

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

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LETICIA R. SE... S. BILPRETH

In the Matter of)
)
Indiana Wesleyan University) Facility I.D. No. 29292
Licensee of Station WIWU-CD) NAL/Acct. No. 201241420007
Marion, Indiana) FRN: 0013222245 FILED/ACCEPTED

**RESPONSE TO NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

APR 30 2012

Federal Communications Commission
Office of the Secretary

1. Indiana Wesleyan University ("IWU") hereby responds to the Commission's Notice of Apparent Liability ("NOAL"), DA 12-485, (rel. March 29, 2012), based on failure of Station WIWU-CD, Facility ID 29292, Marion, Indiana, to make electronic filings of Children's Television Reports (Form 398) in 2009 and 2010.

2. IWU has already explained, in responding on April 28, 2012, to the Commission's letter of inquiry of March 24, 2012, that its staff member in charge of these filings recalled attempting to file these reports but evidently failed to complete the electronic process properly. But even if the facts underlying the NOAL are correct – and IWU cannot prove conclusively otherwise – the forfeiture is excessive, especially since all of the required children's programming was in fact broadcast, which served both the needs of the viewing public and the purpose of Section 73.671 of the Rules.

3. Attached is the Declaration of Randall E. King, Ph.D., Director of Broadcast Media for IWU, presenting proof of the broadcast of Children's programming.¹ Dr. King also notes that

¹ Dr. King's Declaration refers to an attached Excel spreadsheet documenting the broadcast of Children's Programming. This material exceeds 600 pages, so counsel is withholding it from today's filing to avoid unnecessary use of paper and will try to find a way to submit an electronic copy within the next two business days. This response to the NOAL is being submitted now, to ensure a timely filing.

WIWU-CD has never received any other sanction by the Commission, so the licensee requests a reduction based on its prior good record. Finally, WIWU-CD operates noncommercially and so does not generate any cash revenue that can be used to pay the forfeiture.²

4. IWU also urges that the Commission's so-called "standard" forfeiture amounts are not rational, when the forfeiture here is \$13,000 while the forfeiture assessed for failure to prepare issues-programs lists for the public file is only \$4,000; *see Opus Broadcast Tallahassee, LLC*, DA 12-657, DA 12-658, DA 12-659, DA 12-660, released April 26, 2012. In both situations, programming responsive to public need is involved, and the offense pertains only to record-keeping and not failure to broadcast the underlying programming.

5. In light of the foregoing factors, IWU requests that the forfeiture be reduced to a nominal amount.

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Respectfully submitted,


Peter Tannenwald

Counsel for Indiana Wesleyan University

April 30, 2012

² While IWU recognizes that the Commission has in the past looked to all revenues of an educational institution from all activities, including tuition, in assessing forfeitures, it takes exception to a policy that forces the diversion of revenue from non-broadcast activities, requiring their curtailment, especially where, as here, an educational institution provides service to the public on a noncommercial basis.

DECLARATION OF RANDALL E. KING, Ph.D.

RANDALL E. KING, Ph.D., hereby declares as follows:

1. I am the Director of Broadcast Media for Indiana Wesleyan University. In that position, I supervise the operation of Station WIWU-CD.

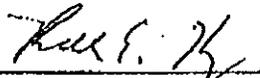
2. We cannot disprove the substance of the findings of the Notice of Apparent Liability issued against WIWU-CD on March 29, 2012, but we request a reduction of the penalty for the following reasons:

a. WIWU-CD is confident the required Children's programming was broadcast during the time period in question. We offer the attached Excel files, with exported data from our programming software, as supporting evidence. These actions fulfilled the intent of the Children's Programming Act, if not the reporting requirements.

b. WIWU-CD has never received a Notice of Violation or Notice of Apparent Liability, to our knowledge, and has operated in good standing. Further, we produce consistent, original programming of significant local interest and service to the community, fulfilling and exceeding the intent of Class A/LPTV license initiatives.

c. WIWU-CD operates non-commercially. The only commercials aired are embedded in national programming and exist for barter purposes. There is no revenue generated by the station as a noncommercial, educational entity supported by Indiana Wesleyan University.

I declare under penalty of perjury that the foregoing is true and correct.



Randall E. King, Ph.D.