

KUTE, Inc. Licensee

**NCE Stations: KSUT(FM), KUTE(FM),
KUUT(FM), KDNG(FM), KPGS(FM),
KUSW(FM), KDNM(FM), KZNM(FM)**

Schedule 303-S, Application for License Renewal

**Explanatory Exhibit: Explanation of Response to Query Regarding Online Public
Inspection File (OPIF)**

The licensee KUTE, Inc., files this explanatory Exhibit to explain why it responded "No" to the certification query concerning uploading dates for the respective OPIFs of the above-listed NCE radio stations on the Schedule 303-S Application for License Renewal that was filed for each of those stations.

The reason for KUTE's inability to certify full compliance with FCC Rule 73.3527 is because several of its quarterly Issues/Programs Lists (IP Lists or IPLs) were uploaded in electronic format to the OPIF in an untimely manner. That is, several of the IPLs for these KUTE-licensed stations appear to have been uploaded late over the course of the past three license years. The discrepancies are accounted for in the numbered paragraphs below. Please be advised of the following:

KUTE, Inc. certifies that the electronic OPIF file for each of its licensed NCE Stations is now complete with respect to all required documents and filings, including all Issues/Programs Lists for all quarters since the prior license renewal in 2012-13. KUTE management and legal counsel have investigated the OPIF upload discrepancy for the IP Lists, and have identified the following timeliness problems with the OPIF since 7/1/18 through the present:

- (1) Between the last quarter of 2012 and March 1, 2018, the public files of all stations licensed to KUTE, Inc. were complete on paper and as an online Word file, and were maintained on paper in an accessible manner in paper Public Inspection Files, as required by the rules during that period;
- (2) KUTE, Inc maintains two NCE networks: Tribal (KSUT, KUUT, KZNM) and Four Corners (KUTE, KDNG, KPGS, KUSW, KDNM). Staff for each network prepare and upload its own IPLs to the appropriate station OPIFs.
- (3) KUTE, Inc.'s management and staff were educated in maintenance of their OPIFs under the Commission's new rules and policies for NCE licensees in early 2018; at that time, they scanned and uploaded to the respective station OPIFs all paper public files in existence on or before March 1, 2018, thus successfully making the required transition to the FCC's internet-based OPIF on a timely basis. This included all Issues/Programs Lists

(IPLs) for all stations for all quarters through the Winter (January 10) quarter of 2018. The Spring 2018 quarter was also uploaded on a timely basis on 4/9/2018.

- (4) KUTE management and staff acknowledge that the upload dates for certain quarters in the license years 2018 through 2020 appear to have been uploaded late. Specifically, the Summer and Fall IPLs for all stations were filed a few days late: Summer on July 12, 2018 (2 days late) and Fall on October 15, 2018 (5 days late). Both quarterly IPLs were prepared on paper and accessible on or before the respective due date for each quarter but, mistakenly, not uploaded online as of the deadline. KUTE, Inc regrets these errors.
- (5) KUTE, Inc staff have reported to its legal counsel that IPLs for many of these problematic quarters were initially uploaded to the OPIF on time, before the quarterly deadline, but subsequently appeared to have "fallen off" the OPIF page and, consequently, had to be reloaded to the ILP area of the station's OPIF. Whether this was staff error or an electronic glitch has not been determined, but staff reports that this phenomenon occurred several times during the 2018-2020 period.
- (6) The Winter 2018-19 ILP filing was an exceptional situation for both KUTE/KSUT networks. January 2019 was the month during which the entire OPIF was inaccessible to all filers as a result of the federal government shutdown that year. Although the FCC released a Public Notice calling for resumption of OPIF filing as of January 31, 2019, KUTE/KSUT staff members were either unaware of that notice and, regrettably, allowed the new deadline to pass in the confusion of that time. The resulting 22- month discrepancy was noted during staff review of OPIF files in preparation for license renewal this month; at this time, the appropriate IPL from January 10, 2019 was promptly located and uploaded to the respective OPIFs of each station that was licensed to KUTE at that time.
- (7) Three of the four IPLs for 2019, although prepared on paper and accessible to the public on a timely basis, were mistakenly, uploaded late online to the respective station OPIFs. The Spring IPL was uploaded, with the Summer IPL, on 7/11/2019, 3 months late for the Spring IPL and one day late for the Summer IPL. The Fall IPL was uploaded two months late, on December 12, 2019. KUTE staff report that these instances are examples of the phenomenon discussed above in point (5): the IPL for spring was initially filed on time before 4/10 but, when the summer IPL was uploaded 3 months later, the spring IPL was no longer shown on the OPIF IPL page. This occurred also with respect to the fall 2019 IPL, which was reloaded on December 12, 2019.
- (8) Similarly, two of the three IPLs for 2020 were prepared on paper and accessible at KUTE headquarters on a timely basis but, due to either staff error or the above problem or staffing issues related to COVID, were uploaded late online to the station OPIFs. The Spring IPL was uploaded on 7/1/2020 (3 months late), and the Fall IPL 9 days late, on October 19, 2020.

(9) At the present time, as this license renewal application is filed, KUTE, Inc.'s Executive Director certifies that all IPLs for all quarters of the December 1, 2012 to November 30, 2020 license term were prepared on a timely basis and have now been uploaded to each station's respective OPIF. The OPIFs of all KUTE-licensed stations are presently in compliance with Rule 73.3627.

The KUTE, Inc. officers and management of acknowledge and sincerely regret the late-filed IPLs to the OPIFs of the above-listed NCE radio stations, in both networks, that are licensed to KUTE, Inc. KUTE, Inc. station management and key staff, in consultation with legal counsel, have now corrected the late-filing of these recent IPLs , and certify that all KUTE, Inc. station OPIFs are presently in full compliance with FCC Rule 73.3627. KUTE, Inc. also commits to the Commission that it has undertaken, and will continue to take, specific concrete and Fail-Safe actions to avoid any such problems recurring in the future. Management and staff have committed to timely uploading of all documents as required by Rule 73.3627. In addition, experienced FCC legal counsel is assisting and guiding KUTE, Inc. board and station management with all regulatory compliance requirements related to the stations and their obligations to serve the public interest. Legal counsel has provided educational efforts and materials, and is working closely with station staff, management, and the licensee's designated officers. KUTE, Inc. station management will routinely consult with counsel to ensure timely and complete public file compliance.