

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Received & Inspected

AUG 14 2013

In re: Application of)
)
Weber State University)
)
for renewal of License)
KWCR-FM 88.1 MHz)
Ogden, UT)
_____)

FCC Mail Room

File No. BRED-20130603BDZ
Facility ID No. 71394

To: Chief, Media Bureau, United States Federal Communications Commission;
Audio Division, License Renewal Team

PETITION TO DENY RENEWAL

Donald Lynn Hullinger (Herein referred to as "The Petitioner") respectfully petitions to deny the renewal of the above captioned application. As is demonstrated below, grant of this application is prima facie inconsistent with the public interest standard set forth in Section 309 (a) of the Communications Act. This petition is submitted pursuant to Section 309(d) of the Communications Act, 47 U.S.C. Sec. 309(d) and Section 73.3584 of the Commission's Rules and Regulations, 47 C.F.R. Sec. 73.3584, is timely, and the petitioner has standing because he has previously worked for this station and is a listener of this station.

INTRODUCTION

This petition challenges the renewal of the station license of Non-Commercial Educational station KWCR-FM which is licensed to Ogden, UT. The basis of this challenge is that this station has failed to meet the needs of its community of license and, in some cases, the stations behavior runs completely contrary to public interest and therefore, that renewal of its license would not serve the public interest. Below you will find facts about this broadcaster and their operation.

Content played featuring drug lyrics, profanity and indecent material.

As far back as 2009, the petitioner has monitored KWCR for the content being played when he realized that the play lists that were programmed contained music that was not edited and included the "F" word and the "s" word. At the behest of an FCC representative, the petitioner started recording content played by KWCR, collecting other types of proof was playing violating content, and filing complaints with the FCC on a regular basis. Below is a list of FCC Complaints filed about these types of violations.

FORM475B: 09-WB14160008
FORM475B: 09-WB14195957

FORM475B: 09-WB14182427
FORM475B: 09-WB14195970

FORM475B: 09-WB14185618
FORM475B: 09-WB14196001

FORM475B: 09-WB14196029
FORM475B: 09-WB14214814
FORM475B: 10-WB14465282

FORM475B: 09-WB14196052
FORM475B: 09-WB14329382
FORM475B: 13-WB15117965

FORM475B: 09-WB14214803
FORM475B: 10-WB14465264

Also Listed below is each date with the name of the content that contained profane or indecent content. Audio and visual proof can be provided of most of these violations, upon request.

4/23/09	The Antlers – Bear	4/24/09	The Antlers – Bear
4/25/09	N.E.R.D. - Spaz Nico Vega – Beast The Antlers – Bear	5/4/09	Dillinger 4 – jingle for the product Savion Glover – P.O.S.
9/4/09	Savion Glover- P.O.S.	9/5/09	Beast – Out of Control Modest Mouse – Guilty Cocker Spaniels These Arms are Snakes – Prince Squid The Antlers – Two Youth Group – Freidrich Strauss
9/7/09	Flowbots – Rhythem Method	9/8/09	The Antlers – Two Youth Group – Freidrich Strausse
3/2/10	Youth Group – Freidrich Strausse Modest Mouse – Guilty Cocker spaniels	3/3/10	Youth Group – Freidrich Strausse These Arms Are Snakes – Prince Squid
3/ 4/10	Youth Group – Freidrich Strauss These Arms are Snakes – Prince Squid	4/13/10	Expose yourself Live read

After filing all those complaints and then having them not be worked because the FCC had stopped enforcing content complaints pending a supreme court hearing, the petitioner ceased filing content complaints until recently. Sometime shortly after the beginning of 2011, after the petitioner had started speaking with the licensees administration, most music played by the station began being edited for content with the petitioner only hearing profane or indecent content occasionally.

Recent possible content violation that the petitioner has heard are drug lyrics and possible obscenity being played in music played on KWCR. According to FCC Document 71-205 which clarified FCC policy on drug lyrics:

“Whether a particular record depicts the dangers of drug abuse, or, to the contrary, promotes such illegal drug usage is a question for the judgment of the licensee. The trust of this notice is simply that the licensee must make that judgment and cannot properly follow a policy of playing such records without someone in a responsible position knowing the contents of those lyrics. Such a pattern of operation is clearly a violation of the basic principal of the licensee's responsibility for, and a duty to exercise adequate control over, the broadcast material presented over his station. It raises serious questions as to whether continued operation of the station is in the public interest.”

On Thursday APR. 4, 2013 at around 7:35 pm, the petitioner was listening to “The Nerd Show” on KWCR and heard the song “Naked Lunch” by Blue Sky, Black Death and Nacho Picasso.

The song is littered with drug lyrics and uses the word "Bitch", alludes to male masturbation in a public setting, and makes reference to putting ones fingers in a woman's genitals. This song, on its face, appears to promote drugs and appears to violate indecency rules. The petitioner called the KWCR's Studio Line at 801-626-8800 and spoke to Dave, the DJ that hosts the show and he informed the petitioner that he was allowed to play what he liked as long as the profanities were cut.

On 6/26/2013 the petitioner received a phone call from an acquaintance telling him to tune in to KWCR because the hosts of the show that was airing were talking about some interesting subjects. When he turned in to the program the first topic was the use of marijuana and the hosts expressed how great it would be if Martha Stewart would introduce her own line of hand-rolled Marijuana Cigarettes and also how cool it would be if ones grandmother could roll Marijuana Cigarettes. This would be the second time in as many weeks that drugs were referred to on KWCR and this time, the conversation completely glorified the use of them.

In several stories discussed, the hosts kept discussing male genitalia. In one specific story the hosts discussed John Wayne Bobbitt, the injury he sustained, and commented that one possible reason that Loraina Bobbitt perpetrated the crime was because "she was looking for a permanent toy."

These are all potential violations of 18 U.S.C. 1464. Even if this content does not rise to the level of obscenity, it shows a clear pattern that the licensee does not exercise adequate control over the broadcast material aired over their station. This not only raises serious question whether continued operation of the station is in the public interest, it actually goes against public interest for this pattern of behavior to continue.

Broadcasting commercial messages by a Non-Commercial Educational entity

The Petitioner has also been monitoring KWCR's use of Enhanced Underwriting and has observed a pattern of abuse of the enhanced underwriting rules. The following is list of the underwriting messages that KWCR has played in the last few years that the petitioner has filed complaints on. (The dates are excluded on some as the files the petitioner had have been transferred between computers and the original dates were lost in the transfer.)

12/1/2009	Breakaway Automotive	4/9/2013	Club 366
5/23/13	Roosters Brewing co.		BC Kites and frames
	Beehive Self Storage		Sustainable Building Center

KWCR acknowledges in their renewal application that they received 2 letters of inquiry from the FCC about these possible violations and that after they responded they have heard nothing else since. The petitioner, after having inquired of the status of the investigation, recently received an email from Jennifer Lewis Hershman, an attorney adviser to the Enforcement Bureau, regarding these complaints of underwriting violations and Ms. Hershman stated that they are an ongoing investigation that she cannot discuss. The petitioner has since sent Ms. Hershman the *Club 366* and *Roosters Brewing Co.* underwriting

ads because he believes they also violate the rules for enhanced underwriting. There again is a clear pattern of the station and its management not supervising what is going out over their airwaves, which again indicates a question of whether the continued operation of the station is in the public interest.

Violation of Emergency Alert System rules

On September 21, 2009, Agents of the Enforcement Bureau's Denver district office inspected KWCR-FM, Located at 1605 University Circle, in Ogden, UT. Subsequent to that visit a Notice Of Violation was issued Jan. 4, 2010 for EAS violations. The information contained in that NOV states that the NOV was issued pursuant to section 189 of the commission's rules. The information of the NOV is as follows: The file number is EB-09-DV-0043. The NOV no. is v201032800017. The violations that were observed were: 47.c.f.r s: 11.35 (a), 47.c.f.r s: 11.61 (a) (1), 47.c.f.r s: 11.61 (a) (2), 47.c.f.r s: 11.61 (b).

On top of this, every time the petitioner has heard an EAS activation, he has tuned into KWCR immediately, listened for at least 15 min, and has NEVER heard an EAS notification go out over KWCR's airwaves. On Nov 9, 2011, the petitioner tuned into KWCR at 2 pm eastern time (12 pm Mountain) to hear the National Emergency Alert test. At 12:02 pm a DJ came on and announced the last song and then said "so, there is supposed to be some emergency alert right now but..... So yeah" and then announced the next song and went into the next song, there was not even an attempt at the alert. If indeed the EAS for KWCR is still not functioning properly, this is a direct violation of EAS protocols and as such should be considered as being part of KWCR's lack of serving the public interest.

Public File

The petitioner has gone several times in the past 4 years and inspected the public file of KWCR and found the public file to be in disarray and missing components. The most recent inspection that the petitioner made of KWCR's Public File was 4/11/2013. Some lapses in the public file that the petitioner noticed on this visit was that the ownership reports in the file were last dated 2005, EEO Reports last dated 2007, "the public and broadcasting was out of date, there was not a copy of the 2008 version (which the petitioner pointed out to the DJ on duty.)

There seemed to be a lack of materials regarding FCC complaints in the file regarding the open investigation of possible underwriting violations. The Letters of Inquiry are in the file, however there is nothing else in regard to any responses to these letters of Inquiry which KWCR stated in their renewal application that they had composed and sent to the FCC. The last Issues/Programs list the petitioner observed was from 2010 and the staff was definitely not placing them quarterly before 2010. Also, the last list of donors was dated 2010.

The petitioner looked through the station logs and found station logs for 2010, 2011, a few for 2012, and none for 2013. The station logs appear incomplete and there are not logs for each broadcast day.

Pre and Post-Filing Announcements

The petitioner monitored KWCR-FM on Apr. 1, 2013; Apr. 16, 2013; May 1, 2013 & May 16, 2013 between 7 and 9 am and 4 and 6 pm on each date for pre-filing announcements and heard none on any of the dates mandated by FCC renewal process procedures. The

Petitioner also monitored KWCR between 7 and 9 am and 4 and 6 pm on June 1, 2013; June 3, 2013 (the day all applications were supposed to be filed as the 1st fell on a Saturday) and June 4, 2013 (assuming that since KWCR's application had not been filed on the 3rd that it would be filed on the 4th and that they would air post-filing announcements the day they did file) and heard no post filing announcements any of those days. The Petitioner listened on June 16, 2013 between 7-9 am, 4 pm – 12 am, and heard no post-filing announcements. He also listened July 1, 2013 from 7-9 am and 4-6 pm and again, no post-filing announcements were aired. On July 16th, 2013 the petitioner listened from 7-9 am and again 4-6 pm and heard no post filing announcements. On Aug 1st, 2013 there were no post filing announcements when he monitored the station between 7-9 am and 4p – 12 am.

Not airing these announcements is a direct violation of the requirements to be fulfilled as part of the licensee's broadcast license renewal requirements, and as such again indicates the stations lack of adherence to FCC Rules.

Not open during "Normal Business Hours"

The Petitioner has gone numerous times to KWCR's main studio between the hours of 9 am and 5 pm to attempt to inspect KWCR's Public File and has found the station to be closed and inaccessible the majority of the time. The most recent attempt was on Wednesday, June 19th, 2013. The petitioner went to the Main Studio Location because KWCR had posted specific hours that they would be open that week (The petitioner took a photo of the flyer with the posted open hours and a photo of the main studio unstaffed).

The flyer hanging next to the main studio door indicated that the main studio would be staffed from 2pm Mountain Time to 9 pm Mountain time that day, however when the petitioner arrived at 7:13 pm the station was unoccupied and the front door was locked. The Petitioner stayed till 7:40 pm to ascertain if there was staff that were working but were on break, however, no one ever returned. The petitioner returned to the Main Studio location of KWCR on 6/26/2013 at 5:30 PM because according to the flyer on the door for that week the main studio was to be staffed from 2 pm to 8 pm. When the petitioner arrived, he was again met with a closed and locked door and all lights off. The petitioner attempted to call the staff offices however, there was no answer. The petitioner waited for 35 minutes to see if anyone from the staff showed, to no avail, so he left. The petitioner also found the station closed on 6/28/2013 at 10:05 AM; on 7/11/2013 at 11:38 AM; on 7/16/2013 at 4:57 PM; on 7/23/2013 at 4:42 pm; on 7/25/2013 at 4:23 P.M; and 7/26/2013 at 1:05 pm.

Accordingly, the FCC has stated repeatedly that they consider 8 hours between 8 am and 6 pm normal business hours, which KWCR management and staff do not keep. This is indicated by KWCR's own signs (which the petitioner retains photo images of) posted outside their station which indicates that not only do they not staff for 8 hours a day between the hours outlined, but they do not staff anywhere close to 40 hours a week: The fact is, the staff does not even keep what hours they post they will be there, which is apparent by their lack of staffing when they indicate they will be. This again goes to the management of the station not following FCC rules and Guidelines, which again runs contrary to public interest.

Lack of Public Interest Programming

The petitioner has observed that KWCR has a serious lack of programming that meets the

FCC guidelines for meeting the "obligation to serve the public interest, convenience and necessity." Granted, the station plays Public Service Announcements at every stop set, however, the FCC has ruled that "while PSAs do serve the public interest and can be issue-responsive programming, they cannot by themselves be the sole source of such programming. Instead, stations need to address the issues that face their community in some fashion other than PSAs to fully meet their public interest obligations."

KWCR does broadcast news segments, however it is not with any consistency and does not always include stories that address issues that face the local community.

KWCR claims to broadcast Spanish language programming, but this type of programming is also never broadcast with any consistency. They are supposed to run this type of programming weekly; however, any time the petitioner has tuned in for this type of programming, he very rarely hears it actually running.

KWCR claims they meet public interest obligations by playing music from "local artists." This is all well, but can playing the same few songs from garage bands over and over be considered contributing to their obligation to serve the public interest, especially since just playing music does not address issues that face the local communities?

Conclusion

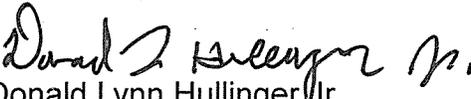
KWCR will argue that they are a Non-Commercial Educational Station and mistakes will happen or that they don't have the resources to staff the station correctly to meet FCC standards and rules. This is all negated by the fact that the station has a (full time) Faculty Advisor that knows FCC rules, a full managerial staff (of at least 5 directors) and Students working as DJ's, which is more than sufficient to staff the main studio 8 hours a day.

It seems that if the University were interested in maintaining a healthy relationship with the FCC and keeping their license in good standing that they would have made changes to station upper management after the problems that they have already experienced with the FCC.

The petitioner suggests that the reviewers of this complaint pull the FCC files for this station and look at them as the petitioner has heard "rumors" of other violations that the FCC has addressed with this licensee; however, he has no proof of these so he cannot speak to them with any certainty.

All of these facts taken together, with the existing violations of the Broadcasting Act that have already been addressed and the apparent disregard for FCC rules, constitute a pattern of abuse which runs directly contrary to public interest. As such, it is prudent that the renewal should be designated for hearing and that the license should not be renewed after hearing all the evidence of the licensee's lack of serving the public interest and disregard of the FCC's policies and regulations.

Thank You,


Donald Lynn Hullinger Jr.

Affidavit

Received & Inspected

AUG 14 2013

FCC Mail Room

The State Of Utah)
) SS
County of Salt Lake)

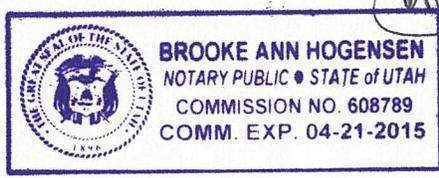
I, Donald Lynn Hullinger Jr. of West Jordan, Utah, MAKE OATH AND SAY THAT:

1. I, Donald Lynn Hullinger of West Jordan, UT am a regular listener and previous Student Employee of KWCR-FM. As Such, I am a party of Interest, have standing, and have a real stake in the outcome of the renewal of this stations license.
2. I certify that the allegations and statements made in this Petition to Deny are true and correct to the best of my knowledge.

SUBSCRIBED AND SWORN TO)
BEFORE ME, on the)
5⁴th day of August, 2013)

Brooke A. Hogensen)
Notary Public)
My Commission Expires 04-21-2015)

Donald Lynn Hullinger Jr.
Donald Lynn Hullinger Jr.)



(DPH)

CERTIFICATE OF MAILING

Received & inspected

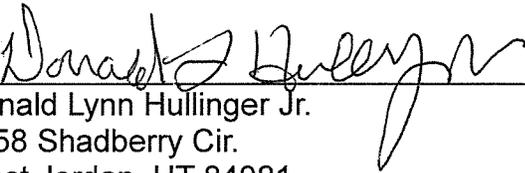
AUG 14 2013

FCC Mail Room

I, Donald Lynn Hullinger, hereby certify that I have this day served the foregoing document upon the parties of record set forth below by mailing a copy thereof, properly addressed by first class mail:

KWCR-FM
2188 University Circle
Ogden, UT 84408

DATED this 5th day of August, 2013 .

x 
Donald Lynn Hullinger Jr.
5558 Shadberry Cir.
West Jordan, UT 84081