, its contemporaneous documents filed with the Commission during 1987-1990, and the testimony of Jamal Long, Charles Knox, and Ako Abdul-Samad. We have reached two separate and independent conclusions. First, we hold that substantial record evidence supports the ALJ's finding that Center's "no" response to Question 6 of the renewal application denying Knox's felony convictions was a misrepresentation. Second, and even more serious, is our conclusion that the record fully supports the ALJ's findings about a "cover up" and the giving of candorless testimony by Center's witnesses at the hearing. Thus, Center has breached the fundamental requirement that complete candor is demanded of "Commission licensees as to matters under investigation."

Greco, Inc., 39 FCC 2d 732, 736 (1973), cited with approval by the Commission and the court in *Richardson Broadcast Group*, 7 FCC Rcd 1583, 1585 (1992), *aff'd by judgement*, 995 F.2d 306 (D.C. 1993); *Swan Creek*, 39 F.3d at 1222-1223 (applicant in testimony "acted less than honestly").

8. There is no dispute among the parties that Knox was convicted in 1987 in a Texas Federal District Court on two felony counts of impersonating an attorney in violation of Federal Law, and in 1989 in an Illinois Federal Court on three counts of conspiracy, racketeering, and embezzlement. Bureau Exhs. 15-18. The embezzlement count involved funds from the National Telecommunications and Information Administration intended for Station KUCB-FM. Bureau Exh. 17 at 4-5. Defendant Knox's Plea Agreement recited that:

the defendant on behalf of KUCB in Des Moines, Iowa received \$72,484 from the Department of Commerce pursuant to a grant from the National Telecommunications and Information Administration (NTIA). As defendant knew and understood, the grant money was supposed to be used to purchase radio equipment to operate a minority-run radio station. Instead the defendant knowingly diverted at least \$31,181.15 to a company called Burns Associates, South Chicago Auto Sales, for purposes other than radio equipment. The defendant completed this conversion of government funds by causing the \$31,181.15 to be delivered to Burns and Associates in Chicago, Illinois. The money was delivered in the form of six checks signed by the defendant during the period from February, 1985 to March, 1986. Although quarterly reports of how the money was spent are required by NTIA, Knox never filed any such reports.

9. Center's ownership report dated January 22, 1990, which accompanied the renewal application, listed Charles Knox as Center's President. Bureau Exh. 12, at 4-5. Knox prepared this report, albeit signing Jamal Long's name and certification, and revised his address from earlier ownership reports, dated May 23, 1987, and April 12, 1988, which had also identified him as Center's President. Bureau Exh. 1 at 87-90. Knox testified that he had tendered a resignation by telephone in 1987, by letter in 1989, and had been asked to resign in 1989, when Wayne Ford was elected President of the board of directors, allegedly in the winter of 1989. Tr. 1397-1398, 1416-1418. We agree with the ALJ that this testimony is not credible in light of Center's ownership documents filed with the Commission and Knox's admission on cross-examination that he had filled in the ownership form listing the names and addresses of the officers including his own. Tr. 1415-16. The alleged 1989 written resignation was never produced by Center, which was permitted by the ALJ to adduce all mitigating evidence, nor was Wayne Ford called to corroborate testimony that he was elected president in 1989 and then asked Knox to resign before the renewal filings. On March 15, 1990, Ford did file a fourth ownership

report with the Commission which, for the first time, replaced Knox's name with Ford as President. Bureau Exh. 1 at 91-92. That report was certified by Ford on the 9th of March 1990, and further recited that: "All of the information furnished is reported as of February 10, 1990." *Id.* Late in his cross-examination, Knox conceded that: "It could have been 1990" [that the new Board was elected and he was asked to resign], "I am not sure," see Tr. 1417, and that, after the filing of Center's renewal application and his "resignation," he has travelled to Des Moines "a couple of times" and "was at the station" and that the KUCB Board continues to seek his advice "not necessarily on the operations, but on the technical portion." Tr. 1418.

10. Since Knox's ultimately admitted that he prepared Center's renewal application and ownership report, signed Long's name, and mailed them to the Commission from Chicago, we do not rely on the ALJ's finding, para. 4(e) above, that Long and Samad knew of the convictions when the renewal application was filed, inasmuch as Long was not the individual who prepared or signed the application, and our *Decision* does not rest on that finding. Nevertheless, based upon Center's own documents, which were not adequately explained by Center's contradictory oral testimony, we conclude, as did the ALJ, that Knox was a party to the renewal application and ownership reports that he prepared and filed in January of 1990, and that Knox was aware of his own prior felony convictions. Thus, we will affirm the ALJ's initial conclusion that: "Knox, while acting as agent for Center, knowingly misrepresented when he checked ... a 'No' response to Question 6 The motive to so misrepresent was in order to knowingly conceal the fact of criminal convictions from the Commission which, if disclosed, would adversely reflect on Center's character." *I.D.*, ¶ 98.

11. Second, and fatal to Center's renewal application, is our affirmation of the ALJ's finding about the "cover up" by Center's witnesses, especially Long's failure to disclose Knox's role in the preparation of Center's renewal application and ownership report, and the other evasive and candorless testimony by the Center witnesses regarding the claim that Knox resigned or was asked to resign prior to the filing of the renewal application. Initially, we focus on Center's argument that the ALJ:

misunderstood the testimony concerning who signed Jamal Long's name on Center's renewal application.... Jamal Long testified that the signature was his. However, he did not testify that he had personally signed his signature; in fact, both he and Charles Knox consistently testified that Charles Knox signed Long's name on the renewal application for 1990.

Center's Br. at 20-21.¹

12. The record contradicts Center's contention, and supports the ALJ's findings. Our review of Long's testimony indicates that Long: (a) never revealed that Knox had prepared the renewal application, and related ownership report; (b) never indicated that Knox had signed Long's name; and (c) never indicated that Knox had mailed those

¹ The admission that Long did not sign his name, if it stood alone, would establish a technical violation of the Commission's signature rule, and require a remedial amendment. See *KQED*, 3 FCC Rcd at 2831-2832.

documents to the Commission. On the contrary, in response to questions from Center's own counsel, Long testified "I filled out the application," Tr. 954, and answered "no" when asked if he had any significant contacts with Knox at the time the renewal application was prepared. Tr. 955. Long also testified that he "was trying to rush" because he "knew that the deadline was close" and that he made sure that the application was filed on time. See Tr. 956-957, reproduced below (emphases added):

Q. Mr. Long, on that date [when the renewal application was signed], were you aware that Mr. Knox had a conviction of a felony crime, to your best recollection?

A. No, I did not.

Q. Had you been in significant contact with Mr. Knox at that point at the time you filled out your application for renewal?

A. No.

Q. Tell us how did you know even to file a renewal of your license?

A. We had got a reply about the deadline and *I was trying* to rush to really get that in because *I knew* the deadline was coming close upon us. And that was *my concern, to make sure we got that in on time.*

Q. And did you do that?

A. Yes.

[CENTER'S COUNSEL]: Your Honor, I don't think I have any further questions at this time of this Witness.

13. On cross-examination, Long continued to deny that Knox had any involvement with Center at renewal time and did not disclose that Knox had prepared the renewal application and ownership report, signed Long's name, and filed them with the Commission. In his testimony, Long repeated over and over: "I sent the ownership report in"; "I sent it in"; "I got it in on time"; "I sent the form in"; "I didn't remove people"; "I didn't remove their names"; "I didn't take any names off"; "I didn't take any names off at that time"; "there was names I didn't take off." And, finally, when shown the signature on the report and asked if it was his, he replied "Yes," but failed to indicate that, in fact, Knox had signed his name. See Tr. 995-996 and 997, 998, 999 reproduced below (emphases added):

Q. Yes. Was Mr. Knox involved in Center as recently as January 1990?

A. No.

Q. Can you explain why this ownership report shows that Mr. Knox is President of Center in January 1990?

A. Lots of times when we sent -- when *I sent the ownership report in*, we -- in the times *I sent it in*, we didn't remove -- *I didn't remove* people that had been -- was no longer with the Center. *I didn't remove*

their names, because when you do the ownership report, to add some people in, you always remove some people.

So these times *I did not take any names off*. That was because *I was in a hurry* to make sure that *I got them in on time*. And so *I didn't take any names off at that time*. They have a list, a column where you add names and you take names off.

Tr. 995-96.

Q. In other words, Mr. Knox was President of Center in 1990.

A. *I said when I sent the form in, there was names that I didn't remove.*

Q. Mr. Long, this ownership report that was signed on January 22, 1990, on the second page of that ownership report, it shows that Charles Knox is President of Center.

My question to you is was Charles Knox President of Center on that date?

A. No.

Q. Mr. Long, is that *your signature* on the second page of the ownership report?

A. Yes.

Tr. 997.

Q. Is that your signature on the second page of the ownership report [dated April 12, 1988], which is labeled Page 88?

A. Yes.

Q. Was Mr. Knox President of Center in April -- on April 12, 1988?

A. No.

Tr. 998.

Q. Would you let me know when you're finished looking at that ownership report [dated May 23, 1987]?

A. Yes, I'm through.

Q. Mr. Long, on May 23, 1987, was Charles Knox President of the Center?

A. No.

Tr. 999.

14. In his testimony quoted above, Long misrepresented and lacked candor when he failed to disclose Knox's role in the preparation of Center's renewal application and ownership report. Long's attempt to "cover up incriminating information" about Knox's significant role in the renewal filings, as the ALJ correctly found, *see I.D.*, ¶ 53, was only a part of Center's attempt to create the false impression that Knox had withdrawn from his position as Center's President before the renewal filing, and that Center's board of directors had also decided late in 1989 to remove Knox. *Id.* at ¶ 98. Center responds that "there was some confusion as to exactly when Charles Knox ceased his participation with KUCB." Br. at 19-20. Center essentially urges that "lack of information" about Knox's convictions, and "uncertainty about his capacity within the organization by some officers" explains why "erroneous information appeared in Center's application for renewal." *Id.* p. 21.

15. Center's contention is contradicted by the record and especially Knox's reluctant admission that he prepared the renewal application and ownership report. Moreover, Center's own contemporaneous documents, *see* para. 9 above, and the inconsistent and contradictory testimony of Long, Knox, and Samad demonstrate that the ALJ was completely justified in finding that Center's witnesses attempted to conceal Knox's significant role in the preparation of the renewal filings, and attempted to create the false appearance that Knox had withdrawn from his position as Center's President prior to the filing of the renewal application in January of 1990.

16. With respect to the contradictory testimony, Long answered in response to another direct question from Center's counsel about the last time that Dr. Knox was involved with the station: "I think it was around the early 80's." Tr. 889. On cross-examination, Long responded on three different occasions that he was: "not sure about the date." Tr. 994. However, after being shown the three ownership reports dated January 22, 1990, April 12, 1988, and May 23, 1987, which listed Charles Knox as Center's President, Long gave a flat "no" each time when asked if Knox was President at those times. *See* Tr. 997-999, reproduced at ¶ 13, above. Long's claim that Knox was not an officer at the time of the 1987 and 1988 ownership reports was impeached by Knox's own testimony that he was on the board from "1985, to resignation, in 1989," (Tr. 1397-1399) and Samad's testimony that, in late 1989, Knox was asked by the newly elected board to resign (Tr. 1119-1120; tr. 1150); *see also* Tr. 1135-1136.

17. The record supports the ALJ's additional finding that Knox "misrepresented the status of his resignation in order to avoid an adverse finding against Center with respect to Knox's conviction." *I.D.*, ¶ 98. The 1987, 1988, and 1990 ownership reports all listed Knox as Center's President, *see* para. 9 above. In his testimony, Knox first attempted to create the impression that it was Long who had listed his name in the January 1990 ownership report (*see* Tr. 1394-1395 and 1413-1414). However, he was finally forced to admit near the end of his cross-examination that the handwriting on the ownership form was his, and that he filled in the part of the ownership form listing the names and addresses of the officers including his own name. Tr. 1415-1416. Like the ALJ, we find an irreconcilable conflict between Knox's testimony that he attempted to resign and had been asked to resign prior to the filing of the renewal application, and the Commission records, especially the January 1990 ownership report where Knox in his own handwriting identified himself as Center's President and

revised his own address. *See Swan Creek*, 39 Fd. 3d at 1222-1223 ("Board could properly make a lack of candor determination ... where, as here, an irremediable conflict appears between records submitted to the Commission and testimony").

18. In sum, reliable documentary evidence and other substantial evidence firmly undergird the ALJ's findings summarized in para. 4 (a) - (d), above, and his conclusion that Center's false testimony establishes that "it does not have a propensity to deal honestly with the Commission. Rather, it has a propensity to deal falsely with the Commission, even under oath." *I.D.*, ¶ 103. Disposition of Center's renewal application is controlled by the Commission's holding in *Greenco*, 39 FCC 2d at 736-37, that:

Complete candor from Commission licensees as to matters under investigation may be demanded and is expected. ... While issues are designated to place the licensee on notice of the charges which he will be required to meet at the hearing, notice to a renewal applicant that he must testify truthfully and not conceal material information is superfluous. Taking the oath serves the purpose and no unfairness results in holding a renewal applicant to have knowingly assumed the risk of an adverse determination as to its character qualifications when a principal testifies falsely at the hearing. ... [W]e cannot temporize with deliberate deception of the Commission. No matter how unblemished the reputation of the principal in the community, no one is allowed "one bite" at the apple of deceit. (citation omitted).

19. Center faults the ALJ in its exceptions for failing to consider the Commission's public policies supporting minority-owned educational stations, *see* Br. at 17-19; but the Bureau correctly notes in reply, at 9-10, that the Commission's policies of fostering minority ownership have never "suggested that th[ese] polic[ies] excuse[] a licensee's misconduct." Moreover, it is now well-established that a noncommercial broadcast applicant's "proclivity to deal truthfully with the Commission is a bedrock prerequisite to a finding of basic character qualification to hold a license." *KQED, Inc.*, 3 FCC Rcd at 2826 ¶ 24; *see also Trustees of the University of Pennsylvania*, 69 FCC 2d 1394, 1399, 1429-30 (1978) (accountability of noncommercial broadcast licensees).

20. A meritorious past broadcast record can not mitigate or offset Center's lack of candor, which is a serious breach of trust undermining the integrity of the Commission's processes. *See KQED*, 3 FCC Rcd at 2827 at ¶ 27; *Standard Broadcasting Inc.*, 7 FCC Rcd at 8577 n.29. In any event, Center's past broadcast record includes a serious violation of Section 73.561(a), and (f), which requires that its noncommercial station "operate at least 36 hours per week, consisting of at least 5 hours per day on at least 6 days per week" and if the licensee cannot adhere to its operating schedule, notification must be sent to the Commission. Here, the ALJ found that resolution of a Section 73.561 issue designated in this proceeding by the Commission provided another ground for denial of Center's renewal since for some two years Station KUCB-FM remained silent without Commission knowledge or authorization in violation of 47 CFR § 73.561. *I.D.* at ¶ ¶ 104-107. Such a violation, on its face, is inconsistent with the general public interest, and the special needs of KUCB-FM's listening audience. The Bureau correctly notes at 12 n.7 of its reply

that "Center's exceptions do not specifically dispute Center's violation of Section 73.561 of the Commission's Rules" and that "any objection thereto is waived. Section 1.277(a) of the Commission's Rules." Nevertheless, in light of Center's disqualification on the misrepresentation and lack of candor issue, we do not reach the question whether the Section 73.561 violation is sufficient, standing alone, to also warrant Center's disqualification.

21. Finally, at an earlier stage in this proceeding, Center requested that we find that the ALJ's prehearing procedural rulings indicated bias towards Center, mainly due to their harshness to that applicant. After reviewing Center's showing in light of the legal standards set forth in *United States v. Grinnell Corp.*, 384 U.S. 563 (1966) and other legal authorities, we denied Center's motions. *Center for Study and Application of Black Economic Development*, 7 FCC Rcd 3101 (Rev. Bd. 1992). In its exceptions, at 14-17, 23-26, Center renews its bias claims against the ALJ and Bureau Counsel. The exceptions are without merit. Initially, as a matter of law, we note that since our prior ruling on this matter, the United States Supreme Court, in *Litke v. U.S.*, 114 S. Ct. 1147, 1157 (1994), reinforced the controlling legal principle of *Grinnell* that "judicial rulings alone almost never constitute valid basis for a bias or partiality motion." The Court observed that: "A judge's ordinary efforts at courtroom administration -- even a stern and short-tempered judge's ordinary efforts at courtroom administration -- remain immune." *Id.* Similarly, the United States Court of Appeals for the D.C. Circuit recently held that: "In an adjudicatory proceeding, recusal is required only where 'a disinterested observer may conclude that [the decisionmaker] has in some measure adjudged the facts as well as the law of the particular case in advance of hearing it.'" *Metropolitan Council of NAACP Branches v. FCC*, No 93-1471, Slip Op. p. 18 (D.C. Cir. January 27, 1995). Center has not made the required showing of prejudice.

22. Now that we have had an opportunity to review the factual record, we find that Center was not materially prejudiced by the ALJ's ruling of default, the primary gravamen underlying Center's claim of bias, which ruling technically precluded Center from presenting a direct case at the comparative hearing. We agree with the Bureau that Center did have an opportunity to present its case on the decisional misrepresentation issue. "Center offered all of the exhibits which it had exchanged before the Admissions Session and was not precluded from calling any witness on its list of witnesses because of the default ruling." Bureau Reply at 6. Our review of the record also confirms that the ALJ made a reasonable effort to accommodate the schedule of all counsel in this multi-party proceeding, see *Faith Center, Inc.*, 92 FCC 2d 1255 ¶¶ 15-16 (Rev. Bd. 1983), and that contrary to a contention by Center, Br. at 2, its chief counsel, Alfredo Parrish, had an opportunity to fully cross-examine Larry Nevilles, a former Station KUCB-FM employee and now a principal of Minority. See Tr. 656-717; 762-764. Lastly, Center has not made a showing of bias or prejudice on part of Bureau counsel because the Bureau participates in such hearing as a party, 47 CFR 0.61(d), is not a decisionmaker in this case, 47 CFR 1.1202(c), and was not shown to have prejudged any of the issues or was "impervious to contrary evidence." *Metropolitan Council of NAACP v. FCC*, *supra*.

ACORN'S FINANCES

23. *Background:* Non-commercial broadcast applicants, such as the applicants here, may certify that their financial qualifications are contingent upon later receipt of: (1) a grant from the National Telecommunications and Information Administration (NTIA); or (2) grants from charitable, educational, or government entities. See FCC Form 340, Section III- Financial Qualifications, Questions 1 and 2; see also *KQED, Inc.*, 5 FCC Rcd 1784, 1785 (1990). Question 3 of FCC Form 340, however, requires that applicants not relying upon the grant provisions above to check the "Yes" or "No" box in response to the following certification:

The applicant certifies, except as noted above [in Questions 1 and 2] that sufficient liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without additional funds.

Compare CHM Broadcasting, 24 F.3d at 1455, financial certification by commercial broadcasters.

24. In their applications filed in January of 1990, both Acorn and Minority failed to certify that they were financially qualified as required by Question 3, above, both checking the "No" box. Within the period for amending as of right prior to designation for hearing, Minority filed an amendment certifying that it was financially qualified. Minority's certification was based upon its application for a grant of \$100,000 from NTIA, and on a \$50,000 loan commitment letter from the East Des Moines National Bank, dated February 21, 1990. See Exhs. C and D to Minority's Opposition to Motion to Enlarge Issues filed August 27, 1991. Acorn, however, did not amend its financial certification prior to designation for hearing.

25. On August 29, 1991, Acorn filed an amendment which merely certified "yes" to Question 3. A subsequent amendment, filed September 20, 1991, indicated that: Acorn had entered into an agreement with Affiliated Media Foundation Movement (AMFM), whereby the latter agreed to secure Acorn's financing; that on July 2, 1990, AMFM had received a commitment letter from "U.S. Trust for a loan for up to \$700,000 for construction and initial operation of a radio station in Des Moines, Iowa"; and that Acorn needed "a total of \$155,355" to finance its proposed station. Petition to Amend at 2, Exh. A. When the ALJ was notified by the Mass Media Bureau's pleadings that Acorn had failed to certify its finances prior to designation for hearing and that Acorn's reliance on the UST loan commitment letter raised substantial questions of fact, the ALJ added the following issue against Acorn:

To determine whether [Acorn] has reasonable assurance of funds to construct and operate Channel 207C; whether [Acorn] is financially qualified; and whether [Acorn] is qualified to receive a Commission [construction] permit for the Des Moines community.

Tr. 72-73; see also *Order*, FCC 91M-3004, released October 3, 1991; *I.D.*, ¶ 4. Both the burden of proceeding and the ultimate burden of proof were placed on Acorn. *Id.* ¶¶ 4, 76, 121-122.

26. At hearing, Acorn submitted a letter from AMFM dated December 27, 1989, which states in pertinent part:

This letter will confirm the willingness of [AMFM] to secure funding for [Acorn]. We are able to make a commitment of \$730,000 in the form of unsecured loans.

Id. at ¶ 79. The parties do not dispute the ALJ's finding that AMFM was only acting as an intermediary. Acorn ultimately relied on the UST letter to AMFM dated July 2, 1990, which recites in part:

This letter states the conditional commitment of our investment management clients to loan up to \$700,000 to assist AMFM in the financing for construction and initial operation of a radio station licensed to Des Moines, Iowa. Their willingness to do so is subject to the following conditions: ...

(2) All reasonable and ordinary credit criteria of [UST] are met at such time as [Acorn] (a) has received the permit to construct said station and (b) requests from our client via [UST] a formal and unconditional lending commitment; and,

(3) [UST] receives, once the above conditions have been met, the written agreement to the terms of the loan from each and all of our investment management clients participating in the loan.... The precise terms of security of the loan also will be determined at the time of the unconditional loan commitment.

Id. at ¶ 80. The letter concludes:

[UST] is personally and favorably acquainted with [AMFM] and we would be relying on your commitment to continued participation in the venture and management of the radio station as a part of the loan application.

Id. at ¶ 82. (Emphasis added).

27. Acorn's President Pauline Green, who had signed the financial certification, on August 29, 1991, did not offer any direct testimony regarding the financial issue. On cross-examination, she stated that Acorn had contracted with AMFM to secure financing for Acorn but did not submit any financial statement to AMFM. *I.D.*, at ¶¶ 78-79. Green also testified that Acorn's budget estimate was based upon AMFM's expertise and experience with other stations AMFM operates. *Id.* ¶ 86. After reviewing the relevant evidence, the ALJ found that "the estimate of \$700,000 was based on raw speculation and lacked any foundation in reasonable fact," and that the mistake was attributable to AMFM because:

... Moody and Rathke [UST and AMFM principals] testified that in actually the likely amount of the loan would be \$150,000. (Moody, Tr. 518, Rathke, Tr. 548, 561.) Mr. Rathke surmised that the \$700,000 figure was a mistake on the part of UST in using another unrelated project as the basis for the estimated costs because the \$700,000 estimate clearly was excessive for Acorn's needs. (Rathke, Tr. 550, 551). However, since UST was relying on AMFM for the project's management, it is more likely that the mistake was AMFM's. In fact, on December 27, 1989,

AMFM was committing to secure \$730,000 and on July 2, 1990, UST was referring to a conditional loan commitment of \$700,000.

Id. at ¶ 87.

28. Acorn's proposal to finance its station "through a UST commitment letter to a third party, AMFM," was found by the ALJ to be deficient as a matter of fact for several reasons. Initially, he pointed to "a fundamental error" that both the AMFM and the UST letters were based on "an erroneous assumption that Acorn would require \$700,000 to construct and operate" the proposed station, whereas "the true estimate would have been approximately \$150,000." *Id.* at ¶ 123. The Des Moines radio proposal had apparently been confused by AMFM with an unrelated and more expensive TV proposal. *Id.* This fatal factual error in UST's letter, the ALJ found, occurred because Acorn was not consulted by UST, there was no relationship between Acorn and UST, and therefore, there was no meeting of the minds on a true estimate of costs. *Id.* Moreover, he found several specific conditions in the letter from UST to AMFM that "neutralize any commitment": the UST "conditional commitment" would provide funding only so long as AMFM continues to be involved in the management of Acorn's "radio station" even though AMFM is not a party to the application; UST must first obtain prior approval from potential investors and there is no evidence that any investor has seen Acorn's financial statement or a plan of operations which discloses experience of operating personnel and a feasibility of performance; and not one of the potential investors has expressed a willingness to participate. Accordingly, the ALJ concluded that the UST/AMFM letters were "meaningless" and "ephemeral" so that no reasonable applicant could rely upon them to establish reasonable assurance. *Id.* at ¶ 124.

29. *Discussion.* A broadcast applicant must have reasonable assurance "before the applicant certifies its financial qualifications. In other words, the applicant may not certify its financial qualifications and then arrange financing." *Northampton Media Associates*, 4 FCC Rcd 5517, 5519 (1989). Whether an applicant has a reasonable basis to certify turns on "an objective inquiry" rather than the applicant's subjective intent, and probative evidence must be adduced at the hearing. *See Aspen FM, Inc.*, 5 FCC Rcd 3196, 3198 (Rev. Bd. 1990), *review denied*, 6 FCC Rcd 1602 (1991). Commission precedent also requires that loan commitment letters demonstrate more than a generalized "interest" to make a loan. *Capital City Community Interests, Inc.*, 2 FCC Rcd 1984, 1986 (Rev. Bd. 1987). A valid commitment letter need not establish "a legally binding commitment", *Multi-state Communications, Inc. v. FCC*, 590 F.2d 1117, 1119 (D.C. Cir. 1978), but it must establish a "present firm intention to make a loan, future conditions permitting." *Merrimack Valley Broadcasting, Inc.*, 82 FCC 2d 166, 167 (1980).

30. Here, Acorn's certification that "sufficient funds are available from committed sources to construct and operate the requested facilities for three months without additional funds", FCC Form 340, Question 3, was based on the loan commitment letter from UST to AMFM. As the ALJ correctly concluded, however, it was apparent on the face of the documents before Green when she certified that Acorn did not have reasonable assurance. First, Acorn needed approximately \$150,000, but the AMFM/UST contingent commitment letters were based on the erroneous assump-

tion that \$700,000 was needed; thus, we agree with the ALJ that there was no meeting of the minds on the true estimate of Acorn's financial need. Second, and even more fatal to Acorn's financial certification, was the fact that on its face the UST "conditional commitment" letter was contingent upon AMFM's "continued participation in the venture and management of the radio station as a part of the loan application." See ¶ 26 above. Green had to know at the time she certified that this condition was impossible to accomplish because Acorn's application, even as amended, did not propose AMFM in a management role. AMFM had been retained to provide technical assistance regarding engineering, financial, legal, and other matters relative to Acorn's application. *I.D.*, at ¶ 78. According to its application, Acorn intends to own, manage, and operate the station. Finally, UST's letter indicates on its face that before UST can make a loan the applicant must first obtain the approval from participating potential investors, and not one such investor has expressed a willingness to participate. Reinforcing the obstacle imposed by this condition is the testimony of an AMFM principal that AMFM had previously never arranged a loan directly from UST; instead, it had obtained loans from clients that were part of the portfolio managed by UST. Tr. 551. An objective review of the documents on which Green based her certification supports the ALJ conclusion that no reasonable applicant could have certified based on those documents. *CHM Broadcasting*, 24 F.3d at 1457-1458 ("reliance on objective information" for financial certification).

31. Acorn's principal contention is that the ALJ failed to recognize that the traditional lending criteria may not be relevant in the noncommercial context. It argues for "an expanded notion of what actually constitutes reasonable assurance." Br. at 4. Acorn points out that UST and its clients were responsible for "making socially and ethically responsible investments" and that "financial information might not be sought because the investment concern might be solely about the social benefit of that investment." *Id.* Had the ALJ applied these "criteria," Acorn argues, it would have been found to have reasonable assurance of financing. *Id.* at 5. This argument is of no avail. In essence, we agree with the Bureau's reply that only if Acorn had relied on an NTIA, charitable, educational or other governmental grant would a different noncommercial standard have been applicable. See ¶ 23 above; *KQED, supra*, 5 FCC Rcd at 1585. On the record of this case, the Bureau points out that "it is irrelevant that the potential investors are interested in socially and ethically responsible investments, as Acorn insists. There simply are no investors upon which Acorn could reasonably rely." Bureau Reply at 15-16.

32. Acorn's final contention regarding finances (Br. 11-12) is that the ALJ was "arbitrary and capricious" and acted contrary to administrative "due process and equal protection of the laws" when he added a financial qualifications issue against Acorn but refused to specify a financial issue against Minority. Acorn alleges that Minority's showing contained "comparable contingencies" as those in Acorn's letters. *Id.* at 12. Acorn and Minority were not similarly situated procedurally. Acorn failed to financially certify prior to designation for hearing and the Commission's processing staff inadvertently did not designate a financial issue against Acorn. Minority, on the other hand, amended its application as of right prior to designation for hearing certifying that it was financially qualified. Thus, Acorn had to make a *prima facie* showing that a financial issue should be designated against Minority, which it failed

to do. See 47 CFR § 1.229, and Bureau Reply at 17. Our review of the documents before the ALJ, see ¶ 24, above, reveals that, as a matter of fact, Acorn and Minority were not similarly situated. Minority's financial certification was based upon an NTIA grant explicitly contemplated by Commission policy, see *KQED, supra*. Acorn did not rely upon such a grant. Minority's certification also relied on a bank letter, but a review of that letter indicates that it did not contain any of the fatal contingencies present in Acorn's letters. We therefore affirm the ALJ's conclusion that substantial evidence in the record establishes that Minority is the only qualified applicant to receive a construction permit for a noncommercial FM station in Des Moines, Iowa. *I.D.*, at ¶¶ 132-135.

33. ACCORDINGLY, IT IS ORDERED, That the application of Minority Communications, Inc. for a construction permit for a new FM station (File No. BPED-900116MA) IS GRANTED; the license renewal application (File No. BRED-900131UA) of Center for Study and Application of Black Economic Development for Station KUCB-FM, Des Moines, Iowa IS DENIED; the application of Iowa Acorn Broadcasting Corporation for a construction permit for a new FM Station (File No. BPED-900102MB) IS DENIED; and Center for Study and Application of Black Economic Development IS AUTHORIZED to continue operation of Station KUCB-FM until 12:01 A.M., on the forty-fifth (45) day from the release date of this *Decision* to enable the licensee to conclude the station's affairs, unless an application for review or petition for reconsideration is filed within 30 days, in which case the effective date will be suspended pending further order of the Board or Commission.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino
Chairman, Review Board

STATEMENT
of
BOARD MEMBER MARJORIE REED GREENE

When all is said and done, Center's qualifications turn on a question of character: whether this licensing Commission can trust the information Center's principals provide. From this record, the answer is no.

This proceeding began with an issue to determine whether Center had misrepresented in its renewal application when certifying that no party to the application had any felony convictions, although Charles Knox, a man Center identified as its president, had twice been convicted of felonies in federal court. As the hearing progressed, Center's candor in responding to the issue came into question.

Charles Knox was a moving force behind Center and KUCB-FM from the station's inception in 1979 and in 1984 took on the title of president. See generally Bureau Exh. 1, p. 15 (December 10, 1984 letter signed by Knox as "President"); tr. 1424. Center reported Knox as president in ownership reports dated May 23, 1987, and April 12, 1988. Bureau Exh. 1, pp. 87-90. When Center applied for renewal on January 22, 1990, it again reported Knox as president in the accompanying ownership report. Bureau Exh. 12, p. 5. It also answered "no" to question 6 on the renewal application inquiring about felony convictions of parties to the application. *Id.*, p. 3.

Knox, however, had been convicted in the United States District Court for the Western District of Texas for two counts of fraudulently representing that he was licensed as an attorney in the State of Illinois for purposes of attorney-client visits to an inmate under the jurisdiction of the Department of Justice; he was sentenced on May 29, 1987 to imprisonment for three years and probation for an additional five years. Bureau Exh. 15. For the next year and a half he unsuccessfully appealed to the federal circuit court and the Supreme Court. Tr. 1439. He was next convicted following a guilty plea in the United States District Court for the Northern District of Illinois for, *inter alia*, embezzling funds he had received for KUCB-FM from the National Telecommunications and Information Administration between February 1985 and March 1986; he was sentenced on September 27, 1989 to imprisonment for three years and probation for an additional five, the sentence of imprisonment to run concurrently with and include credit for time served under the Texas conviction.¹ Bureau Exh. 16; Bureau Exh. 17, pp. 4-5.

¹ There is no information in this record about when, if ever, Knox was actually incarcerated under either sentence.

According to Center, its board members knew nothing of Knox's convictions until after the renewal application had been filed, although witnesses certainly admitted to an awareness that Knox had problems with the law attributed to his activism on behalf of the African American community, and KUCB-FM had participated in Knox's legal defense fund in 1987. See Ako Abdul-Samad, tr. 1134; Kalonji Saadiq, tr. 1132, 1430-31.² Knox testified that during a KUCB talk show he "may have referred" to his alleged 20-year persecution by the FBI for his community activities but otherwise "really did not like to discuss his legal problems with anybody." Tr. 1431-32, see tr. 1436, 1440. From Knox's point of view, "people are more interested in my technical ability than whether or not I have a conviction. There is just not that standard in the community, there." Tr. 1440. Ako Abdul-Samad, a Center vice president at the time of renewal, described his first awareness of Knox's convictions as an awareness in "the spring of '90" "that there was a problem, that Charles had gotten into a situation and he was being persecuted, and we had to do something to help, you know, him in the community as we would do anyone else." Tr. 1134.

Also according to Center, Knox was not actively involved in Center activities, so his felony should not prejudice the applicant, Brief, p. 19; there was confusion within the Center board about when Knox ceased his participation with KUCB, *id.*; and

once the knowledge of the convictions of Dr. Knox became known, a prime objective was to openly accept the resignation of Knox and exclude his name from any further actions taken by Center or KUCB. It was due to the lack of information regarding his convictions and the uncertainty of his capacity within the organization by some officers that erroneous information appeared in the Center's application for renewal.

Brief, p. 21.

The record shows that Knox has been active with Center until KUCB-FM went dark between 1987 and 1989. Station personnel sought Knox's help in dealing with the FCC and relied on him for technical training and legal matters. Samad, tr. 1079; Saadiq, tr. 1258, 1289; Long, tr. 1048-50. His name regularly appeared on submissions to the Commission as either the signatory or the one to whom Commission communications should be sent. See Bureau Exh. 1, pp. 10, 15, 56; Bureau Exh. 4, p. 2 item 2; Bureau Exh. 2, p. 1 item 2; Bureau Exh. 3, p. 1; Bureau Exh. 5, p. 1; Bureau Exh. 6, p. 1; Bureau Exh. 7, p. 1; Bureau Exh. 9; Bureau Exh. 10, pp. 1, 3. Knox "was primarily responsible for grantsmanship, and developing the financial resources," according to Kalonji Saadiq, who was with the station until the

² Long's testimony is consistent but evasive. See tr. 1005, 1028-31.

end of 1986. Tr. 1269, 1274, 1298 (Saadiq returned some time after the renewal had been filed, probably early 1991, tr. 1275-76). Knox testified he had "[p]robably very little involvement" during the period the station was dark,³ although station personnel "continued to call me anyway, for consultation," and write to him about station business. Tr. 1391-92. When the station went back on the air in 1989, Knox was "somewhat involved" in the move to the station's Sixth Avenue quarters, and he prepared the 1990 renewal. Knox, tr. 1366, 1395. Until "about the spring of 1990," he "was the one dealing with the technical assistance of the station." Samad, tr. 1135-36. Thus, although Knox may have had reduced contact while the station was dark, Knox again became involved when the station resumed activity. The test for party status, however, is not how actively involved a principal is but whether that person is in the decisionmaking position of governing board member or officer. See Ownership Report for Noncommercial Educational Broadcast Station, FCC Form 323-E, p. 2, item 5 (Sept. 1987).

When Knox left Center's board is far from clear on this record. Long testified that Knox had not been involved with Center since the early 1980's, although he was not sure of the exact date. Tr. 889, 993-94. He added that Knox was not president when Long himself signed Center's 1988 ownership report listing Knox as president, or at the time of Center's 1987 ownership report listing Knox as president, or on January 22, 1990 when the renewal application was signed and he was listed as president in the accompanying ownership report. Tr. 997-99. According to Samad, the Center board met to elect new members when KUCB-FM went back on the air in December 1989; Wayne Ford joined the board and was elected president at that time - with the condition that Knox not be involved or consulted further. Tr. 1119-20, 1150. But, Samad also said that the board was dealing with Knox' resignation at a board meeting in the spring of 1990, after Knox's convictions had become known to the board, and that Knox had been providing technical assistance to the station. Tr. 1135-36. Knox testified that he had been trying to resign from the presidency since 1986 or 1987, but the board "did not want to accept a resignation." Tr. 1397-98. He said he was on the board from the mid-1980's "to resignation, in 1989, even though I tried to resign before that time. I just could not get the board to accept it." *Id.* His resignation had been by telephone, but "in 1989" he submitted a written resignation at Ford's request. Tr. 1400, 1416. If this existed, it was never entered into evidence.⁴ On cross-examination Knox wavered in his certainty about when he

³ This was during the period of Knox's appeal from the Texas conviction. Knox testified he was not out and about during that time, so he was not in Des Moines then. Tr. 1439.

⁴ When asked on direct examination whether Ford, in 1989, had requested a written form to follow up on the oral resignation from three years earlier, Knox responded, "Yes. Mr. Ford wanted, he could not find the file." Tr. 1398. Knox

resigned in writing. He said he was "pretty sure [his written resignation] was around 1989, and preceded the telephonic piece." Tr. 1416. Knox was not sure, however, when Ford was elected president of the board. "It could have been in 1990. I am not sure." Tr. 1417. Knox also was not sure whether Ford was president when he requested Knox's written resignation. "He [Ford] was either president of the board, or ready to be president of the board, or something to that effect, but at the time he requested the resignation, he needed a letter." Tr. 1417. Ford did not appear. The only documentary evidence is Center's March 9, 1990 ownership report which, unlike earlier reports, does not include Knox. Bureau Exh. 1, pp. 91-92.

What is puzzling is why Long, who had filled out the 1988 ownership report listing Knox as president and had asked Knox to take care of the renewal in 1990, would testify that Knox had ceased to be involved in the early 1980's, before the 1987 ownership report listing Knox as president for the first time and the 1988 report signed by Long. Nor did he suggest who might have been president in Knox's place during this period. Also puzzling is why Samad and Knox would testify that Ford sought Knox's written resignation *in 1989* and Samad would explain that the board changes were conditioned on no further involvement or consulting by Knox -- before the board supposedly knew about the convictions and before Long asked Knox to take care of the renewal. Previous board elections had seemed fairly informal; Knox had said he wanted to be replaced; there is no hint in the record of friction between Knox and either Ford or the board in 1989; and there is no hint of any board effort to seek other advisors. In short, the record is devoid of any reason for needing a written resignation and separation from KCUB in 1989, if Center's argument that it knew nothing of Knox's convictions until later is to be believed. Indeed, Saadiq (who returned to Center some time after the renewal had been filed) described Knox as "an inspiration to the station," tr. 1304, and Samad "had just a real problem [with Knox's resignation] till things were explained to me."⁵ Tr. 1136. This was "in about the

continued with an explanation that files were missing from break-ins at the station in about 1986 and 1987, but failed to explain what these break-ins had to do with his written resignation in 1989 or what documentation of his earlier oral resignation might have been affected.

⁵ Because Saadiq had returned to the station some time after the renewal application was filed and Knox's resignation demanded, he did not personally observe what transpired then. Nonetheless, based on what he "had heard," he referred during his August 17, 1991 talk show to "a time when [Knox], who was a major thrust in this radio station, *had to resign*." Tr. 1310-11 (emphasis added). He referred to Knox as his "beloved" and "courageous brother" whom he "loved dearly." *Id.* Saadiq confirmed in his testimony that he "had heard that [Knox] had to resign." Tr. 1311. While this hearsay does not establish that Knox was forced to resign, the statement shows that this is what Saadiq had heard about the resignation.

spring of 1990," when the board was dealing with Knox's criminal convictions and resignation letter. Tr. 1135 (testimony does not make clear whether resignation letter had been received or whether decision to request one had been made or was still under consideration).

Also puzzling is the testimony of Long and Knox about preparation of the 1990 renewal application. Long tried to create the impression during his testimony before the ALJ that *he, Long*, had prepared, signed, and sent in the 1990 renewal application, even going so far as to explain why he had erroneously included Knox's name in the accompanying ownership report,⁶ although he did not prepare either the application or the ownership report at all, or sign them, or send them in. Tr. 996-97, 1000, 1394. Long also said he was not in substantial contact with Knox when he, Long, filled out the renewal, although, according to Knox, he had called Knox in Chicago to ask him to prepare it because no one else would. Tr. 956, 1394-95.

Knox kept up the subterfuge in his testimony. He testified that, when he received the renewal application from Long, "it was for the most part, already filled out. We are talking about the application and the Equal Opportunity report?" Tr. 1414. He said that the copy he received from Long included the listing of board members on the ownership report. Tr. 1413. He said that, when he learned that an erroneous ownership report had been filed, he contacted Samad and talked with Long about the need for a corrected report. Tr. 1411. Yet, when shown the application and ownership report, he admitted the handwriting listing the names and addresses of board members is his and that he had filled out and signed Long's name to the ownership report. Tr. 1415. He had even corrected his own address, which suggests more than a mindless copying of an old report, if he even had one at hand. *Compare* Bureau Exh. 12, p. 5 (Center 1/22/90 ownership report), *with* Bureau Exh. 1, p. 88 (Center 4/12/88 ownership report). He did not dispute Bureau counsel's assertion that

⁶ When questioned about why the January 1990 ownership report includes Knox, Long said:

Lots of times when we sent -- when I sent the ownership report in, we -- in the times I sent it in, we didn't remove -- I didn't remove people that had been -- was no longer with the Center. I didn't remove their names, because when you do the ownership report, to add some people in, you always remove some people.

Tr. 996. However, the 1988 report Long filled out did include an additional name, his, and was handwritten. *See* Bureau Exh. 1, p. 88. Long also explained he was in a hurry when he did ownership reports, although the record shows that he did only the 1988 report. Tr. 996.

he had filled in the negative response to question 6 regarding felony convictions on the renewal application himself, and he admitted to signing Long's name for the certification. Tr. 1395-96, 1415, 1416. Indeed, all of the information on the renewal and accompanying reports is handwritten, and all of the handwriting on the renewal application form and on the attached Equal Opportunity Report bears a strong resemblance to Knox's handwriting on the ownership report and no resemblance to the handwriting on Center's April 12, 1988 ownership report that Long said he had prepared.⁷ Tr. 998; *compare* Bureau Exh. 12 (Center 1/22/90 renewal application, with attachments) *with* Bureau Exh. 1, pp. 87-88 (Center 4/12/88 ownership report). Yet, both Knox and Long had claimed Long participated in preparing the form. On January 30, 1990 Center forwarded an additional copy of the renewal application to the Commission. Bureau Exh. 13. The transmittal letter is signed "Jamal Long" in a handwriting that strongly resembles the signatures reading "Jamal Long" that Knox wrote on Center's January 20 renewal application, ownership report and transmittal letter. *Compare* Bureau Exh. 13 with Bureau Exh. 12, pp. 1, 3, 5.

So, what conclusions should this Review Board draw from all of this? Center would have us believe the misinformation in the renewal application was simply a mistake resulting from the board's lack of information about Knox's convictions and uncertainty about his position. But, there is only Knox's uncorroborated testimony that he tried to resign in 1986 or 1987. Center repeatedly reported Knox as its board president from 1987 until its March 9, 1990 report, which stated that the information therein was reported as February 10, 1990, several weeks after the renewal had been filed. Bureau Exh. 1, p. 91 item 4.⁸ According to Knox, Center continued to seek his

⁷ The only information needed on Center's Equal Employment Report was the call letters, licensee name, and community of license for the station, an "x" to indicate the type of station, the name and address of the person to whom notices and communications should be sent, and an "x" to indicate that the station employs fewer than five full-time employees. The only information needed on Center's renewal application was the applicant name; its address, call letters, and principal community; two responses, each indicated by an "x," showing that employment and ownership reports were attached; yes or no responses to four additional questions; and a certification as to the truth, completeness and correctness of the information. Center added a five word response to one question. Knox testified that Long had asked for his help because "[t]here was some problem with filling out the renewal application, and he requested assistance, my assistance, in filling that application out." Tr. 1394. The nature of the "problem" was never identified.

⁸ The record includes a memorandum from the board authorizing Richard Eugene Fowler to be station operator. Bureau Exh. 1, p. 76. This was signed by Ford and dated January 26, 1990, just four days after Center's renewal application was signed, but it was not authenticated during the hearing by Ford or any other witness. Even

assistance in spite of his protestations that other board members learn to handle things themselves, and Long, who testified that Knox hadn't been involved since the early 1980's, turned over the 1990 renewal application to Knox. Indeed, from the handwriting in the January 30, 1990 letter transmitting a copy of the renewal to the Commission, it appears that Knox did even that. According to Samad, the decision about Knox's resignation -- in the spring of 1990 -- was a difficult one, and Saadiq later heard that Knox's resignation had been forced. From all of this, Knox's preparation of the renewal application appears to have been business as usual. There is much on this record to support the ALJ's conclusion that, at the time of the renewal, Knox was a party to the application and knowingly misrepresented when saying no party to the application had been convicted of a felony.

Center clearly has been badly served by Knox. Center's members trusted him, relied on him, revered him. See Saadiq, tr. 1304, 1325. In return, Knox embezzled funds Center badly needed, let KUCB and Center members participate in fundraising for his defense, and may well have avoided disclosing the reasons for his persecution to Center members. Had Center been candid about what went on with Knox, it may well have found sympathy at the Commission. But, this record does not show candor. Center argues that, when it learned of Knox's convictions, it took public action. If it learned of the problems after the renewal had been filed, as it said it did, why Samad's repeated testimony that action was taken in 1989 -- before the renewal application and before competing applications threatened Center's renewal? Why did Knox testify to board action in 1989 until pushed on cross-examination? Why did Long deny Knox's involvement in Center since the early 1980's -- while turning to Knox to take care of the renewal and insisting he had done it himself? Knox's testimony about this, too, is lacking in candor, changing from what appears to be Center's story only when pushed on cross-examination.⁹

if Ford had been authorized to act as president on January 26, this does not establish that Knox had left the board before February 10, 1990, the reporting date specified in the March 9, 1990 ownership report filed by Ford. See 47 CFR § 73.3615(a) (ownership reports shall provide the information as of a date not more than 60 days prior to the filing of the report).

⁹ Although according to Center Knox was not a Center director or officer when he testified, the ALJ found that Center presented Knox as a witness and vouched for the truthfulness of his testimony. *ID* ¶ 101. The ALJ ordered Center to produce Knox as a witness. Center complied but did not treat Knox as a hostile witness. Indeed, we note that Center's counsel here represented Knox at judgment in the Texas matter. See Bureau Exh. 15, p. 1. In this context, his lack of candor is relevant to the overall question of Center's candor.

There is testimony on this record about the lack of legal justice and government persecution. *See Samad*, tr. 1134; *Saadiq*, tr. 1288, 1304, 1311-12; *Knox*, tr. 1432 ("I feel that the FBI was totally involved with trying to destroy the station and had influence on those agencies which even regulate the station."). I want to emphasize that this Review Board's decision has nothing to do with government persecution or quashing civil rights activities and everything to do with the Commission's requirement of truthfulness and reliability from its licensees, an expectation derived from the Communications Act of 1934, as amended, 47 U.S.C. § 308(b), and years of Commission precedent. *See, e.g., Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1183, 1210-11 (1986). The false statement in Center's renewal application is transformed from the wrongdoing of one malfeasant by the candorless testimony of Long, by Samad's participation in the attempt to show that Center's break with Knox came before it actually occurred, and by presenting as truthful candorless testimony from Knox. This alone warrants disqualification. *See Richardson Broadcasting Group*, 7 FCC Rcd 1583, 1583-85 (1992), *recon. denied sub nom. Elizabeth M. Younts*, 8 FCC Rcd 1714 (1993), *aff'd by judgment*, 995 F.2d 306 (D.C. Cir. 1993).