



Federal Communications Commission
Washington, D.C. 20554

November 21, 2014

In Reply Refer to:
1800B3-SS

Cary S. Tepper, Esq.
Booth, Freret, Imlay & Tepper, PC
4900 Auburn Avenue, Suite 100
Bethesda, MD 20814-2632

In re: Villanova University
WXVU(FM), Villanova, PA
Facility ID: 70229
File No. BRED-20140312AAG

Dear Counsel:

This letter refers to the referenced application of Villanova University (“Villanova”) for renewal of license for station WXVU(FM), Villanova, Pennsylvania (“Application”). For the reasons set forth below, we admonish Villanova for violation of Section 73.3527 of the Commission’s Rules (“Rules”)¹ regarding the filing and retention of issues/programs lists 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. Villanova indicated “No” to that certification, attaching an Exhibit explaining that the issues/programs list for the second quarter of 2007 was not prepared and filed in the station’s public file in a timely manner — it has since been recreated but remains partially incomplete — and that those for 2008 were properly prepared, but filed every four months instead of every quarter.² The Exhibit also noted that steps have been taken to assure that this will not happen in the future.³

Section 73.3527 of the 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.⁴

¹ 47 C.F.R. § 73.3527.

² See Application at Exhibit 12.

³ *Id.*

⁴ Cf. *Letter to Kathleen N. Benfield*, 13 FCC Rcd 4102 (1997), citing *License Renewal Applications of Certain Commercial Radio Stations*, Memorandum Opinion and Order, 8 FCC Rcd 6400 (1993).

Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁵ and Section 1.80(a) of the Rules,⁶ 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 violations were admitted to the Commission in the context of the license renewal application, albeit in response to questions compelling such disclosure. Moreover, the violations involve only one missing 2007 issues/programs list and lists for 2008 which were created but filed in the station’s public inspection file every four months rather than every quarter. 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 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 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 Villanova’s violation of

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

¹¹ See note to 47 C.F.R. § 1.80(b)(8). See also *Tabback Broadcasting Company*, Forfeiture Order, 15 FCC Rcd 10384 (2000); *Sarkes Tarzian, Inc.*, Memorandum Opinion and Order, 65 FCC 2d 17 (1975).

¹² 47 U.S.C. § 309(k)(1).

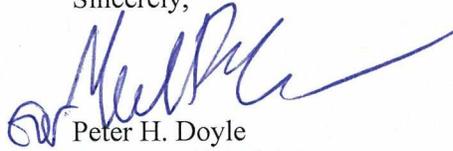
¹³ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

Section 73.3527 does not constitute a "serious violation" 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 WXVU(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. Villanova University IS HEREBY ADMONISHED for its admitted violation of Section 73.3527, and we caution the licensee to be and remain more diligent in the future regarding the operation of WXVU(FM).

Finally, IT IS FURTHER ORDERED, that the application (File No. BRED-20140312AAG) of Villanova University for renewal of license for station WXVU(FM), Villanova, Pennsylvania, IS GRANTED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Rev. Peter M. Donohue, President, Villanova University

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.* 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).