



Federal Communications Commission
Washington, D.C. 20554

June 7, 2013

In Reply Refer to:
1800B3-SS

Indiana State University
c/o Philip M. Glende, Ph.D.
217 Dreiser Hall
Terre Haute, IN 47809

In re: **WISU(FM), Terre Haute, IN**
Indiana State University
Facility ID No. 28603
File No. BRED-20120329ACV

Dear Dr. Glende:

This letter refers to the referenced application of Indiana State University ("Licensee" or "ISU") for renewal of license for Station WISU(FM), Terre Haute, Indiana ("Application"). For the reasons set forth below, we admonish ISU for violation of Sections 73.3527 and 73.3615 of the Commission's Rules ("Rules")¹ regarding the filing of issues/programs lists and biennial ownership reports in a broadcast station's public inspection file, and we grant the Application.

Public file rule 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 the station's public inspection file at the appropriate times. ISU indicated "No" to that certification, attaching an exhibit explaining that the issues/programs lists for the first and second quarters of 2012 were absent from the public inspection file and that the biennial ownership report, which was required to be filed by April 1, 2006, was filed on February 13, 2007.² The exhibit also noted that all missing reports have since been placed in the public inspection file and that additional measures have been implemented to meet all mandatory deadlines going forward.³

¹ 47 C.F.R. §§ 73.3527 and 73.3615.

² See *id.*; see also Application at Exhibit 12.

³ See Application at Exhibit 12. ISU also notes that current management is unable to verify that all pre-filing announcements were broadcast at appropriate times, although the former, and now deceased, general manager left a recording of the announcement and a draft certification indicating that pre-filing announcements did air. With respect to post-filing announcements, ISU states that all announcements were made on the specified dates but two aired during incorrect dayparts; the station broadcast additional post-filing announcements to address the deficiency. *Id.* We find that Licensee's efforts here constitute substantial compliance with 47 C.F.R. § 73.3580(d)(4)(i) and (ii) and that no further action is required on this matter. See *Mark N. Lipp, Esq.*, Letter, 22 FCC Rcd 21429, 21433 (MB 2007) (airing of pre- and post-filing announcements at incorrect times found to be in "substantial compliance" with Section 73.3580).

Section 73.3615 of the Rules requires broadcast licensees to file a biennial ownership report when filing the station's application for renewal of license and every two years thereafter on the anniversary of the date its renewal application is due to be filed. The purpose of this requirement is to provide the public with timely information at regular intervals throughout the license period.⁴

Section 503(b) of the Communications Act ("Act")⁵ and Section 1.80(a) of the Rules⁶ 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.⁷ A continuing violation is "repeated" if it lasts more than one day.⁸ In this regard, where lapses occur in maintaining the public file, neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.⁹

The Commission's *Forfeiture Policy Statement* sets a base forfeiture amount of \$10,000 for public file violations.¹⁰ In this case, the public file and ownership report violations were admitted to the Commission in the context of the license renewal application, albeit in response to questions compelling such disclosure. However, the violations involved only two of 28 required issues-programs lists and one untimely ownership report. Considering the record as a whole, we believe that an admonishment, rather than a forfeiture, is appropriate for the violations in this case.¹¹

License renewal application. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act. 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 Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal

⁴ Cf. *Letter to Kathleen N. Benfield from Linda B. Blair, Chief, Audio Services Division*, 13 FCC Rcd 4102 (MMB 1997), citing *License Renewal Applications of Certain Commercial Radio Stations*, Memorandum Opinion and Order, 8 FCC Rcd 6400 (1993).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80(a).

⁷ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-4388 (1991).

⁸ *Id.*, 6 FCC Rcd at 4388.

⁹ 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*, Notice of Apparent Liability, 71 RR 2d 882 (FOB 1992).

¹⁰ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

¹¹ See note to 47 C.F.R. § 1.80(b)(4). See also *Tabback Broadcasting Company*, Memorandum Opinion and Order, 15 FCC Rcd 11899, 11900 (2000) (Commission affirmed staff decision to admonish licensee for violation of the public inspection file rule); *Sarkes Tarzian, Inc.*, Memorandum Opinion and Order, 65 FCC 2d 127 (1975) (same); *Minority Voice, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 5607, 5611 (MB 2008) (licensee admonished for its violation of Sections 73.3526 and 73.3615 of the Rules).

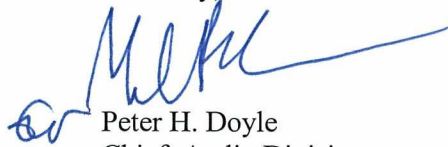
application.¹² If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”¹³

The public inspection file and biennial ownership report rules serve the critical function of making available to the public important information regarding a station’s ownership interests and 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 Sections 73.3527 and 73.3615 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,¹⁴ and we find that Station WISU(FM) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.¹⁵

Conclusion/Actions. Indiana State University IS HEREBY ADMONISHED for its admitted violation of Sections 73.3527 and 73.3615 of the Rules, and we caution the licensee to be and remain more diligent in the future regarding record retention and filing requirements for Station WISU(FM).

Finally, IT IS FURTHER ORDERED, that the application (File No. BRH-20120329ACV) of Indiana State University for renewal of license for Station WISU(FM), Terre Haute, Indiana, IS GRANTED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

¹² 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).

¹³ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁴ For example, we do not find here that the 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.*, 32 FCC 2d 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).

¹⁵ *See* 47 U.S.C. § 309(k).