

**Federal Communications Commission**

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

In the Matter of	)	
	)	
Mark V. Aulabaugh	)	File No. EB-07-DL-0249
Licensee of Radio Station KSEY-FM	)	
Facility ID: 71535	)	NOV No. V20083250004
Seymour, Texas	)	
	)	

**NOTICE OF VIOLATION**

Released: June 24, 2008

By the District Director, Dallas 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<sup>1</sup> to Mark V. Aulabaugh, licensee of radio station KSEY-FM in Seymour, Texas.
2. On February 20, 2008, agents of the Commission’s Dallas Office of the Enforcement Bureau inspected radio station KSEY-FM located at Seymour, Texas, and observed the following violation(s):
  - a. 47 C.F.R. § 11.35(a): “Additionally, broadcast stations and cable systems and wireless cable systems must determine the cause of any failure to receive the required [EAS] tests or activations specified in § 11.61(a)(1) and (a)(2). Appropriate entries must be made in the broadcast station log, ... indicating why any tests were not received.” At the time of inspection, the EAS equipment installed at KSEY was not operational. According a statement by Mr. Aulabaugh, the last time that the equipment was known to be operational was on January 3, 2008, and that the licensee had contacted the equipment manufacturer to initiate repair procedures on or before February 19, 2008. The station did not maintain a station log, and there were no entries regarding the EAS outage in any other logs.
  - b. 47 C.F.R. § 11.61: “Tests of EAS procedures. (a) EAS Participants shall conduct tests at regular intervals, as specified in paragraphs (a)(1) and (a)(2) of this section. Additional tests may be performed anytime. EAS activations and special tests may be performed in lieu of required tests as specified in paragraph (a)(4) of this section. All tests will conform with the procedures in the EAS Operating

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<sup>1</sup>47 C.F.R. § 1.89.

Handbook. (1) Required Monthly Tests of the EAS header codes, Attention Signal, Test Script and EOM code. (i) Tests in odd numbered months shall occur between 8:30 a.m. and local sunset. Tests in even numbered months shall occur between local sunset and 8:30 a.m. They will originate from Local or State Primary sources. The time and script content will be developed by State Emergency Communications Committees in cooperation with affected EAS Participants. Script content may be in the primary language of the EAS Participant. These monthly tests must be transmitted within 60 minutes of receipt by EAS Participants in an EAS Local Area or State. ... (2) Required Weekly Tests: (i) EAS Header Codes and EOM Codes: (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. ... (b) Entries shall be made in EAS Participant records, as specified in §§11.35(a) and 11.54(b)(13).” At the time of inspection, there were EAS Participant records available and no record that KSEY-FM had sent or received any tests at any time.

- c. 47 C.F.R. §§ 73.1560(a) & (d): “The station’s antenna input power must be maintained as near as practicable to the authorized antenna input power and may not be less than 90% nor more than 105% of the authorized power. Also, if it becomes technically impossible to operate the station at authorized power, the station may operate at reduced power for not more than 30 days without specific authorization from the FCC. If causes beyond the control of the licensee prevent restoration of the authorized power within 30 days, a request for Special Temporary Authority<sup>2</sup> must be made to the FCC in Washington, DC for additional time as may be necessary.” At the time of inspection, February 20, 2008, the FM transmitter was operating with a transmitter output power of 500 Watts, 23.3% of the transmitter output power necessary to meet the authorized 3 Kilowatt effective radiated power, and had been operating at reduced power for over 30 days.
- d. 47 C.F.R. § 73.1800(a): “The licensee of each station must maintain a station log as required by § 73.1820.” At the time of inspection, the required station log was not available for inspection.
- e. 47 C.F.R. §§ 73.1870(a)(1) & (3): “The licensee of each AM, FM, TV or Class A TV station must designate a person to serve as the station’s chief operator. The designation must be in writing and posted with the station’s license.” The agents found no written designation of a chief operator for the station.
- f. 47 C.F.R. § 73.3526(e)(8): Commercial broadcast licensees shall maintain for public inspection a file containing the materials set forth in this section. “At all times, a copy of the most recent version of the manual entitled ‘The Public and Broadcasting.’ There was no copy

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<sup>2</sup>See 47 C.F.R. § 73.1635.

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of “The Public and Broadcasting” in the station’s public inspection file.

3. Pursuant to Section 308(b) of the Communications Act of 1934, as amended,<sup>3</sup> and Section 1.89 of the Commission's Rules, Mark V. Aulabaugh must submit a written statement concerning this matter within twenty (20) days of release of this Notice. The response must fully explain each violation, must contain a statement of the specific action(s) taken to correct each violation and preclude recurrence, and should include a time line for completion of pending corrective action(s). The response must be complete in itself and signed by a principal or officer of the licensee. 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  
Dallas Office  
9330 LBJ Freeway, Suite 1170  
Dallas, TX 75243

4. This Notice shall be sent to Mark V. Aulabaugh at its address of record.
5. The Privacy Act of 1974<sup>4</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. Any false statement made knowingly and willfully in reply to this Notice is punishable by fine or imprisonment under Title 18 of the U.S. Code.<sup>5</sup>

FEDERAL COMMUNICATIONS COMMISSION

James D. Wells  
District Director  
Dallas District Office  
South Central Region  
Enforcement Bureau

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<sup>3</sup>47 U.S.C. § 308(b).

<sup>4</sup>P.L. 93-579, 5 U.S.C. § 552a(e)(3).

<sup>5</sup>18 U.S.C. § 1001 *et seq.*