



Federal Communications Commission
Washington, D.C. 20554

December 14, 2012

In Reply Refer to:
1800B3-HM

Gregory J. Conroy
Board of Trustees Southern Illinois University
Southern Illinois University
Campus Box 1773
Edwardsville, IL 62026 - 1773

In re: Board of Trustees Southern Illinois
University
WSIE(FM), Edwardsville, Illinois
Facility ID: 6128
File No. BRED-20120726AAU

Dear Mr. Conroy:

This letter refers to the captioned application of Board of Trustees Southern Illinois University ("Licensee"), for renewal of license for Station WSIE(FM), Edwardsville, Illinois ("Station"). For the reasons set forth below, we admonish Licensee for its violation of Section 73.3527¹ of the Commission's Rules ("Rules") regarding a broadcast station's public inspection file, and we grant the WSIE(FM) license renewal application.

Violation. Section III, Item 3 of the license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3526 or 73.3527 of the Rules, as applicable, has been placed in its station's public inspection file at the appropriate times. Licensee indicated "No" to that certification, attaching an Exhibit 12 to the application. Licensee explained that, in the process of reviewing the Station's public inspection file, it discovered that the issues/programs listed for the second, third, and fourth quarters of 2009 were missing.² Licensee believes that a change in management at the time of the missing reports and a limited staff of only two full-time employees may have contributed to the missing issues/programs lists.³ However, Licensee states that its current Station management has taken steps to ensure that the public inspection file complies with applicable regulations.⁴

Section 73.3527 of the Rules requires a noncommercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations. This requirement serves to provide the public with timely, pertinent, information throughout the license period.⁵ In this regard, where lapses occur in maintaining the public file, neither the negligent acts or omissions of station

¹ 47 C.F.R. § 73.3527.

² Application at Exhibit 12.

³ *Id.*

⁴ *Id.*

⁵ Cf. *Letter to Kathleen N. Benfield from Linda B. Blair, Chief, Audio Services Division* (April 3, 1997), 13 FCC Rcd 4102 (1997), citing *License Renewal Applications of Certain Commercial Radio Stations*, Memorandum Opinion and Order, 8 FCC Rcd 6400 (1993).

employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.⁶

Section 503(b) of the Communications Act (the "Act")⁷ and Section 1.80(a) of the Rules,⁸ each state that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term "willful" means that the violator knew it was taking the action in question, irrespective of any intent to violate the Rules.⁹ A continuing violation is "repeated" if it lasts more than one day.¹⁰

The Commission's *Forfeiture Policy Statement* sets a base forfeiture amount of \$10,000 for violation of the public file rule.¹¹ In this case, the violations were admitted to the Commission in the context of the license renewal application, but only in the context of the question contained in the license renewal application that compelled such disclosure. On the other hand, the violations involve only three untimely filed issues/programs list. Considering the record as a whole, we believe that an admonishment rather than a forfeiture is appropriate for the violations in this case.¹²

License renewal application. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.¹³ That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission's Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁴ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application "on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted."¹⁵

⁶ See *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709 (1999)(citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)); *Surrey Front Range Limited Partnership*, Letter, 7 FCC Rcd 6361 (FOB 1992).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80(a).

⁹ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-4388 (1991).

¹⁰ *Id.*, 6 FCC Rcd at 4388.

¹¹ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) ("*Forfeiture Policy Statement*"), recon. denied, 15 FCC Rcd 303 (1999), 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹² Staff practice in cases where the Section 73.3526 or Section 73.3527 violation has lasted less than one year (i.e., involved fewer than four missing issues/programs lists) has generally been to admonish the licensee rather than issue an NAL. See, e.g., *Letter to Eure Communications, Inc., WWWV(FM), Charlottesville, Virginia*, Reference 1800B3-KV (MB Oct. 8, 2003).

¹³ 47 U.S.C. § 309(k).

¹⁴ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).


¹⁵ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

The public inspection file rule serves the critical function of making available to the public important information regarding programs that provided a station's most significant treatment of community issues during the license term. On balance, however, we find that Licensee's violations of Section 73.3527 do not constitute "serious violations" of the Rules warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.¹⁶ Further, we find that Station WSIE(FM) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.¹⁷

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED, that the Board of Trustees Southern Illinois University, IS HEREBY ADMONISHED for its apparent violations of Section 73.3527 of the Rules, and we caution Licensee to be and remain more diligent in the future regarding the operation of WSIE(FM).

Finally, IT IS FURTHER ORDERED pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the application (File No. BRED-20120726AAU) of Board of Trustees Southern Illinois University, for renewal of license for Station WSIE(FM), Edwardsville, Illinois, IS GRANTED.

Sincerely,


Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁶ For example, we do not find here that Licensee's station operation "was conducted in an exceedingly careless, inept and negligent manner and that the Licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200. *See also Center for Study and Application of Black Economic Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991), *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

¹⁷ *See* 47 U.S.C. § 309(k).