

**Federal Communications Commission**

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

In the Matter of	)	
	)	
Birach Broadcasting Corporation	)	Case No. EB-FIELDNER-12-00005058
Licensee of Radio Station WTOR	)	
Facility ID # 74121	)	
Youngstown, New York	)	NOV No. V201332400009
	)	
	)	

**NOTICE OF VIOLATION**

**Released: December 6, 2012**

By the District Director, Philadelphia Office, Northeast Region, Enforcement Bureau:

1. This is a Notice of Violation (Notice) issued pursuant to Section 1.89 of the Commission’s rules (Rules)<sup>1</sup> to Birach Broadcasting Corporation, licensee of AM Broadcast Station WTOR in Youngstown, New York. 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 violations noted herein.<sup>2</sup>

2. On October 18, 2012, and November 15, 2012, an agent of the Enforcement Bureau’s Philadelphia Office inspected the WTOR main studio located in Lewiston, New York, and the WTOR transmitter site located in Ransomville, New York, and observed the following violations:

- a. 47 C.F.R. § 73.1225(a): “The licensee of a broadcast station shall make the station available for inspection by representatives of the FCC during the station’s business hours, or at any time it is in operation.” When agents attempted to conducted an inspection of the WTOR transmitter equipment during business hours on October 18, 2012, a station representative was not available to provide access to the transmitter building.
- b. 47 C.F.R. § 73.49: “Antenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) must be enclosed within effective locked fences or other enclosures. Ready access must be provided to each antenna tower base for meter reading and maintenance purposes at all times. However, individual

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<sup>1</sup> 47 C.F.R. § 1.89.

<sup>2</sup> 47 C.F.R. § 1.89(a).

tower fences need not be installed if the towers are contained within a protective property fence.” At the time of the inspection on October 18, 2012, a substantial portion of the fences surrounding Tower #1 and Tower #2 in the WTOR antenna array were removed. Because there was no protective property fence, these conditions resulted in unrestricted access to these towers, which had radio frequency potential at their base.

- c. 47 C.F.R. § 73.1125(e): “Each AM, FM, TV and Class A TV broadcast station shall maintain a local telephone number in its community of license or a toll-free number.” At the time of the inspection on October 18, 2012 and November 15, 2012, the WTOR website (www.Birach.com) and Verizon 411 Telephone Directory Service had no record of a telephone number for station WTOR. Furthermore, the phone number advertised in several online resources ((716) 754-9514) was no longer assigned to Station WTOR.
- d. 47 C.F.R. § 73.3526(e)(12): “Radio issues/programs lists. For commercial AM and FM broadcast stations, every three months a list of programs that have provided the station’s most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October—December, April 10 for the quarter January—March, etc.). The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. ... The lists described in this paragraph shall be retained in the public inspection file until final action has been taken on the station’s next license renewal application.” At the time of the inspection on October 18, 2012, the agent determined that the public inspection file did not contain five quarters of the issues-programs lists from the third and fourth quarters of 2011 and the first, second and third quarters of 2012.
- e. 47 C.F.R. § 73.1560(a)(1): “Except as provided for in paragraph (d) of this section, the antenna input power of an AM station as determined by the procedures specified in § 73.51 must be maintained as near as is practicable to the authorized antenna input power and may not be less than 90% nor more than 105% of the authorized power.” At the time of the inspections on October 18, 2012 and November 15, 2012, Station WTOR was operating with 2812.5 Watts or 20.5% of the authorized antenna input power.
- f. 47 C.F.R. § 73.1350(a): “Each licensee is responsible for maintaining and operating its broadcast station in a manner ... in accordance with the terms of the station authorization.” At the time of the inspection on October 18, 2012 and November 15, 2012, the field strength of the WTOR emissions at the monitoring point along the 189.5 degree bearing exceeded the maximum limit of 11.9 mV/m by 9.2 % percent.

- g. 47 C.F.R. § 73.62(a): “Each AM station operating a directional antenna must maintain the relative amplitudes of the antenna currents, as indicated by the antenna monitor, within 5% of the values specified on the instrument of authorization. Directional antenna relative phases must be maintained within 3 degrees of the values specified on the instrument of authorization.” At the time of the inspection on November 15, 2012, the relative amplitudes of the antenna currents and phases for each of the three antenna towers exceeded the authorized values.<sup>3</sup>
- h. 47 C.F.R. § 73.61(a): “Each AM station using a directional antenna must make field strength measurements at the monitoring point locations specified in the instrument of authorization, as often as necessary to ensure that the field at those points does not exceed the values specified in the station authorization... The results of the measurements are to be entered into the station log.” Station WTOR’s engineer reported that he had last taken monitoring point readings about one year ago. Those readings were not entered into the station logs and, at the time of inspection on October 18, 2012, the agent found that the directional parameters were out of tolerance. Although the agent immediately informed the station engineer regarding the out-of-tolerance meter readings, the meter readings were still out of tolerance when the agent returned on November 15, 2012.
- i. 47 C.F.R. § 73.1590(d): “Equipment Performance Measurements. 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.” At the time of the inspection on November 15, 2012, the station engineer stated that he conducted equipment performance measurements in the past year, but he did not maintain any records including the measurement data and the description of the equipment and procedures used.
- j. 47 C.F.R. § 73.1870(a)(3): “The designation of the chief operator must be in writing with a copy of the designation posted with the station license. Agreements with chief operators serving on a contract basis must be in writing with a copy kept in the station files.” At the time of the inspection on November 15, 2012, Birch Broadcasting had not made the designation of the chief operator in writing.

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<sup>3</sup> The relative current ratios for Tower #1, Tower #2 and Tower #3 exceeded that authorized by 10.6%, 47.5%, and 14.7%, respectively. The relative phases for Tower #1, Tower #2 and Tower #3 exceeded that authorized by 87°, 94.5° and 15°, respectively.

- k. 47 C.F.R. § 11.35(a): “EAS Participants are responsible for ensuring that EAS Encoders, EAS Decoders, Attention Signal generating and receiving equipment, and Intermediate Devices used as part of the EAS to decode and/or encode messages formatted in the EAS Protocol and/or the Common Alerting Protocol are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation. Additionally, EAS Participants must determine the cause of any failure to receive the required tests or activations specified in § 11.61(a)(1) and (2). Appropriate entries indicating reasons why any tests were not received must be made in the broadcast station log as specified in §§ 73.1820 and 73.1840 of this chapter for all broadcast streams...” For the two years prior to the November 15, 2012 inspection, Birach Broadcasting failed to ensure that Station WTOR was receiving the required weekly tests and required monthly tests. Furthermore, at the time of the inspection, there were no entries in the station logs indicating reasons why Station WTOR did not receive the required tests.

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 regulatees. We also must investigate violations of other Rules that apply to broadcast licensees. Pursuant to Section 308(b) of the Communications Act of 1934, as amended,<sup>4</sup> and Section 1.89 of the Rules, we seek additional information concerning the violations and any remedial actions taken. Therefore, Birach Broadcasting 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.<sup>5</sup>

4. In accordance with Section 1.16 of the Rules, we direct Birach Broadcasting to support its response to this Notice with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of Birach Broadcasting with personal knowledge of the representations provided in Birach Broadcasting’s response, verifying the truth and accuracy of the information therein,<sup>6</sup> and confirming that all of the information requested by this Notice

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<sup>4</sup> 47 U.S.C. § 308(b).

<sup>5</sup> 47 C.F.R. § 1.89(c).

<sup>6</sup> Section 1.16 of the Commission’s 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.

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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.<sup>7</sup>

5. 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:

Federal Communications Commission  
Philadelphia Office  
One Oxford Valley Building, Suite 404  
2300 East Lincoln Highway  
Langhorne, Pennsylvania 19047

6. This Notice shall be sent to Birach Broadcasting Corporation at its address of record.

7. The Privacy Act of 1974<sup>8</sup> 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

David C. Dombrowski  
District Director  
Philadelphia District Office  
Northeast Region  
Enforcement Bureau

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<sup>7</sup> 18 U.S.C. § 1001 *et seq.* See also 47 C.F.R. § 1.17.

<sup>8</sup> P.L. 93-579, 5 U.S.C. § 552a(e)(3).