



Federal Communications Commission  
Washington, D.C. 20554

JUL 17 2007

*In Reply Refer to:*  
1800B3-JWR

Matthew H. McCormick, Esq.  
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Washington, DC 20005-1770

In re: Willamette Broadcasting Co., Inc.  
KYKN(AM), Keizer, OR  
Facility ID: 72474  
File No. BR-20051003BMX

Dear Mr. McCormick:

This letter refers to the captioned application (the "Application") of Willamette Broadcasting Co., Inc. (the "Licensee") for renewal of license for Station KYKN(AM), Keizer, Oregon. For the reasons set forth below, we ADMONISH the Licensee for violation of Section 73.3526 of the Commission's Rules (the "Rules"),<sup>1</sup> the rule requiring the maintenance of a broadcast station's public inspection file, and we grant the Application.

*Public File Rule Violation.* Section 73.3526 of the Rules requires a commercial broadcast licensee 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.<sup>2</sup>

Section III, Item 3 of the broadcast 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. The Licensee indicated "No" to that certification, attaching an amended Exhibit 11 to the application,<sup>3</sup> explaining that the public inspection file was complete except for the quarterly issues/programs lists for the third and fourth quarters of 2004 and the first and second quarters of 2005. Specifically, Licensee states that, while it had documentation regarding issue-responsive programming broadcast during these periods, it had neither put that information in the appropriate format nor placed the reports in the public file. Licensee states that, as of October 6, 2005, it completed the reports for the four quarters in question and placed them in the public file.

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<sup>1</sup> 47 C.F.R. § 73.3526.

<sup>2</sup> Cf. *Letter to Kathleen N. Benfield*, 13 FCC Rcd 4102 (MMB 1997) (citing *License Renewal Applications of Certain Commercial Radio Stations*, Memorandum Opinion and Order, 8 FCC Rcd 6400 (1993)).

<sup>3</sup> The Licensee amended its application on October 18, 2005.

As the Licensee has acknowledged, during periods within the license term, the Station's public inspection file did not contain certain items required to be retained in the file by Section 73.3526 of the Rules. 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.<sup>4</sup>

The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for violation of the public file rule.<sup>5</sup> In determining the appropriate forfeiture amount, we must consider the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, or other such matters as justice may require."<sup>6</sup>

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. In this case, although the Licensee has admitted to the violations, it did so only in the context of the question contained in its captioned license renewal application that compelled such disclosure. Nevertheless, the violations here were not extensive, involving only four missing issues/programs lists. Moreover, they occurred only during the final months of the license term and, since that time, the Licensee has complied with the rule. Considering the record as a whole, we believe that an admonishment, rather than a forfeiture, is appropriate for the violations in this case.<sup>7</sup>

*License renewal application.* In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.<sup>8</sup> 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.<sup>9</sup> 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

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<sup>4</sup> 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).

<sup>5</sup> 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.

<sup>6</sup> 47 U.S.C. § 403(B)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 1700; 47 C.F.R. § 1.80(b)(4).

<sup>7</sup> See note to 47 C.F.R. § 1.80(b)(4). See also *Tabback Broadcasting Company*, Memorandum Opinion and Order, 15 FCC Rcd 11899 (2000); *Sarkes Tarzian, Inc.*, Memorandum Opinion and Order, 65 F.C.C.2d 127 (1977).

<sup>8</sup> 47 U.S.C. § 309(k).

<sup>9</sup> 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).


application "on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted."<sup>10</sup>

For the reasons set forth above regarding our decision not to propose a forfeiture here, we find that the Licensee's violations of Section 73.3526 do not constitute "serious violations" of the Act or Rules warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.<sup>11</sup> Further, we find that Station KYKN(AM) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.<sup>12</sup>

*Conclusion/Actions.* Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules, that Willamette Broadcasting Co., Inc. IS HEREBY ADMONISHED for its apparent violations of Section 73.3526 of the Commission's Rules

IT IS FURTHER ORDERED, pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the application (File No. BR-20051003BMX) of Willamette Broadcasting Co., Inc., for renewal of license for Station KYKN(AM), Keizer, Oregon, IS GRANTED.

Sincerely,

  
Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Willamette Broadcasting Co., Inc.

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<sup>10</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>11</sup> 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." *Heart of the Black Hills Stations*, 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).

<sup>12</sup> *See* 47 U.S.C. § 309(k).