

Federal Communications Commission

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

In the Matter of)	
)	
Vanguard Media LLC)	File No. EB-11-SD-0036
Licensee of Radio Station KIVA)	
Facility ID # 4705)	
Albuquerque, NM)	NOV No. V201132940002
)	

NOTICE OF VIOLATION

Released: March 10, 2011

By the Acting District Director, San Diego Office, Western Region, Enforcement Bureau:

1. This is a Notice of Violation ("Notice") issued pursuant to Section 1.89 of the Commission's Rules,¹ to Vanguard Media LLC ("Vanguard Radio"), licensee of radio station KIVA, licensed to serve Albuquerque, New Mexico.

2. On February 9, 2011, an agent of the Enforcement Bureau's San Diego Office inspected the KIVA main studio located in Albuquerque, New Mexico, and observed the following violations:

- a. 47 C.F.R. § 11.35(a): "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 log as specified in Sections 73.1820 and 73.1840 of this chapter for all broadcast streams" At the time of the inspection, there were no entries in KIVA's logs indicating why the required monthly tests (RMTs) had been sporadically missed over the three months prior to the inspection.

- 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. 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 Handbook." KIVA failed to ensure that, over the three months prior to the inspection, that RMTs of the EAS system were received and transmitted.

¹ 47 C.F.R. § 1.89.

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- c. 47 C.F.R. § 73.3526(e)(12): “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.” At the time of the inspection, the issues-programs lists for the third and fourth quarters for 2010 were not found in the 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. We also must investigate violations of other rules that apply to broadcast licensees. Pursuant to Section 403 of the Communications Act of 1934, as amended,² and Section 1.89 of the Commission's Rules, we seek additional information concerning the violations and any remedial actions the station may have taken. Therefore, Vanguard Radio 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.³

4. In accordance with Section 1.16 of the Commission’s Rules, we direct Vanguard Radio, to support its response to this Notice with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of Vanguard Radio, with personal knowledge of the representations provided in Vanguard Radio’s response, verifying the truth and accuracy of the information therein,⁴ 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

²47 U.S.C. § 403.

³47 C.F.R. § 1.89(c).

⁴Section 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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the U.S. Code.⁵

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
San Diego Office
4542 Ruffner Street, Suite 370
San Diego, CA 92111

6. This Notice shall be sent to Vanguard Media LLC at its address of record.

7. The Privacy Act of 1974⁶ 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

James T. Lyon
Acting District Director
San Diego District Office
Western Region
Enforcement Bureau

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

⁶ P.L. 93-579, 5 U.S.C. § 552a(e)(3).