

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Butler Broadcast Consultants, LLC)	File No. EB-FIELDSCR-12-00003413
Licensee of Station WXKW)	
)	
Facility ID: 170942)	NOV No. V201332600001
)	
Key West, Florida)	

NOTICE OF VIOLATION

Released: October 1, 2012

By the Resident Agent, Miami Office, South Central Region, Enforcement Bureau:

1. This is a Notice of Violation (Notice) issued pursuant to Section 1.89 of the Commission’s rules (Rules),¹ to Butler Broadcast Consultants, LLC (Butler), licensee of Station WXKW in Key West, Florida. Pursuant to Section 1.89(a) of the Rules, issuance of this NOV does not preclude the Enforcement Bureau from further action if warranted, including issuing a Notice of Apparent Liability for Forfeiture for the violation(s) noted herein.²

2. On July 18, 2012, based on a complaint by the Federal Aviation Administration that a spurious emission on the aeronautical band frequency 113.1 MHz was emanating from Station WXKW’s transmitter, agents of the Enforcement Bureau’s Miami Office inspected Station WXKW located at 525 Southard Street, Key West, Florida 33040, and observed the following violations:

- a. 47 C.F.R. § 11.35(a): “...[Emergency Alert System] EAS Participants must determine the cause of any failure to receive the required tests or activations specified in Sections 11.61(a)(1) and (a)(2). Appropriate entries indicating reasons why any tests were not received must be made in the broadcast station logs as specified in Sections 73.1820 and 73.1840 of this chapter. ... ” Station WXKW’s EAS equipment was removed for repair on July 9, 2012. There were no entries in the station’s logs that Station WXKW had received any Required Weekly or Required Monthly Tests from its assigned LP-1 or LP-2 stations and no entries indicating why such tests had not been received.

¹ 47 C.F.R. § 1.89.

² 47 C.F.R. § 1.89(a).

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- b. 47 C.F.R. § 11.61(a): “EAS Participants shall conduct tests at regular intervals, as specified in paragraphs (a)(1) and (a)(2) of this section...”
- (1) (i)(A) “Analog and digital AM, FM, and TV broadcast stations must conduct tests of the EAS header and EOM codes at least once a week at random days and times.” During the inspection, the EAS printouts showed that Required Weekly EAS Tests were not conducted at random days and times, but were all conducted on Sunday morning at midnight.
- c. 47 C.F.R. § 73.317(a): “FM broadcast stations employing transmitters authorized after January 1, 1960 must maintain the bandwidth occupied by their emissions in accordance with the specification detailed below. ... (S)hould harmful interference to other authorized stations occur, the licensee shall correct the problem promptly or cease operation.” (d) “Any emission appearing on a frequency removed from the carrier by more than 600 kHz must be attenuated by at least $43 + 10 \text{Log}_{10}(\text{Power, in watts})$ dB below the level of the unmodulated carrier, or 80 dB, whichever is the lesser attenuation.” On the date of inspection, the WXXW transmitter was operating with 696 watts transmitter output power. Therefore, any emissions removed from the carrier by more than 600 kHz must be attenuated by at least 71.4 dB. During the inspection, agents observed a spurious emission on 113.1 MHz emanating from the WXXW transmitter which was attenuated by only 43 dB below the level of the unmodulated carrier. When the WXXW transmitter was temporarily powered down, the spurious emission disappeared.
- d. 47 C.F.R. § 73.1590: “The licensee of each AM, FM, TV, and Class A TV station... must make equipment performance measurements for each main transmitter as follows: (a)(7) When required by other provisions of the rules or the station license.” (b) “Measurements for spurious and harmonic emissions must be made to show compliance with the transmission system requirements of ... § 73.317 for FM stations... Measurements must be made under all conditions of modulation expected to be encountered by the station...” (d) “The data required by paragraphs (b) and (c) of this section, together with a description of the equipment and procedure used in making the measurements, signed and dated by the qualified person(s) making the measurements, must be kept on file at the transmitter or remote control point for a period of 2 years, and on request must be made available during that time to duly authorized representatives of the FCC.” During the agents’ inspection, and in subsequent conversations, station personnel stated to an agent that a possible cause of the spurious emission on 113.1 MHz was a damaged band pass filter in the transmission line, and that the filter was removed for several weeks and later reinstalled. This constitutes a modification to the transmitting equipment, and therefore, equipment

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performance measurements must be made as per §73.1690(e). Additionally, since the transmitter was emanating a spurious emission on an aeronautical band frequency and may pose a threat to life or property, these measurements are necessary to ensure that any aeronautical band emissions have been eliminated or reduced to acceptable levels, and that the station is otherwise operating in compliance with the technical rules. No equipment performance measurements were available upon inspection, and station personnel stated to an agent that equipment performance measurements were not conducted upon removal or reinstallation of the filter.

- e. 47 C.F.R. § 73.1690(e): “Any electrical and mechanical modification to authorized transmitting equipment that is not otherwise restricted by the preceding provisions of this section, may be made without FCC notification or authorization. Equipment performance measurements must be made within ten days after completing the modifications (See § 73.1590). An informal statement, diagram, etc., describing the modification must be retained at the transmitter site for as long as the equipment is in use.” Station personnel stated that the damaged band pass filter was removed and reinstalled several times between July 18, 2012 and August 25, 2012. On September 7, 2012, station personnel stated to an agent that no equipment performance measurements had been made.
- f. 47 C.F.R. § 73.1800: “The licensee of each station must maintain a station log as required by Sec. 73.1820.” This log must be retained for a period of 2 years as required by Section 73.1840. During the inspection, the agents observed that the only station logs available were EAS equipment printouts of Required Weekly Tests sent from the period February 19, 2012 to May 27, 2012.
- g. 47 C.F.R. § 73.1820(a)(1)(iii): “Entries must be made in the station log...of each test and activation of the Emergency Alert System (EAS) pursuant to the requirement of part 11 of this chapter and the EAS Operating Handbook.” Aside from EAS equipment printouts of Required Weekly Tests sent from February 19, 2012 to May 27, 2012, there were no other logs of Required Weekly Tests sent, and no logs whatsoever of any Required Weekly Tests received or Required Monthly Tests sent or received.
- h. 47 C.F.R. § 73.1870(b)(3): “The designation of the chief operator must be in writing with a copy of the designation posted with the station license.” During the inspection, the agent observed that there was no written designation of the chief operator.
- i. 47 C.F.R. § 73.1870(c)(3): “The chief operator is responsible for...review of the station records once each week to determine if required entries are being made correctly...Upon completion of the review, the chief operator or his designee must date and sign the log, initiate any corrective action which may

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be necessary, and advise the station licensee of any condition which is repetitive.” During the inspection, the agents observed that the Station’s EAS printouts were not signed weekly by the chief operator.

3. As the nation’s emergency warning system, the Emergency Alert System is critical to public safety, and we recognize the vital role that broadcasters play in ensuring its success. The Commission takes seriously any violations of the Rules implementing the EAS and expects full compliance from its licensees. We also must investigate violations of other rules that apply to broadcast licensees.

4. Pursuant to Section 308(b) of the Communications Act of 1934, as amended,³ and Section 1.89 of the Rules, we seek additional information concerning the violations and any remedial actions taken. Therefore, Butler must submit a written statement concerning this matter within twenty (20) days of release of this Notice. The response (i) must fully explain each violation, including all relevant surrounding facts and circumstances, (ii) must contain a statement of the specific action(s) taken to correct each violation and preclude recurrence, and (iii) must include a time line for completion of any pending corrective action(s). The response must be complete in itself and must not be abbreviated by reference to other communications or answers to other notices.⁴

5. In accordance with Section 1.16 of the Rules, we direct Butler to support its response to this Notice with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of Butler with personal knowledge of the representations provided in Butler’s response, verifying the truth and accuracy of the information therein,⁵ and confirming that all of the information requested by this Notice which is in the licensee’s possession, custody, control, or knowledge has been produced. To knowingly and willfully make any false statement or conceal any material fact in reply to this Notice is punishable by fine or imprisonment under Title 18 of the U.S. Code.⁶

6. All replies and documentation sent in response to this Notice should be marked with the File No. and NOV No. specified above, and mailed to the following address:

³ 47 U.S.C. § 308(b).

⁴ 47 C.F.R. § 1.89(c).

⁵ Section 1.16 of the Rules provides that “[a]ny document to be filed with the Federal Communications Commission and which is required by any law, rule or other regulation of the United States to be supported, evidenced, established or proved by a written sworn declaration, verification, certificate, statement, oath or affidavit by the person making the same, may be supported, evidenced, established or proved by the unsworn declaration, certification, verification, or statement in writing of such person Such declaration shall be subscribed by the declarant as true under penalty of perjury, and dated, in substantially the following form . . . : ‘I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)’.” 47 C.F.R. § 1.16.

⁶ 18 U.S.C. § 1001 *et seq.* See also 47 C.F.R. § 1.17.

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Miami Office
PO Box 520617
Miami, FL 33152-0617

7. This Notice shall be sent to Butler at its address of record.

8. The Privacy Act of 1974⁷ requires that we advise you that the Commission will use all relevant material information before it, including any information disclosed in your reply, to determine what, if any, enforcement action is required to ensure compliance.

FEDERAL COMMUNICATIONS COMMISSION

Steven DeSena
Resident Agent
Miami Office
South Central Region
Enforcement Bureau

⁷ P.L. 93-579, 5 U.S.C. § 552a(e)(3).