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February 12, 2015

Accepted / Filed

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FEB 12 2015

Federal Communications Commission
Office of the Secretary

* NOT ADMITTED IN VIRGINIA

VIA HAND DELIVERY

Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

ATTN: Peter Doyle, Chief, Audio Division, Media Bureau

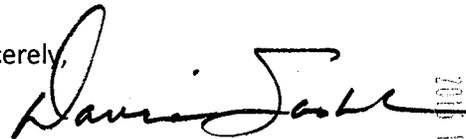
**RE: Petition to Deny BRED-20130603BDZ (1800B3-HOD)
Weber State University, KWCR-FM, Ogden, UT (Facility Id. 71394)**

Dear Mr. Doyle:

Please find enclosed in triplicate the response of Weber State University, licensee of KWCR-FM, Ogden, UT (Facility Id. 71394), to your letter dated January 13, 2015, regarding the petition to deny filed against the above-captioned renewal application.

Please contact the undersigned directly if there are any questions or concerns with regard to this matter.

Sincerely,



Davina S. Sashkin
Counsel to Weber State University

Enclosure

2015 FEB 13 A 9:41

February 12, 2015

Peter H. Doyle
Chief, Audio Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

2015 FEB 18 A 9:41

Accepted / Filed
FEB 12 2015
Federal Communications Commission
Office of the Secretary

RE: 1800B3-HOD
Weber State University
BRED-20130603BDZ

Dear Mr. Doyle

In response to your request, dated January 13, 2015, for additional information pertaining to Donald Hullinger's ("Hullinger") Petition to Deny ("Petition") filed on August 14, 2013 and his Supplement to Petition to Deny ("Supplement") filed July 21, 2014, against the above-captioned license renewal application, Weber State University responds in the following manner.

I. Emergency Alert System

In response to Hullinger's assertion that KWCR-FM violated the Commission's rules ("Rules") governing the Emergency Alert System (EAS), we confirm in review of the KWCR-FM's radio logs that there is no record of the station airing the EAS nationwide test on November 9, 2011. We can neither confirm nor deny that the disc jockey (who was a student volunteer and no longer is at the University) made the statement reported by Hullinger.

II. Normal Business Hours

In response to Hullinger's claim that KWCR-FM's is not staffed during "normal business hours" consistent with 47 C.F.R. 73.1125(a) and FCC's Memorandum Opinion and Orders interpreting this regulation, we deny that KWCR-FM is not staffed during "normal business hours" during Fall and Spring Semesters when the station is fully staffed with a paid student General Manager, a paid student Program Director, a faculty advisor, and voluntary student DJs who staff the station for course credit. However, we confirm that during the Summer Semester, KWCR-FM is staffed by a paid student General Manager and a paid student Program Director who work a combined total of 40 hours a week, in addition to student volunteers. The Summer Semester was the period of time in which Hullinger allegedly attempted to visit the studio on thirty separate occasions but found the studio closed and unattended. While we believe that the KWCR-FM main studio was largely open during business hours during the Summer Semesters, we are reviewing our process to ensure the station is staffed during the Summer Semester to comply with the FCC's minimum staffing and "normal business hours" requirements.

However, Hullinger's allegations should be contextualized based on KWCR-FM's student workers' observations of his behavior. Austin Hatch (Hatch), the current KWCR-FM student Program Director, provided the following statement, supported by a declaration attached hereto:

During my time here at KWCR I have had several encounters with Mr. Donald Hullinger.

One occasion being that he came into the office and required me to read his petition against the renewal of our temporary broadcasting license. Mr Hullinger was very professional but was also somewhat forceful and intimidating in the way he occupied my office and my personal space.

There have been many instances, most notably in the spring 2014 semester where Mr. Hullinger would linger outside of the studio under the stairs and listen to our broadcasts for sometimes close to two hours. On one instance, he listened to our Spanish program and approached them with questions after the show. Donald's lingering presence throughout the semester was a significant cause of distress for our staff, and our DJ's, putting us on edge a lot of the time.

During our regular business hours, the General Manager and myself ensured that one of us was present in the office at all times. On several occasions the manager would leave to attend class on campus and I would remain in [the] office to ensure we were staffed during regular hours[.] [I]mmediately after the General Manager left, Mr Hullinger would make several phone calls to the office and when I would pick up the phone he would immediately hang up or ask for our General [M]anager. The same phenomena occurred when I would leave for class[.] [T]he General manager would receive calls in [the] office only to be disconnected when he answered. This happened often throughout the spring, summer, and fall semesters 2013-2014. The constant calls were also quite stressful.

JP Orquiz (Orquiz), the current General Manager, volunteered during the summer of 2014 and observed the same general behavior from Hullinger as had Hatch. A declaration by Orquiz is attached. In one instance, he recalls momentarily leaving KWCR-FM's main studio to go to the bathroom (the KWCR-FM main studio is in a campus building and the restroom facilities are down the hall). In route, Orquiz observed Hullinger hovering outside the studio, but when he returned a few minutes later from using the bathroom, he noticed that Hullinger had abruptly left. On another occasion, Orquiz recalls stepping out momentarily and noticing that the paper announcing the normal business hours had been torn from the door even though it was sufficiently affixed to the door. These observations suggest that Hullinger may have waited, at times, for hours outside KWCR-FM until the staff briefly left the station to then claim that the station was not open during normal business hours.

It is also noteworthy that the photos purportedly taken by Hullinger and appended to his Supplement do not determinatively demonstrate that KWCR-FM was closed, but rather portray

the front door being closed and nobody visible from the front windows. The KWCR-FM main studio consists of several offices, including the General Manager's and Program Director's offices, which are not visible from the vantage point indicated in the photographs. It is possible – indeed, likely, given the known staffing on the days in question – that Hullinger took these photos while KWCR-FM staff were in the station, but not visible from the front windows.

III. Public File

In response to Hullinger's allegation that KWCR-FM's public file lacks certain materials in violation of 47 § C.F.R. 73.3527 of the Rules, we answer as follows:

- 1) We deny the allegation that the file contained an outdated ownership report. It is the station's policy to maintain in the file the most recent ownership report, in compliance with 47 C.F.R. § 73.3527(e)(4). The 2013 biennial ownership report (File No. BOA-20130603BDP) is currently in the file. It replaced the prior report from 2011, which was placed in the file immediately upon filing with the FCC.
- 2) Regarding the question of the EEO reports, KWCR-FM confirms that it does not maintain EEO annual public file reports because, pursuant to the small station exemption in 47 C.F.R. § 73.2080(d), KWCR-FM employs fewer than five full-time employees in its station employment unit and consequently is not required to comply with the EEO public file requirements outlined in 47 C.F.R. § 73.2080(c)(6). We do note, however, that the Form 396 Broadcast Equal Opportunity Employment Program Report required to be filed in conjunction with the station's license renewal application is currently in the station's public file.
- 3) We deny the allegation that we did not maintain updated donor lists pursuant to 47 C.F.R. § 73.3527(e)(9). In fact, the KWCR-FM public file contains (and contained on the dates Mr. Hullinger visited) the complete donor lists date back to 2010 – well beyond the required two years proscribed in said regulation.
- 4) We deny the allegation that we did not maintain an updated copy of "The Public and Broadcasting" pursuant to 47 C.F.R. § 73.3527(e)(7). The the current (2008) version of said manual is currently in the public file and, as we do not have a policy of retroactively updating the file, is believed to have been there during Mr. Hullinger's visits
- 5) We deny the allegation that we did not maintain in the file complaints submitted by Hullinger pertaining to underwriting announcements, as required in 47 C.F.R. § 73.3527(e)(11), because in our review of the public file, we located said complaints relating to underwriting announcements and we do not have a policy of retroactively updating the public file.

- 6) We admit to the allegation that, on the dates of Mr. Hullinger's visits, the most recent issues/programs lists in the public file dated back to 2010. We further admit that, prior to 2010, KWCR-FM was not placing issues/programs lists in its file on a quarterly basis pursuant to 47 C.F.R. § 73.3527(e)(8).

IV. Station Logs

In response to the allegation that KWCR-FM has not kept station logs, we confirm that in the last two years since temporarily locating our antenna and transmitter off-site, there has been no technical means or procedures to provide feedback to personnel in the main studio. Consequently, station logs were not maintained pursuant to 47 C.F.R. § 73.1800-1840. Prompted by this allegation, KWCR-FM has instituted a procedure by which its consulting engineer communicates information from the off-site antenna and transmitter to the KWCR-FM studio personnel, who then make logs as required under said regulations.

V. Pre-Filing and Post-Filing Announcements

In response to the allegation that KWCR-FM failed to air the pre- and post-filing announcements regarding the Renewal Application as required by 47 C.F.R. § 73.3580(d)(4)(i) and (ii), we confirm in review of the files that there are no records indicating that pre-filing announcements were made; however, we deny that the post-filing announcements were not made, but we confirm that the announcements were not made during the specified time of day.

In conclusion, the foregoing is submitted under penalty of perjury.

Sincerely,



Dean Madonne Miner

Signed Declaration

I, Ty Sander Ph.D. was former KWCR station advisor and am a current faculty member at Weber State University and was given the task of reviewing the KWCR Public File.

I, Ty Sander Ph.D., under penalty of perjury, certify that all statements about the Public File in this response are, to the best of my knowledge, true and correct.

2-11-2015

Date

Ty Sander
Signature

Signed Declaration

I, Juan Pedro Orquiz, am the current student General Manager of KWCR and previously worked as a student volunteer DJ at KWCR.

I, Juan Pedro Orquiz, under penalty of perjury, certify that all my statements about Mr. Donald Lynn Hullinger's behavior and my other observations are true and correct to the best of my knowledge.

2-12-2015

Date



Signature

Signed Declaration

I, Austin Hatch, am the current student Program Director of KWCR and previously volunteered and worked as a student at KWCR.

I, Austin Hatch, under penalty of perjury, certify that all my statements about Mr. Donald Lynn Hullinger's behavior and my other observations are true and correct to the best of my knowledge.

02/12/15

Date

A handwritten signature in black ink, appearing to read 'Austin Hatch', written over a horizontal line.

Signature

CERTIFICATE OF SERVICE

I, Michelle Brown Johnson, a secretary with the law firm of Fletcher, Heald & Hildreth, PLC, hereby state that a true copy of the enclosed response of Weber State University was served by first class mail, postage prepaid, unless indicated otherwise, this 12th day of February, 2015, to the following:

Donald Hullinger
5558 Shadbury Circle
West Jordan, UT 84041

Peter Doyle, Esq.*
Chief, Audio Division
Media Bureau
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445 12th Street, SW
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Washington, DC 20554
(peter.doyle@fcc.gov)

Heather Dixon, Esq.*
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* Denotes service by hand delivery and email.


Michelle Brown Johnson