



Federal Communications Commission
Washington, D.C. 20554

FEB 22 2006

In Reply Refer to:

1800B3-MAT
NAL/Acct No.:
MB200541410121
FRN: 0005273230

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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In re: WEAX(FM), Angola, IN
Tri-State University
Facility ID No. 67795
File No. BRED-20040323ASY

Dear Counsel:

This letter refers to the captioned application of Tri-State University ("Tri-State) for renewal of license for station WEAX(FM), Angola, Indiana. For the reasons set forth below, we issue a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE to Tri-State University for violation of the Commission's rule regarding a broadcast station's public inspection file, 47 C.F.R Section 73.3526, and we grant the WEAX(FM) license renewal 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, has been placed in the station's public inspection file at the appropriate times. Tri-State indicated "No." The Exhibit for Item 3 stated:

For a period of time during the previous license term, station WEAX did not properly maintain the public inspection file. The situation was corrected with the hiring in 2001 of an operations manager for the station. The station also retained communications counsel beginning in the fall of 2001. To the extent possible, the public inspection file has been brought up to date. Quarterly issues/programs lists for period from January 2000 have been prepared and placed in the file. Unfortunately, lists for quarters prior to that date apparently were not prepared or have been lost. Reconstruction of those missing lists does not appear to be possible.

In subsequent amendments to the application¹ Tri-State admits that:

¹ Tri-State amended the renewal application on December 2, 2004 and February 10, 2005.

that statement now appears to be inaccurate due to a misunderstanding as to the work done by the previous operations manager. As noted above, the licensee cannot now locate any of the quarterly issues programs lists for the last license term except the listings for the second quarter of 2003, and the second and third quarters of 2004.

Section 73.3526 of the Commission's Rules requires broadcast licensees to maintain a public inspection file containing specific types of information related to station operations. The purpose of this requirement is to provide the public with timely information at regular intervals throughout the license period.² 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.³

Section 503(b) of the Communications Act and Section 1.80(a) of the Commission's rules each state that any person who willfully or repeatedly fails to comply with the provisions of the Communications Act or the Commission's rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Communications Act, the term "willful" means that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission's rules.⁴ A continuing violation is "repeated" if it lasts more than one day.⁵

The Commission's Forfeiture Policy Statement sets a base forfeiture amount of \$10,000 for public file violations.⁶ In this case, the violations were admitted to the Commission in the context of the license renewal application. On the other hand, the application, as amended on December 2, 2004, indicated that the public inspection file for WEAX currently does not contain quarterly issues/programs lists for any of the quarters of the previous license term, except for the second quarter of 2003 and the second and third quarters of 2004. As a result, the public file was incomplete for a considerable amount of time. Considering the record as a whole, we believe that a \$10,000 forfeiture would be appropriate for the violations in this case.⁷ However, in light of the licensee's voluntary disclosure, we are reducing the forfeiture by \$1,000, for a total forfeiture of \$9,000.⁸

² Cf. *Letter to Kathleen N. Benfield*, 13 FCC Rcd 4102 (MMB Apr. 13, 1997) (citing *License Renewal Applications of Certain Commercial Radio Stations*, 8 FCC Rcd 6400 (1993)).

³ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Front Range Limited Partnership*, 7 FCC Rcd 6361 (FOB 1992) ("Surrey").

⁴ See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4387-88 (1991).

⁵ *Id.* at 4388.

⁶ *Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 17087, 17113 (1997), recon. denied, 15 FCC Rcd 303 (1999).

⁷ *Dick Broadcasting Co. of Tennessee, Inc.*, 19 FCC Rcd 6319 (MB 2004); *Pacific Spanish Network, Inc.*, 14 FCC Rcd 10021 (MMB 1991); and *Padre Serra Communications, Inc.*, *supra*.

⁸ See *Surrey*, 7 FCC Rcd at 6361.

License renewal application. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Communications 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 Communications 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.⁹ 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.”¹⁰

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 Tri-State's violation of Section 73.3526 does not constitute a “serious violation” of the Commission's rules warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.¹¹ Further, we find that station WEAX(FM) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.¹²

Conclusion/Actions. For the reasons set forth above, and pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. Section 503(b), and Sections 0.283 and 1.80 of the Commission's Rules, 47 C.F.R. Sections 0.283 and 1.80, Tri-State University is hereby advised of its apparent liability for a forfeiture of \$9,000, for willfully and repeatedly violating Section 73.3526.

IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, that within thirty days of the release of this Notice, Tri-State University SHALL PAY to the United States the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. (MB200541410121) and FCC Registration Number (“FRN”) (0005273230) referenced above. Payment by check or money

⁹ 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 *Order, Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996).

¹⁰ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹¹ 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*, 32 F.C.C.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*, 6 FCC Rcd 4622 (1991); *Calvary Educational Broadcasting Network, Inc.*, 7 FCC Rcd 4037 (1992).

¹² See 47 U.S.C. § 309(k).

order may be mailed to Federal Communications Commission, P. O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670 Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

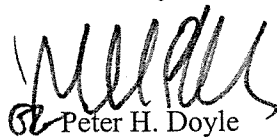
The response, if any, must be mailed to Peter H. Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 2-A360, Washington, D.C. 20554 and **MUST INCLUDE** the NAL/Account Number (MB200541410121) and FRN (0005273230) referenced in the caption of this document.

The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

Finally, **IT IS ORDERED**, that the application (File No. BRED-20040323ASY) of renewal of license for station WEAX(FM), Angola, Indiana IS **GRANTED**.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Tri-State University

¹³ See 47 C.F.R. § 1.1914.