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July 12, 2010

P. Michele Ellison, Bureau Chief  
Office of the Bureau Chief  
Enforcement Bureau  
Federal Communications Commission  
445 12th Street, SW  
Room 7-C723  
Washington, DC 20554

Peter Doyle, Chief  
Audio Division  
Media Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Notification of the University of Tulsa Concerning Compliance Issues

Dear Chief Ellison and Chief Doyle:

The University of Tulsa (hereinafter "University" or "Licensee"), licensee of non-commercial educational FM stations KWGS and KWTU in Tulsa, Oklahoma, by undersigned counsel, hereby submits this notification advisory with respect to compliance with the provisions of 47 CFR Sect. 73.3527 et al. The University is

submitting this notification advisory after completion of its own audit of the stations' public files. This audit was conducted by the Oklahoma Association of Broadcasters ("OAB") pursuant to OAB's Alternative Broadcast Inspection Program ("ABIP"), as sanctioned and approved by the Federal Communications Commission ("FCC"). This advisory is being submitted to provide the FCC with information as to the University's now full compliance with 47 CFR Sect. 73.3527, as identified by the University during and after the above-mentioned audit. This is also being submitted to demonstrate that the licensee has taken all steps to bring the stations into full compliance with FCC-stated requirements to properly maintain a public file, and the actions taken to insure full and timely compliance in the future.

## Background

### I. Brief History of the University's Stations

KWGS and KWTU are non-commercial FM stations licensed to the University of Tulsa. KWGS covers northeastern Oklahoma with a power of 50,000 watts; KWTU serves Tulsa with 5,000 watts. KWGS and KWTU are affiliates of National Public Radio, American Public Media, Minnesota Public Radio, and the British Broadcasting System. KWGS began broadcasting on October 19, 1947 – some 63 years ago, and was the first non-commercial FM station in Oklahoma, as well as one of the first educational stations in the country.

The University sought to expand its service and programming diversity by establishing a second station in the Tulsa area. This resulted in KWTU commencing operations in October, 2004. It has been continuously operating and serving the Tulsa community for almost six years.

Both stations not only serve the greater Tulsa area but they are used as teaching labs for the University's communication curriculum, training students in broadcasting, journalism, management, and related fields. They have had exemplary compliance records throughout the years of service to their community of license and environs.

## II. Recent Developments Concerning Compliance with FCC Rules

### A. The Oklahoma Association of Broadcasters (OAB) "Alternative Broadcast Inspection Program"

In mid-2009 the University wished to independently confirm/buttreass the University's own internal FCC compliance program. The University turned to the OAB and asked the OAB to send an independent inspector to the stations, under OAB's Alternative Broadcast Inspection Program ("ABIP"). As the Commission is aware, these independent inspections/audits are conducted by qualified individuals contracted by the OAB and approved by the FCC's Dallas Field Office.

The OAB advises the FCC Dallas Field Office and OAB's contract inspector of a station's request for an inspection. Within 30 days, the Inspector contacts the General/Station Manager of the station(s) to establish a date for inspection. The FCC's Field Office is notified of the request and a 150-day "grace period"

commences. Within this 150-day grace period the stations are inspected, corrections are made to any existing or potential non-conformance with FCC regulations, they are re-inspected if necessary (not necessary in this case), and the stations receive Certificates of Compliance (which the University's stations have from the OAB; copies attached).

If a station successfully completes the ABIP program, the FCC will exempt it from FCC random inspections for a period of three (3) years from the date of issuance of the Certificate.

#### B. The University's Participation in the ABIP Program

The University entered into a standard agreement with OAB with respect to this program. Inspection of the stations was conducted in November of 2009. As a result of this inspection, a report of the inspector's findings was compiled and provided to the University licensee.

In the report, the OAB documented several items on its checklist of FCC-required items which the inspector could not readily locate in the stations' public files. Many of these items were located at the time of the inspection and re-cataloged/re-filed within the public files for ease of reference in the future. Relevant highlights of the inspection report found potential deficiencies or missing items as noted below:

1. Documents Required to be Placed in Public File on an On-Going Basis
  - a. Quarterly Issues and Programs Lists as follows:

- 1st, 2nd, 3rd Quarter 2009
- 1st, 2nd, 3rd and 4th Quarters of 2008
- 1st, 2nd, 3rd and 4th Quarters of 2007
- 1st, 2nd, 3rd and 4th Quarters of 2006
- 1st, 2nd, 3rd and 4th Quarters of 2005

b. EEO Annual Public File Reports as follows:

- February 1, 2008 thru January 31, 2009
- February 1, 2007 thru January 31, 2008
- February 1, 2006 thru January 31, 2007
- February 1, 2005 thru January 31, 2006

(Joint EEO Reports were properly posted to the [publicradiotulsa.org](http://publicradiotulsa.org) website on-time, but with the exception of one year, printed copies were not placed in the public file. This has since been remedied.)

c. Bi-Annual Ownership Report to be filed by November 2009

(A non-commercial station report was filed on 3/31/10 and placed in the public file.)

d. 'Station Log', which must be maintained for two years to-date and must include a minimum of:

- All EAS activity received and transmitted
- Transmitter readings if any adjustments are required

(These were in the public file and reviewed by the inspector. They were since removed from the public file and placed in the control point file.

## 2. Documents Required to Be Placed in the Public File on a One-time Basis

### a. FCC Public and Broadcast Manual, circa July 2008

(While an older version of the manual was in the KWGS file, none was in the KWTU file. This has since been remedied.)

### b. Copy of any Application(s) filed with the FCC since January 2005

### c. A KWGS Signal Contour Map with the studio address noted thereon

(A contour map was in the public file, but did not have the studio address printed on the map; since added.)

### d. Donor List of contributions for underwriting/sponsoring specific programs for the past two years to-date

(There were too many donor lists listing all programs, not just specific underwritten programs. This section was pared down as appropriate and accurate.)

### e. Basic 'Written Instructions for Operators' placed at the Control Point

(They were present, but not easily accessed by operators or inspector. This has since been rectified.)

### f. Copy of the FCC's AM & FM EAS Handbook and the Oklahoma State EAS Plan must be present at the EAS equipment Control Point.

(These were in the public file (the national handbook was current, but the Oklahoma plan was outdated). Moved from the public file to the control point file.)

### III. Remedial Efforts of the Licensee

While no member of the public has requested access to the stations' public files in station management memory, and thus no one was denied or delayed access, the University always stands ready to accommodate any legitimate request for inspection. The University has taken all necessary and/or appropriated steps to address the legitimate deficiencies identified in the OAB inspection report. As a result, the University has received a Certificate of Compliance from the OAB. (See attached.)

These remedial measures have been taken swiftly and voluntarily. The stations' licenses are not due for renewal until June 1, 2013. The participation in the FCC/OAB ABIP program was not entered into in anticipation of, or during the application for, license renewal; rather, minor lapses were discovered and corrected mid-license term on a voluntary, self-policing basis.

The University believes these lapses occurred in large part because it had previously relied on an outside consulting company which routinely advised broadcast licensees as to public file and other requirements. The licensee now recognizes that the public file filing system used was outdated, and that has been corrected.

The University has had FCC counsel for several decades, and FCC counsel routinely advises as to existing as well as changes or proposed changes in FCC Rules

and policies and the need to comply with all relevant FCC Rules and regulations.

There may have also been a lack of full communication and delineation of responsibility between the University's Director of Broadcast Services Office and the stations' General Manager's Office.

To insure these oversights in terms of requisite items being placed in the stations' public inspection files on a routine, timely basis, will not occur in the future, the following additional step has been undertaken: Both a representative of each Office within the University responsible for the broadcast stations have updated compliance manuals and are cross-checking between them as to FCC requirements on a routine, monthly basis.

### III. The University Requests Favorable Consideration under the Circumstances

#### A. Responsibility for Maintaining a Local Public File

47 CFR Sect. 73.3527 sets out the requirements for establishment and maintenance of the local public inspection file of noncommercial educational stations. As the FCC's Media Bureau itself notes in its manual "The Public and Broadcasting: How to Get the Most Service from Your Local Station" (Revised July 2008)

"Our rules require that all licensees and permittees of TV and radio stations and applicants for new broadcast stations maintain a file available for public inspection. This file must contain documents relevant to the station's operation and dealings with the community and the FCC. The public inspection file generally must be maintained at the station's main studio...."

The FCC also sets out the purpose of the public file:



Because we do not routinely monitor each station's programming and operations, viewers and listeners are an important source of information about the nature of their area stations' programming, operations, and compliance with their FCC obligations. The documents contained in each station's public inspection file have information about the station that can assist the public in this important monitoring role.

## B. FCC Enforcement Authority & Precedent

The FCC issues admonitions and/or assesses proposed forfeiture amounts in accordance with Section 503(b) of the Communications Act, Section 1.80 of the Commission's Rules, and the Commission's forfeiture guidelines as set forth in its *Forfeiture Policy Statement*. The Forfeiture Guidelines establish a maximum of \$10,000.00 as the baseline fine for serious, on-going, FCC-discovered/identified violations of 47 CFR Sect. 73.3527.

In assessing forfeitures, Section 503(b) of the Communications Act of 1934, as amended, requires the FCC take into account the nature, circumstances, extent, and gravity of the alleged violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters as justice may require.

The *Forfeiture Policy Statement* and Section 1.80(b)(4) of the FCC's Rules permit downward adjustment of proposed forfeitures on the basis of the transgression(s) being relatively minor in nature, good faith or voluntary disclosure,

history of overall compliance, or inability pay, as well as other factors within the discretion of the Commission staff. (47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II, Adjustment Criteria for Section 503 Forfeitures, Downward Adjustment Criteria.) The FCC routinely reduces proposed fines on the basis of licensee voluntary disclosure of the potential violation. Reduction will also be accorded based on a licensee's history of compliance with the Rules. *See, e.g., Christian Center, Inc.*, Forfeiture Order, 24 FCC Rcd 1128 (MB 2009); *ROA Licenses, LLC*, Forfeiture Order, 23 FCC Rcd 11326 (MB 2008). In each case, the underlying Notice of Apparent Liability initially found the licensee apparently liable but reduced the forfeiture amount based on the licensee's voluntary disclosure of its public file deficiencies.

#### C. Circumstances in this Case Support Issuing an Admonition Only or Significantly Reducing Any Proposed Forfeiture

The Commission customarily admonishes a licensee as a first warning in circumstances such as these and based on the overall track record of the licensee. It is submitted this should be the extent of any FCC action here, based on the overall, long compliance record of the licensee. Alternatively, the FCC may issue a forfeiture for apparent violations of Sect. 73.3527. However, for the reasons submitted, the University believes there are numerous mitigating factors which should serve to significantly reduce or eliminate any forfeiture(s) which might be considered for

imposition as a result of the circumstances described in this advisory. The University has an exemplary record as licensee of noncommercial educational broadcast stations, with its flagship station having over six (6) decades of service to the public and compliance with FCC Rules. Perhaps most importantly, the University conducted the internal audit voluntarily, absent any regulatory pressure from the FCC or any impending license renewal. In short, the University has met all relevant criteria established by prior FCC decisions and policy which would argue for just issuing an admonition or warning, or reducing any forfeiture which might otherwise be imposed in this case.

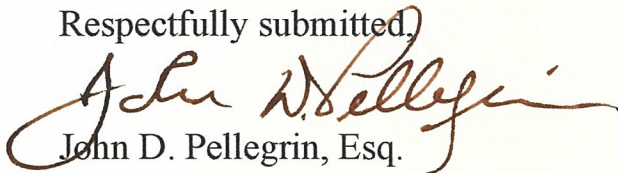
The public file has for decades been located at the main studio and has always been available for inspection as required by Sect. 73.3527. At most, for a relatively brief period of time, there were some items missing from that public file – now fully rectified.

Again, the University has brought the present situation to the Commission's attention voluntarily. It has participated in the OAB/FCC ABIP program, which is designed to bring all stations into compliance with FCC Rules. Prior to this inadvertent administrative error/oversight, the public file was fully maintained, and will be so maintained on an ongoing basis. The University has established written procedures implemented by its staff to ensure future compliance, which procedures will be included in all future staff training and cross-checked on a regular basis.

## Conclusion

For the foregoing reasons, the University of Tulsa respectfully requests that the Commission consider the totality of the circumstances in this case and either issue a letter of admonition, decline to issue any forfeiture, or at most, impose a minimal forfeiture(s).

Respectfully submitted,



Federal Communications Commission Counsel for the University of Tulsa  
Licensee of Non-commercial educational FM Stations KWGS & KWTU

## Attachments (2)

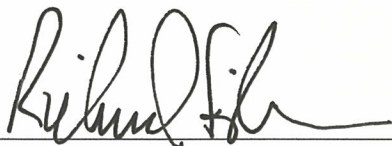
*Also Of Counsel to Moran Monfort, P.L.C.*

The facts and arguments contained hereinabove are true and correct to the best of my information, belief and/or knowledge.

s/ 

Date: July 12, 2010

Frank Christel, Director, Broadcast Services, University of Tulsa

s/ 

Date: July 12, 2010

Richard Fisher

General Manager, Stations KWGS & KWTU, University of Tulsa





## ALTERNATIVE BROADCAST INSPECTION PROGRAM

# *Certificate Of Compliance*

## KWGS-FM Tulsa

The Oklahoma Association of Broadcasters (The "Association") hereby certifies that the above-named station (i) recently participated in the association's **Alternative Broadcast Inspection Program**, which is maintained by the Association pursuant to an agreement between the Association and the Enforcement Bureau of the Federal Communications Commission (the "Bureau"), and (ii) has successfully completed that program.

Accordingly, pursuant to the agreement, the Association hereby issues this original executed and valid Certificate of Compliance on this 19<sup>th</sup> day of April, 2010. This Certificate of Compliance will remain in full force and effect for a three-year period up to and including April 18<sup>th</sup>, 2013.

Vance Harrison, President  
Oklahoma Association of Broadcasters

**66586**

Facility ID Number





Oklahoma Association of Broadcasters

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## ALTERNATIVE BROADCAST INSPECTION PROGRAM

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# *Certificate Of Compliance*

## KWTU-FM Tulsa

The Oklahoma Association of Broadcasters (The "Association") hereby certifies that the above-named station (i) recently participated in the association's **Alternative Broadcast Inspection Program**, which is maintained by the Association pursuant to an agreement between the Association and the Enforcement Bureau of the Federal Communications Commission (the "Bureau"), and (ii) has successfully completed that program.

Accordingly, pursuant to the agreement, the Association hereby issues this original executed and valid Certificate of Compliance on this 19<sup>th</sup> day of April, 2010. This Certificate of Compliance will remain in full force and effect for a three-year period up to and including April 18<sup>th</sup>, 2013.

Vance Harrison, President  
Oklahoma Association of Broadcasters

**81517**

Facility ID Number