



Federal Communications Commission
Washington, D.C. 20554

January 13, 2014

In Reply Refer To:
1800B3-HOD

VIA CERTIFIED MAIL

Susan A. Marshall, Esq.
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street, 11th Floor
Arlington, VA 22209

In re: Weber State University
KWCR-FM, Ogden, UT
Facility ID No. 71394
BRH-20130603BDZ

Petition to Deny

Dear Counsel,

We have before us a Petition to Deny (“Petition”) filed by Donald Lynn Hullinger (“Hullinger”) on August 14, 2013, and a Supplement to Petition to Deny (“Supplement”) filed by Hullinger on July 21, 2014. Hullinger urges us to deny the application filed by Weber State University (“Weber State”) to renew the license of KWCR-FM, Ogden, Utah (“Station”). We herein request additional information from Weber State.

Hullinger asserts that Weber State has violated the Commission’s rules (“Rules”) governing the Emergency Alert System (“EAS”).¹ Hullinger alleges that the Station failed to air the nationwide test of EAS on November 9, 2011. According to Hullinger, at noon on that date, when the test was scheduled to occur, no test was heard on the Station. Instead, a disc jockey was heard to state “[S]o, there is supposed to be some emergency alert right now but So[,] yeah.” Hullinger asserts that the disc jockey then announced the next song and played it.

Hullinger also claims that the Station’s main studio is not staffed during “normal business hours.”² He alleges that he tried to visit the studio on nearly thirty separate occasions but found the studio closed and unattended.³

Hullinger further alleges that the Station’s public file lacks certain materials in violation of Section 73.3527 of the Rules.⁴ Hullinger states that he inspected the Station’s file on April 11, 2013. At that time, Hullinger claims that the file contained outdated ownership and EEO reports, outdated donor

¹ Petition at 4. See 47 C.F.R. §§ 11.1-11.61.

² Petition at 5; Supplement at 1-2. See Section 73.1125(a); *Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616 n.2 (1991) (noting that “there must be management and staff presence on a full-time basis during normal business hours”).

³ See Petition at 5; Supplement at 1-2 and Exhs.

⁴ 47 C.F.R. § 73.3527.

lists, and an outdated copy of “The Public and Broadcasting.”⁵ Hullinger also claims that the file lacked certain materials related to complaints he had filed regarding violations of the rules governing underwriting announcements.⁶ Hullinger asserts that the most recent issues/programs lists in the file dated back to 2010.⁷ He also notes that, even prior to 2010, the Station was not placing issues/programs lists in its file on a quarterly basis.

Hullinger alleges that station logs – which the Station is required to maintain – are either absent or incomplete.⁸ Finally, Hullinger asserts that the Station failed to air the pre- and post-filing announcements regarding the Renewal Application that are required by Sections 73.3580(d)(4)(i) and (ii) of the Rules.⁹ Specifically, Hullinger states that he monitored the station on the dates and at the times listed and heard no pre- or post-filing announcements broadcast by the Station.

- April 1, April 16, May 1, May 16, June 1, June 3, June 4, July 1, and July 16, 2013. From 7 to 9 a.m. and 4 to 6 p.m.
- June 16, and August 1, 2013. From 7 to 9 a.m. and 4 p.m. to 12 a.m.

To date, Weber State has not opposed the Petition or otherwise responded to Hullinger’s allegations. We hereby direct Weber State to respond to each of these allegations. We direct Weber State to support its response with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer with personal knowledge of the representations provided in Weber State’s response,

⁵ Petition at 4. Section 73.3527(e) requires that a noncommercial educational (“NCE”) station’s public file include, among other things a copy of the Station’s most recent ownership report, the EEO materials required to be included under Section 73.2080 of the Rules (which must be retained until final action is taken on the Station’s next license renewal application), lists of donors supporting specific programs (which must be retained for two years from the date of the broadcast of the specific program supported), and a copy of the most recent version of the manual entitled “The Public and Broadcasting.” See 47 C.F.R. §§ 73.3527(e)(4), (5) (7) & (9).

⁶ Petition at 4. Section 73.3527(11) requires an NCE station’s public file to include material relating to complaints made to the Commission about the Station. 47 C.F.R. § 73.3527(e)(11). This material must be retained until the Station is notified in writing that it may be discarded. *Id.*

⁷ Petition at 4. Section 73.3527(e)(8) requires an NCE station to place quarterly issues/programs lists in its public file and to retain these lists until the Commission takes final action on the Station’s next renewal application. 47 C.F.R. § 73.3527(e)(8).

⁸ Petition at 4. See 47 C.F.R. §§ 73.1800, 1820 & 1840.

⁹ 47 C.F.R. §§ 73.3580(d)(4)(i) & (ii). A licensee filing a renewal application must air pre-filing announcements “beginning on the first day of the sixth calendar month prior to the expiration of [its] license, and continuing to the date on which the application is filed.” 47 C.F.R. § 73.3580(d)(4)(i). The pre-filing announcements must be broadcast on the 1st and 16th day of each calendar month. *Id.* NCE stations like KWCR-FM generally must broadcast at least two of the required announcements between 7 a.m. and 9 a.m. and/or 4 p.m. and 6 p.m. 47 C.F.R. §§ 73.3580(d)(4)(i)(B)(2) & (3). However, such stations “need not broadcast the announcement during any month during which the station does not operate.” 47 C.F.R. § 73.3580(d)(4)(i)(B)(3). Similarly, a licensee filing a renewal application must air post-filing announcements “[d]uring the period beginning on the date on which the renewal application is filed to the sixteenth day of the next to the last full calendar month prior to the expiration of the license.” 47 C.F.R. § 73.3580(d)(4)(ii). These announcements also must be broadcast on the 1st and 16th day of each calendar month. *Id.* NCE stations must make at least three of the required announcements between 7 a.m. and 9 a.m. and/or 4 p.m. and 6 p.m., at least one announcement between noon and 4 p.m., and at least one announcement between 7 p.m. and midnight. 47 C.F.R. §§ 73.3580(d)(4)(ii)(B)(2) & (3). However, an NCE station need not broadcast the announcement during any month during which it does not operate. 47 C.F.R. § 73.3580(d)(4)(ii)(B)(3).

verifying the truth and accuracy of the information therein and that all of the information requested by this letter which are in Weber State's possession, custody, control or knowledge has been produced. If multiple Weber State employees contribute to the response, in addition to such general affidavit or declaration of the authorized officer of Weber State noted above, if such officer (or any other affiant or declarant) is relying on the personal knowledge of any other individual, rather than his or her own knowledge, provide separate affidavits or declarations of each such individual with personal knowledge that identify clearly to which responses the affiant or declarant with such personal knowledge is attesting. All such declarations provided must comply with Section 1.16 of the Rules,¹⁰ and be substantially in the form set forth therein. We remind Weber State that to knowingly and willfully make any false statement or conceal any material fact in reply to this inquiry is punishable by fine or imprisonment.¹¹ Moreover, failure to respond appropriately to this Media Bureau letter of inquiry may constitute a violation of the Communications Act and our Rules.

Please respond within thirty (30) calendar days of the date of this letter, submitting the response in triplicate to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, and serving copies on Donald Lynn Hullinger and on Heather Dixon, Esq., Room 2-A236, 445 12th Street, S.W., Washington, DC 20554.

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle" followed by the initials "PH" in a stylized, cursive script.

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Donald Lynn Hullinger

¹⁰ 47 C.F.R. § 1.16.

¹¹ See 18 U.S.C. § 1001; *see also* 47 C.F.R. § 1.17.