

Federal Communications Commission

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

In the Matter of)	
)	
Kenai Educational Media, Inc.)	File No.: EB-FIELDWR-13-00009787
Licensee of KIBH-FM)	
)	NOV No.: V201332780025
Seward, Alaska)	
)	Facility ID: 176521
)	

NOTICE OF VIOLATION

Released: August 12, 2013

By the Resident Agent, Anchorage Resident Agent 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 Kenai Educational Media, Inc., (KEMI) licensee of radio station KIBH-FM with a community of service in Seward, Alaska. Pursuant to Section 1.89(a) of the 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 violation(s) noted herein.²

2. On June 18, 2013, an agent of the Enforcement Bureau’s Anchorage Office inspected KIBH-FM at the location that KEMI indicated was the designated main studio, 222 4th Ave., Seward, Alaska. The Anchorage agent observed the following violations:

- a. 47 C.F.R. § 11.15: “The EAS Operating Handbook states in summary form the actions to be taken by personnel at EAS Participant facilities upon receipt of an EAN, an EAT, tests of State and Local Area alerts. A copy of the Handbook must be located at normal duty positions or EAS equipment locations when an operator is required to be on duty and be immediately available to staff responsible for authenticating messages and initiating actions.” The inspection of June 18, 2013, found no EAS Operating Handbook.
- b. 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 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 system are in operation.” The inspection of June 18, 2013, found that the programming and identification of the EAS device/system was for another broadcast station, KWAP (AM) in Wasilla, AK in the Matanuska-Susitna Borough operational area, and not for the KIBH-FM station in the Kenai Peninsula Borough operational area. The KEMI representative stated that the EAS device/system

¹ 47 C.F.R. § 1.89.

² 47 C.F.R. § 1.89(a).

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came from the Wasilla station and was awaiting firmware and software updates from the manufacturer. The EAS system printer indicated that the system was activated/started May 18, 2013.

- c. 47 C.F.R. § 11.52(d)(1): “With respect to monitoring for EAS messages that are formatted in accordance with the EAS Protocol, EAS Participants must monitor two EAS sources.” The inspection of June 18, 2013, found that KIBH-FM EAS system was monitoring only one (1) source for EAS messaging, National Weather Service (NWS, Seward).
- d. 47 C.F.R. § 73.1125(a): “... each AM, FM, and TV broadcast station shall maintain a main studio at one of the following locations: (1) Within the station’s community of license; (2) At any location within the principal community contour of any AM, FM or TV broadcast station licensed to the station’s community of license; or (3) Within twenty-five miles from the reference coordinates of the center of its community of license...” “A station must equip the main studio with production and transmission facilities that meet applicable standards, maintain continuous program transmission capability, and maintain a meaningful management and staff presence.”³ The Commission has defined a minimally acceptable “meaningful presence” as full-time managerial and full-time staff personnel.⁴ The main studio inspection of June 18, 2013, found only a volunteer staff member at the main studio.
- e. 47 C.F.R. § 73.1230(a): “The station license and any other instrument of station authorization shall be posted in a conspicuous place and in such a manner that all terms are visible at the place the licensee considers to be the principal control point of the transmitter; (b) Posting of the station license and any other instruments of authorization shall be done by affixing them to the wall at the posting location, or by enclosing them in a binder or folder which is retained at the posting location so that the documents will be readily available and easily accessible.” The inspection of June 18, 2013, found no documents of any instrument of authorization posted, or in a binder, and available for inspection for KIBH-FM operations.
- f. 47 C.F.R. § 73.1400: “The licensee of an AM, FM, TV or Class A TV station is responsible for assuring that at all times the station operates with tolerances specified by applicable technical rules contained in this part and in accordance with the terms of the station authorization.” The inspection of June 18, 2013, found that access to the transmission facilities is restricted to specific hours of the day, six days of the week, and no automated system (ATS) or remote control facility was installed.
- g. 47 C.F.R. § 73.1840(a): “Any log required to be kept by station licensees shall be retained by them for a period of 2 years.” At the June 18, 2013, inspection, the

³ *Main Studio and Program Origination Rules*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026 (1988).

⁴ *Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616 (1991), *clarified* 7 FCC Rcd 6800 (1992).

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KEMI representative could produce no records for the station's operation (equipment, transmitter, calibrations, or EAS, etc.) for the prior two years.

- h. 47 C.F.R. § 73.1870(a): "The licensee of each AM, FM, TV or Class A TV broadcast station must designate a person to serve as the station's chief operator. At times when the chief operator is unavailable or unable to act (e.g., vacations, sickness), the licensee shall designate another person as the acting chief operator on a temporary basis. . . . (b)(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 June 18, 2013, inspection, the KEMI representative could not produce a written document designating a chief operator.

- i. 47 C.F.R. § 73.3527(a): *Responsibility to maintain a file* (2) Every permittee or licensee of an AM, FM, or TV station in the noncommercial educational broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(11) of this section. In addition, every permittee or licensee of a noncommercial educational TV station shall maintain for public inspection a file containing material, relating to that station, described in paragraphs (e)(12) of this section. A separate file shall be maintained for each station for which an authorization is outstanding, and the file shall be maintained so long as an authorization to operate the station is outstanding." At the June 18, 2013, inspection, the KEMI representative was unable to produce a complete public inspection file, producing a plastic portable file cabinet with approximately 25 green file folders of which only one folder was marked for and had documents/applications incorporated for KIBH-FM.

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.

4. Pursuant to Section 308(b) of the Communications Act of 1934, as amended,⁵ and Section 1.89 of the Rules, we seek additional information concerning the violations and any remedial actions taken. Therefore, Kenai Educational Media, Inc., 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). In addition, based on the Anchorage agent's observations of the transmission line length, antenna in use, and power amplifier, KEMI is not fulfilling the requirements of the existing special temporary authority (STA), for KIBH-FM.⁶ We also direct KEMI to provide a complete explanation, along with any relevant documents, as to when the KIBH-FM power amplifier stopped operating; the timeline for completing repairs and restoring KIBH-FM facilities under the STA; the manufacturer make, model and gain of the antenna at the STA location; and the

⁵ 47 U.S.C. § 308(b).

⁶ See File No. BSTA-20130424AAG, granted April 25, 2013, expiring October 22, 2013.

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manufacturer make, model, and the length of the transmission line from the transmitter to the antenna to the nearest foot. The response to all the inquiries raised in this Notice must be complete in itself and must not be abbreviated by reference to other communications or answers to other notices.⁷

5. In accordance with Section 1.16 of the Rules, we direct Kenai Educational Media, Inc., to support its response to this Notice with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of Kenai Educational Media, Inc., with personal knowledge of the representations provided in Kenai Educational Media, Inc., response, verifying the truth and accuracy of the information therein,⁸ 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.⁹

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
Anchorage Resident Agent Office
PO Box 231949
Anchorage, AK 99523-1949

7. This Notice shall be sent to Kenai Educational Media, Inc., at its address of record.

8. The Privacy Act of 1974¹⁰ 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.

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David J. Charlton
Resident Agent
Anchorage Resident Agent Office
Western Region
Enforcement Bureau

⁷ 47 C.F.R. § 1.89(c).

⁸ 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.

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

¹⁰ P.L. 93-579, 5 U.S.C. § 552a(e)(3).