

Federal Communications Commission

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

In the Matter of)	
)	
Ely Radio, LLC)	File No. EB-FIELDWR-12-00004672
Former Licensee of Station KWNA-FM)	
Facility ID # 60047)	NOV No. V201332960004
Winnemucca, NV)	
)	

NOTICE OF VIOLATION

Released: November 2, 2012

By the District Director, San Francisco Office, Western 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 Ely Radio, LLC (Ely), former licensee of radio station KWNA-FM in Winnemucca, NV. Pursuant to Section 1.89(a) of the Commission's Rules, issuance of this Notice 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.²

2. On September 10, 2012, an agent of the Enforcement Bureau's Denver Office inspected radio station KWNA-FM located at 335 W 4th Street, Winnemucca, NV, and observed the following violations:

- a. 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 and cable system records as specified in §§76.1700, 76.1708, and 76.1711 of this chapter. All other EAS Participants must also keep records indicating reasons why any

¹ 47 C.F.R. § 1.89.

² 47 C.F.R. § 1.89(a).

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tests were not received and these records must be retained for two years, maintained at the EAS Participant's headquarters, and made available for public inspection upon reasonable request.” The station had EAS records only from August 13, 2012, to the day of inspection on September 10, 2012; there were no other EAS records. Aside from these EAS records, the station had no logs documenting EAS issues or tests.

- b. 47 C.F.R. § 11.61(a)(2)(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.” The station had no EAS records prior to August 13, 2012, and no evidence of EAS tests preceding August 13, 2012. The EAS records from August 13, 2012, to September 10, 2012, show that the station did not transmit the Required Weekly Test (RWT) during the weeks of August 13, August 27, and September 3, 2012.
- c. 47 C.F.R. § 11.21: “EAS plans contain guidelines which must be followed by EAS Participants' personnel, emergency officials, and National Weather Service (NWS) personnel to activate the EAS...”. The State EAS Plan requires that KWNA-FM monitor KKOH, KUNR, NWS, and FEMA. At the time of the inspection, KWNA-FM was not monitoring KKOH.
- d. 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 be necessary, and advise the station licensee of any condition which is repetitive.” During the inspection, the chief operator said that he had not reviewed the EAS logs.
- e. 47 C.F.R. § 73.1943: “Every licensee shall keep and permit public inspection of a complete and orderly record (political file) of all requests for broadcast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted.” During the inspection, the station manager said that the station had requests but no time was purchased by a political candidate. The station manager said that the station did not keep and could not provide records of these requests.
- f. 47 C.F.R. § 73.3526(e)(1): “*Authorization.* A copy of the current FCC authorization to construct or operate the station, as well as any other documents necessary to reflect any modifications thereto or any conditions that the FCC has placed on the authorization. These materials shall be retained until replaced by a new authorization, at which time a copy of the new authorization and any related materials shall be placed in the file.” At the time of the inspection, the station did not have or could not find a copy of the station authorization.

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- g. 47 C.F.R. § 73.3526(e)(5): “*Ownership reports and related materials.* A copy of the most recent, complete ownership report filed with the FCC for the station, together with any subsequent statement filed with the FCC certifying that the current report is accurate, and together with all related material. These materials shall be retained until a new, complete ownership report is filed with the FCC, at which time a copy of the new report and any related materials shall be placed in the file.” The station did not have the most recent ownership report.

- h. 47 C.F.R. § 73.3526(e)(12): “*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 description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. 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.” The station did not have any issues/programs lists in its public inspection file.

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.

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, Ely 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 Ely to support its response to this Notice with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of Ely with personal knowledge of the representations provided in the Ely response, verifying the truth

³ 47 U.S.C. § 308(b).

⁴ 47 C.F.R. § 1.89(c).

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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:

Federal Communications Commission
San Francisco Office
5653 Stoneridge Dr., Suite 105
Pleasanton, CA 94588

7. This Notice shall be sent to Ely Radio, LLC 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

David K. Hartshorn
District Director
San Francisco Office
Western Region
Enforcement Bureau

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.

⁷ P.L. 93-579, 5 U.S.C. § 552a(e)(3).