



**Federal Communications Commission
Washington, D.C. 20554**

March 4, 2008

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In Reply Refer to:

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In re: **Entercom Portland License, LLC**

KFXX(AM), Portland, Oregon
Facility ID No. 57830
File No. BR-20051003BFL

KKSN(AM), Salem, Oregon
Facility ID No. 72475
File No. BR-20051003BSJ

KTRO(AM), Vancouver, Washington
Facility ID No. 35033
File No. Br-20051003BFU

KWJJ-FM, Portland, Oregon
Facility ID No. 13738
File No. BRH-20051003BFO

KYCH-FM, Portland, Oregon
Facility ID No. 35034
File No. BRH-20051003BEY

Entercom Seattle License, LLC

KBSG-FM, Tacoma, Washington
Facility ID No. 33682
File No. BRH-20051003CCX

KKWF(FM), Seattle, Washington
Facility ID No. 6367
File No. BRH-20051003CAJ

KTTH(AM), Seattle, Washington
Facility ID No. 27023
File No. BRH-20051003CCW

KISW(FM), Seattle, Washington
Facility ID No. 47750
File No. BRH-20051003CAA

KIRO(AM), Seattle, Washington
Facility ID No. 6362
File No. BR-20051003CCU

KMTT(FM), Tacoma, Washington
Facility ID No. 18513
File No. BR-20051013CBK

KNDD(FM), Seattle, Washington
Facility ID No. 34530
File No. BRH-20051003BZT

Entercom Boston License, LLC

WVEI(AM), Worcester, Massachusetts
Facility ID No. 74466
File No. BRH-20051201CFB

WEEI-FM, Providence, Rhode Island
Facility ID No. 71720
File No. BRH-20051201CGE

Entercom Buffalo License, LLC

WGR(AM), Buffalo, New York
Facility ID No. 56101
File No. BR-20060201BAJ

WKSE(FM), Niagara Falls, New York
Facility ID No. 34384
File No. BRH-20060201BAC

WLKK(FM), Wethersfield Township,
New York
Facility ID No. 9250
File No. BRH-20060201BAY

WTSS(FM), Buffalo, New York
Facility ID No. 34382
File No. BRH-20060201AZC

WWWS(AM), Buffalo, New York
Facility ID No. 56014
File No. BR-20060201BAR

Entercom Rochester License, LLC

WBEE-FM, Rochester, New York
Facility ID No. 71206
File No. BRH-20060201ANC

WBZA(FM), Rochester, New York
Facility ID No. 71204
File No. BRH-20060201ANJ

WFKL(FM), Fairport, New York
Facility ID No. 37824
File No. BRH-20060201AOG

WROC(AM), Rochester, New York
Facility ID No. 71205
File No. BR-20060201AMI

Entercom Wilkes-Barre/Scranton License, LLC

WBZU(AM), Scranton, Pennsylvania
Facility ID No. 36200
File No. BR-20060403BTY

WDMT(FM), Pittston, Pennsylvania
Facility ID No. 22925
File No. BRH-20060403BTG

WILK-FM(FM), Avoca, Pennsylvania
Facility ID No. 22666
File No. BRH-20060403BSV

WGGI(FM), Benton, Pennsylvania
Facility ID No. 19543
File No. BRH-20060403BRL

WGGY(FM), Scranton, Pennsylvania
Facility ID No. 36202
File No. BRH-20060403BRJ

WILK(AM), Wilkes-Barre, Pennsylvania
Facility ID No. 34380
File No. BR-20060403BQT

WKZN(AM), West Hazleton, Pennsylvania
Facility ID No. 22667
File No. BR-20060403BPQ

Applications for Renewal of License

Informal Objections

Dear Counsel:

We have before us the applications of the following subsidiaries of Entercom Communications Corporation (“Entercom”): (1) Entercom Portland License, LLC (“Entercom Portland”), for renewal of license for Stations KFXN(AM), Portland, Oregon, KKSJ(AM), Salem, Oregon, KTRO(AM), Vancouver, Washington, KWJJ-FM, Portland, Oregon, and KYCH-FM, Portland, Oregon (the “Portland Applications”); (2) Entercom Seattle License, LLC (“Entercom Seattle”), for renewal of license for Stations KSBG-FM, Tacoma, Washington, KKWF(FM), Seattle, Washington, KTTH(AM), Seattle, Washington, KISW(FM), Seattle, Washington, KIRO(AM), Seattle, Washington, KMTT(FM), Tacoma, Washington, and KNDD(FM), Seattle, Washington (the “Seattle Applications”); (3) Entercom Boston License, LLC (“Entercom Boston”), for renewal of license for Station WVEI(AM), Worcester, Massachusetts (the “Boston Applications”); (4) Entercom Providence License, LLC, for renewal of license for Station WEEI-FM, Providence, Rhode Island (the “Providence Application”); (5) Entercom Buffalo License, LLC (“Entercom Buffalo”), for renewal of license for Stations WGR(AM), Buffalo, New York, WKSE(FM), Niagara Falls, New York, WLKK(FM) Wethersfield Township, New York, WTSS(FM), Buffalo, New York, WWKB(AM), Buffalo, New York, and WWWS(AM), Buffalo, New York (the “Buffalo Applications”); (6) Entercom Rochester License, LLC (“Entercom Rochester”), for renewal of license for Stations WBEE-FM, Rochester, New York, WBZA(FM), Rochester, New York, WFKL(FM), Fairport, New York, and WROC(AM), Rochester, New York (the “Rochester Applications”) and (7) Entercom Wilkes-Barre/Scranton, LLC (“Entercom Scranton”), for renewal of license for stations WBZU(AM), Scranton, Pennsylvania, WDMT(FM), Pittston, Pennsylvania, WFEZ(FM), Avoca, Pennsylvania, WGGI(FM), Benton, Pennsylvania, WGGY(FM), Scranton, Pennsylvania, WILK(AM), Wilkes-Barre, Pennsylvania, and WKZN(AM), West Hazleton, Pennsylvania (the “Scranton Applications”). We also have before us (1) identical Informal Objections to each group of applications filed by Edward R. Stolz, as Executor for the Estate of Irene M. Stolz (“Stolz”),¹ together

¹ Irene M. Stolz was the original objector to the Portland and Seattle Applications. On March 26, 2006, Ms. Stolz died. Edward R. Stolz, II, was substituted as the petitioner in his capacity as the executor of Ms. Stolz’s estate. The Objections also were directed to the pending license renewal applications of the following Entercom subsidiaries: Entercom Portland: KGON(FM), Portland, Oregon, KNRK(FM), Camas, Washington, and KRSK(FM), Molalla, Oregon; Entercom Boston: WEEI(AM) and WRKO(FM), Boston, Massachusetts, WAAF(FM), Westborough, Massachusetts, and WMKK(FM), Lawrence, Massachusetts; Entercom Buffalo: WWKB(AM) and WBEN(AM), Buffalo, New York; and Entercom Scranton: WKRF(FM), Tobyhanna, Pennsylvania, and WKRZ(FM), Freeland, Pennsylvania. Those applications are not before the Commission in this *Order*. Additionally, on November 1, 2005, Stolz filed a Petition to Deny the license renewal applications of Entercom subsidiary Entercom Sacramento License, LLC for Stations KCTC(AM), KDND(FM), KRXQ(FM), KSEG(FM), and KWOD(FM), all licensed to Sacramento, California, and KSSJ(FM), Fair Oaks, California (the “Sacramento Applications”).

with related responsive pleadings,² and (2) Informal Objections to the license renewal application of Station KYCH-FM, Portland, Oregon, filed on January 9, 2006, by the Oregon Alliance to Reform Media and Local 99 of the American Federation of Musicians (collectively, the “KYCH-FM Objections” and the “KYCH-FM Objectors”).³ For the reasons set for below, we deny the Stolz Objection, grant the KYCH-FM Objections in part, admonish Entercom Portland for violation of the Commission’s rule regarding maintenance of a broadcast station’s public inspection file⁴ at Station KYCH-FM, and grant each of the referenced applications.

Background. In the Objections, Stolz incorporates by reference the Petition to Deny against the Sacramento Applications.⁵ Stolz argues that the Applications should not be granted because Entercom has shown a “wanton disregard for the FCC’s rules” as evidenced by: (a) Entercom’s violation of the multiple ownership rules in the Sacramento market by its “unlawful” acquisition of Station KWOD(FM), Sacramento;⁶ (b) a “veritable cornucopia of Notices of Apparent Liability and Letters of Inquiry pertaining to FCC rule violations” issued to Entercom regarding its stations in Sacramento, Kansas City, and Seattle;⁷ and (c) Entercom’s role as a target of “payola” investigations by the New York State Attorney General and the Commission.⁸ Stolz asks that, at a minimum, consideration of the Applications should be deferred until the completion of the payola proceedings, and argues that the “aggregate” of

² With respect to the applications filed by these various Entercom subsidiaries: Portland Stations: Stolz filed an Informal Objection on January 23, 2006; Seattle Stations: Stolz filed an Informal Objection on January 23, 2006; Boston Station: Stolz filed an Informal Objection on February 28, 2006; Providence Station: Stolz filed an Informal Objection on February 28, 2006; Buffalo Stations: Stolz filed an Informal Objection on May 1, 2006, and an Erratum to the Objection on July 20, 2006; Rochester Stations: Stolz filed an Informal Objection on May 1, 2006, and an Erratum to the Objection on July 20, 2006; Scranton Stations: Stolz filed an Informal Objection on June 30, 2006, and an Erratum to the Objection on July 20, 2006. Entercom filed a Consolidated Opposition to all of these Objections on September 28, 2007.

³ Entercom Portland filed a Consolidated Opposition to the KYCH-FM Objections on February 26, 2008.

⁴ 47 C.F.R. § 73.3526.

⁵ Although the Sacramento Applications are not before us here, we will consider the allegations contained in the Petition to the extent they are relevant to Stolz’ claims in this proceeding.

⁶ Sacramento Petition to Deny at 5-6; Portland/Seattle Informal Objection at 3.

⁷ Sacramento Petition to Deny at 9-12, Informal Objections at 3. Stolz cites *Entercom Sacramento License, LLC*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 20129 (2004), in which a \$55,000 Notice of Apparent Liability was issued to station KXRQ(FM), Sacramento, for broadcasting indecent programming. Stolz also references *Entercom Kansas City License, LLC*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 25011 (2004) (“*Kansas City NAL*”), in which the Commission issued a Notice of Apparent Liability for indecent programming aired on stations KQRC-FM, Leavenworth, Kansas, and KFJH(AM), Wichita, Kansas (“*Wichita NAL*”), and *Entercom Seattle License, LLC*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 1672 (EB 2002), Forfeiture Order, 17 FCC Rcd 18347 (EB 2002) (“*Seattle Forfeiture Order*”), *aff’d*, Memorandum Opinion and Order, 19 FCC Rcd 9069 (2004), in which the Commission issued a \$12,000 forfeiture to Station KNDD(FM), Seattle, Washington for indecent programming. Stolz argues that Entercom has demonstrated a pattern of indecency violations that evidence a “scandalous and callous disregard for the public interest.” Petition at 13. Given the “cumulative impact” of these violations, and the fact that Entercom has not learned from the first, second, or third time it was fined for indecent programming, Stolz argues that Entercom’s stations do not serve the public interest. *Id.* at 13-14.

⁸ Sacramento Petition to Deny at 12-13, Informal Objections at 4.

violations by Entercom and its subsidiaries “creates a discernable pattern of abuse under the Act and the Commission’s Rules requiring designation in accordance with Section 309(k) of the Act.”⁹

In response to Stolz’s allegations, Entercom states that Section 309(k)(1) of the Act¹⁰ limits the matters considered during a license renewal proceeding to the licensee’s actions with respect to the specific station being evaluated for license renewal. Thus, Commission actions taken against other Entercom stations have no bearing on the particular Entercom license renewal applications under consideration.¹¹ It also states that the *Seattle Forfeiture Order*, the *Kansas City NAL* and the *Wichita NAL* are each a non-final order, and, accordingly, the Commission is prohibited under Section 504(c) of the Act from relying on these decisions to the prejudice of Entercom. Entercom also states that Stolz’s payola allegations are moot as a result of a Consent Decree between the Commission and Entercom.¹² Finally, Entercom claims that Stolz has received the relief requested, that action on the captioned applications be deferred until resolution of the payola investigations.¹³

Discussion. Pursuant to Section 309(d) and (e) of the Act, petitions to deny and informal objections must, among other things, provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with Section 309(k) of the Act, which governs our evaluation of an application for license renewal.¹⁴

The Stolz Objection. Section 309(k)(1) Renewal Standard. Section 309(k)(1) provides that we are to grant the renewal application for a broadcast station if, upon consideration of the application and pleadings, we find that *with respect to that station*, during the preceding term of its license: (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

⁹ Informal Objections at 4, citing 47 U.S.C. § 309(k).

¹⁰ 47 U.S.C. § 309(k)(1).

¹¹ See Consolidated Opposition at 4-5. Entercom also states that, in any event, the four indecency cases have been fully investigated by the Commission and the broadcasts were not found to raise an issue as to Entercom’s qualifications to remain a licensee; rather, the Commission determined that a monetary forfeiture was the appropriate sanction in each case. *Id.* at 6. Entercom notes that, well after the release of the *NALs* and the *Forfeiture Order* cited by Stolz, the Commission has granted applications for renewal of license for other Entercom stations, including those in Kansas City and Wichita (see, e.g., KMBZ(AM), Kansas City, Missouri, File No. BR-20041001AMI, granted on January 21, 2005), applications for assignment of Stations WVEI-FM, Boston, and WKAF(FM), Brockton, Massachusetts, to Entercom (File No. BALH-20060823ACP, granted on December 27, 2006. See *Letter to Radio One Licenses, LLC and Entercom Boston License, LLC*, 21 FCC Rcd 14988 (MB 2006)). The grants of the renewal and assignment applications, states Entercom, are dispositive of the claims regarding Entercom’s basic qualifications to remain a Commission licensee.

¹² Entercom Consolidated Opposition at 6.

¹³ *Id.*

¹⁴ 47 U.S.C. § 309(e). See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n. 10 (1990), *aff’d sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (“*Area Christian*”) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

abuse.¹⁵ 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.”¹⁶

The plain language and structure of this section clearly establish that the scope of the “violations” listed in Section 309(k)(1) is limited to the station for which license renewal is being considered. Congress has expressly limited the scope of the license renewal inquiry to matters occurring at the particular station for which license renewal is sought.¹⁷ To the extent that Stolz claims we should consider the activities of Entercom at stations other than those captioned here, his Objections will be denied.

KNDD(FM) Indecency Violation. Stolz references a 2002 *NAL* issued to Entercom Seattle for the broadcast of indecent programming on a station in this proceeding, KNDD(FM), Seattle. This *NAL* was subsequently upheld by the Commission¹⁸ and properly is considered in the context of the KNDD(FM) license renewal application.

In January of 2002, the Commission’s Enforcement Bureau issued a \$14,000 *NAL* to Entercom Seattle for the broadcast of indecent material on two separate occasions.¹⁹ Entercom submitted a response to the *NAL*, and the Bureau, while rejecting Entercom Seattle’s assertion that the broadcast of the indecent material was a “minor” violation, nevertheless reduced the forfeiture amount to \$12,000 “in light of Entercom’s record of compliance.”²⁰ The Commission affirmed this determination.²¹ Neither the Bureau nor the Commission found that the broadcast of the indecent programming called into question Entercom’s qualifications, and both concluded that a monetary forfeiture alone was the appropriate sanction; moreover, as observed above, the Enforcement Bureau reduced the forfeiture amount based on Entercom’s record of compliance. Stolz has not proffered evidence of other adjudicated violations at KNDD(FM) that are appropriately considered in connection with that station’s license renewal application.²²

¹⁵ 47 U.S.C. § 309(k)(1) (emphasis added). 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).

¹⁶ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁷ *Sagittarius Broadcasting Corp.*, Memorandum Order & Opinion, 18 FCC Rcd 22551, 22555 (2003).

¹⁸ See Note 4, *supra*.

¹⁹ *Entercom Seattle License, LLC*, Notice of Apparent Liability, 17 FCC Rcd at 1676. The Commission’s *Forfeiture Policy Statement* at that time set a base forfeiture amount of \$7,000 for transmission of indecent or obscene materials. *Id.*, citing *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied* 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*); 47 C.F.R. § 1.80(b).

²⁰ *Seattle Forfeiture Order*, 17 FCC Rcd at 18351.

²¹ *Entercom Seattle License, LLC*, Memorandum Opinion and Order, 19 FCC Rcd at 9075.

²² We reiterate that, under Section 309(k) of the Act, it is inappropriate to consider in the context of the KNDD(FM) renewal application Entercom’s actions at any of its other stations *unless*, in connection with that renewal application, we were issuing a notice of apparent liability. In that case, Entercom’s “history of prior offenses” may be considered in determining the amount of the forfeiture penalty. See 47 C.F.R. § 1.80(b)(4).

(footnote continued)

Given the Commission's prior findings in the *Seattle Forfeiture Order* and the record herein, we find that, with respect to Station KNDD(FM), there have been no serious violations and no evidence of violations that, when considered together, evidence a pattern of abuse.

Payola Investigation. Stolz also argues that Entercom is under investigation by the New York State Attorney General and the Commission for alleged "play-for-pay" conduct.²³ Stolz's allegations regarding Entercom's participation in payola are barred from consideration by the terms of a consent decree (the "Consent Decree") entered into by the Commission and Entercom.²⁴ By the terms of the Consent Decree, Entercom agreed to undertake certain compliance measures and to pay the United States Treasury the sum of \$4,000,000 in consideration for the Commission terminating all investigations, and dismissing, with prejudice, pending payola complaints against Entercom subsidiaries. In addition, the Commission agreed to refrain from taking any action against Entercom or any future application -- including renewal applications -- to which Entercom is a party, based in whole or in part on "alleging violation by any [Entercom] Station of the Sponsorship Identification Laws with respect to any broadcast occurring prior to the Effective Date."²⁵ The Effective Date of the Consent Decree is April 13, 2007, the date of its public release.²⁶ Stolz's Objection was filed before the Effective Date of the Consent Decree. Accordingly, Stolz's payola allegations are barred from consideration in connection with the Applications. Furthermore, as noted by Entercom, Stolz received the relief requested. Consideration of the captioned applications was, in fact, deferred until after resolution of the payola investigation.

Conclusion with Respect to Stolz Objections. For the foregoing reasons, we find that Stolz has failed to raise a substantial and material question of fact calling for further inquiry regarding the propriety of granting the license renewal applications of the captioned stations. We therefore deny Stolz's Objections.

The KYCH-FM Objections. Objectors state that they monitored KYCH-FM for a period of several months, from August through December of 2005. Based on "hundreds of hours of informal listening"²⁷ to the Station during this period, Objectors contend that the Station "is falling far short of

On December 17, 2007, the Enforcement Bureau entered into a Tolling Agreement (the "Tolling Agreement") with Entercom Seattle. In the Tolling Agreement, the Bureau and Entercom agreed to toll the statute of limitations period specified in Section 503(b)(6) of the Act with respect to complaints and potential violations of the Act, the Rules, 18 U.S.C. § 1864, a Commission Order, and/or the terms of the Stations' Licenses at Entercom Seattle Stations KISW(FM), KIRO(AM), KMTT(FM), KNDD(FM), and KTTH(AM). *See* Tolling Agreement at ¶ 8. The Tolling Agreement specifically indicates that "the Licensee does not admit to any Potential Violation." *Id.* at ¶ 11. Those matters remain before the Enforcement Bureau. Accordingly, we decline to consider any of these unspecified "potential violations" in connection with this proceeding.

²³ Payola is a violation of the sponsorship identification requirements, codified at 47 U.S.C. §§ 317 and 508, and 47 C.F.R. § 73.1212. These laws requires that employees of broadcast stations, program producers, program suppliers and others who have accepted or agreed to receive payments, services, or other valuable consideration for airing material must disclose this fact. Disclosure provides broadcasters the information they need to let their audiences know if material was paid for, and by whom.

²⁴ *Entercom Communications Corp.*, Order, 22 FCC Rcd 7910 (2007).

²⁵ Consent Decree, ¶ 8.

²⁶ Consent Decree, ¶ 2(i).

²⁷ Oregon Alliance to Reform Media Informal Objection at first unnumbered page.

‘localism’ expectations as required by the FCC²⁸ and request that the Commission deny the KYCH(FM) renewal application.

Specifically, Objectors first take exception to the lack of locally produced music that is aired on the Station. The Objectors also oppose the Station’s broadcasting of public affairs programming on Sunday mornings, rather than during peak, drive-time hours. Objectors further state that, due to the lack of any live on-air talent, they “have concerns” about KYCH-FM’s capabilities under the Commission’s Emergency Alert System (“EAS”) in the event of a disaster. Objectors also assert that “several monitors” noticed that KYCH-FM did not identify itself by its legal call letters every hour, as required by the Rules,²⁹ although “there was no shortage of ‘Charlie FM’ spots, which most listeners found to be intrusive and annoying.”³⁰ Finally, Objectors assert that the KYCH-FM public inspection file did not include an issues-programs list for the third quarter of 2005, and that a letter of complaint sent by a volunteer from one of the Objectors’ organizations was not in the Station’s public file.

The First Amendment rights of broadcasters and the noncensorship provisions of the Act³¹ provide licensees broad discretion in the selection and scheduling of programming best suited to address issues facing their communities. The Commission will not take adverse action on a license renewal application based upon the subjective determination of a listener or group of listeners as to what constitutes appropriate programming.³² Further, the Commission will not interfere with the exercise of a licensee’s programming judgment where there is no showing that the licensee consistently and unreasonably ignored matters of public concern.³³ The Objectors have made no such showing. Further, we note that, while the Objectors might prefer that the Station employ more local on-air talent and broadcast more locally produced music, the Station’s operations complied with the law and our Rules and policies.³⁴ Likewise, the Station’s decision to broadcast public affairs programming on Sunday mornings does not violate any Rule or policy.

With respect to the Objectors’ “concerns” about KYCH-FM’s EAS capabilities, Entercom Portland states in its Consolidated Opposition that the Objectors do not point to any violation of the Commission’s EAS Rules³⁵ or any instance when the station’s EAS operation failed to function. Additionally, Entercom Portland states that it has confirmed that KYCH-FM’s EAS systems are fully functioning and are ready in the event they are triggered by the appropriate state and federal officials.

²⁸ *Id.*

²⁹ See 47 C.F.R. § 73.1201.

³⁰ KYCH Objections at 2.

³¹ See 47 U.S.C. § 326.

³² See *WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251 (1978) (Commission will not deny renewal application based on the opinion of a viewer, or group of viewers, as to what constitutes “good” programming).

³³ See, e.g., *Columbia Broadcasting System, Inc.*, Memorandum Opinion and Order, 51 FCC 2d 273, 277 (1975) (programming challenge must make specific allegations of fact showing that licensee’s overall programming could not reasonably have met the problems, needs, and interests of people within the station’s service area).

³⁴ See *Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425, 12440 (2004) (Commission has not attempted to define the programming that a broadcaster should air to serve the needs and interests of its local community.)

³⁵ 47 C.F.R. § 11.1 *et seq.*

Finally, it states that it has developed a detailed emergency plan³⁶ for all of its Portland stations, including KYCH-FM, that includes intended responses tailored to the severity and type of the emergency and contemplates a combined effort should a particular emergency call for continuous news on all of the Portland Entercom stations.³⁷ In light of Entercom Portland's response, we do not believe that the Objectors' vague "concerns" about KYCH-FM's EAS capabilities warrant further inquiry.

With respect to Objectors' claim that the KYCH-FM public inspection file did not include an issues-programs list from the third quarter of 2005, Entercom Portland states that it "employs a procedure to place its quarterly Issues and Programs list in the public files for all the Portland stations in a timely manner" and has no reason to believe that the third quarter 2005 Issues and Programs list was not timely placed in the KYCH-FM public file as required by the Commission's Rules.³⁸ Upon receipt of the informal objection, Entercom Portland checked the public inspection files for each of its stations, discovering that all of the station files *except KYCH-FM* contained the third-quarter 2005 issues-programs list. The Licensee indicates that the third quarter 2005 issues-programs list could only have been missing "if an Entercom Portland employee or a member of the public reviewing the file removed the list and failed to return it to the proper place in the file."³⁹ Entercom Portland states that the third-quarter 2005 issues-programs list for KYCH-FM was reprinted from backup electronic files and was promptly replaced in the station's public file.

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. This requirement serves to provide the public with timely, pertinent, information throughout the license period.⁴⁰ 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.⁴¹

Section 503(b) of the Communications Act (the "Act")⁴² and Section 1.80(a) of the Rules,⁴³ each state that any person who willfully or repeatedly fails to comply with the provisions of the Act or the

³⁶ See 47 C.F.R. § 11.21, "State and Local Area Plans and FCC Mapbook."

³⁷ Consolidated Opposition at 6.

³⁸ *Id.* Entercom Portland describes this procedure as follows: (1) The News Director for the Portland Market prepares the issues-programs list for each of the Entercom Portland stations, forwarding the information to corporate headquarters for review and back-up storage; (2) on the tenth day of the month following the close of the reporting period, the News Director places the quarterly issues-programs list into the public inspection file of each Entercom Portland Station. *Id.*

³⁹ *Id.* at 7.

⁴⁰ *Cf. Letter to Kathleen N. Benfield from Linda B. Blair, Chief, Audio Services Division* (April 3, 1997), 13 FCC Rcd 4102 (1997), citing *License Renewal Applications of Certain Commercial Radio Stations*, Memorandum Opinion and Order, 8 FCC Rcd 6400 (1993).

⁴¹ 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).

⁴² 47 U.S.C. § 503(b).

⁴³ 47 C.F.R. § 1.80(a).

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.⁴⁴ A continuing violation is “repeated” if it lasts more than one day.⁴⁵

The Commission’s *Forfeiture Policy Statement* sets a base forfeiture amount of \$10,000 for violation of the public file rule.⁴⁶ In this case, Entercom Portland claims that it prepared and properly filed the KYCH-FM issues-programs list for the third quarter of 2005, but it acknowledges that, when examining the Station’s public file upon receipt of the Objections, that list was in fact missing from the KYCH-FM file. On the other hand, the violation involves only one issues-programs list. Considering the record as a whole, we believe that an admonishment, rather than a forfeiture, is appropriate for the violation in this case.⁴⁷

Finally, with regard to alleged failure to air proper station identification announcements and the missing letter of complaint, the KYCH-FM Objections is silent as to when, specifically, these defective announcements were made⁴⁸ and when the complaint letter supposedly was sent. Accordingly, we are unable to ascertain if, for example, such correspondence was submitted within the three year period for which the public file rule requires its retention.⁴⁹ Based on this record, we cannot conclude that a station identification rule or an additional public file rule violation has occurred at Station KYCH-FM.⁵⁰

Conclusion with Respect to KYCH-FM Objections. For the foregoing reasons, we find that the KYCH-FM Objectors have failed to raise a substantial and material question of fact calling for further inquiry regarding the propriety of granting the license renewal applications of KYCH-FM. Therefore, we will grant the KYCH-FM Objections to the extent of admonishing Entercom Portland for its apparent violation of Section 73.3526 of the Rules at Station KYCH-FM, and we will deny the KYCH-FM Objections in all other respects.

Conclusion/Actions. We have evaluated the referenced Applications pursuant to Section 309(k) of the Act,⁵¹ and we find that each of the Stations has served the public interest, convenience, and necessity during the subject license term. Moreover, we find, with respect to each station, that there have been no serious violations of the Act or the Rules, nor have there been violations by the Licensee of the Act or the Rules which, taken together, would constitute a pattern of abuse.

⁴⁴ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-4388 (1991).

⁴⁵ *Id.*, 6 FCC Rcd at 4388.

⁴⁶ 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.

⁴⁷ See note to 47 C.F.R. § 1.80(b)(4). See also *Tabback Broadcasting Company*, Forfeiture Order, 15 FCC Rcd 10384 (2000); *Sarkes Tarzian, Inc.*, Memorandum Opinion and Order, 65 FCC 2d 127 (1977).

⁴⁸ In its Consolidated Opposition, Entercom Portland indicates that it has programmed its station identification announcements into an automated system specifically designed to comply with the Commission’s station identification rules. It indicates that it is unaware of any system failures.

⁴⁹ See 47 C.F.R. § 73.3526(e)(9)(i).

⁵⁰ See *Area Christian*, *supra* n. 13

⁵¹ 47 U.S.C. § 309(k).

ACCORDINGLY, IT IS ORDERED, that the Informal Objections filed by Edward R. Stolz, II, as Executor for the Estate of Irene M. Stolz, IS DENIED.

IT IS FURTHER ORDERED, that the Informal Objections filed by the Oregon Alliance to Reform Media and Local 99 of the American Federation of Musicians ARE GRANTED TO THE EXTENT INDICATED HEREIN and ARE DENIED IN ALL OTHER RESPECTS.

IT IS FURTHER ORDERED, that Entercom Portland License, LLC IS ADMONISHED for its apparent violation of Section 73.3526 of the Commission's Rules at Station KYCH-FM, Portland, Oregon.

IT IS FURTHER ORDERED, pursuant to Section 309(k) of the Act,⁵² that each of the referenced applications ARE GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

⁵² 47 U.S.C. § 309(k).