

Federal Communications Commission

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

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| In the Matter of |) | |
| |) | |
| Kemp Broadcasting, Inc |) | File No.: EB-FIELDWR-13-00008283 |
| |) | |
| Registrant of Antenna Structure No. 1061958 |) | NOV No.: V201332900025 |
| |) | |
| Moapa, Nevada |) | |

NOTICE OF VIOLATION

Released: May 16, 2013

By the District Director, Los Angeles 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 Kemp Broadcasting, Inc, registrant of Antenna Structure No. 1061958 in Moapa, Nevada. 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 April 17, 2013, an agent of the Enforcement Bureau's Los Angeles Office inspected Antenna Structure No. 1061958 located at Moapa, Nevada, and observed the following violations:

- a. 47 C.F.R. § 17.4(g): "The Antenna Structure Registration Number must be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. Materials used to display the Antenna Structure Registration Number must be weather-resistant and of sufficient size to be easily seen at the base of the antenna structure." During the inspection, the agent observed no Antenna Structure Registration Number posted near the base of the antenna structure.
- b. 47 C.F.R. § 17.48: "The owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part: (a) Shall report immediately by telephone or telegraph to the nearest Flight Service Station or office of the Federal Aviation Administration any observed or otherwise known extinguishment or

¹ 47 C.F.R. § 1.89.

² 47 C.F.R. § 1.89(a).

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improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes. Such reports shall set forth the condition of the light or lights, the circumstances which caused the failure, the probable date for restoration of service, the FCC Antenna Structure Registration Number, the height of the structure (AGL and AMSL if known) and the name, title, address, and telephone number of the person making the report..." The agent observed extinguished flashing obstruction lights on the tower, both during the day and at night. Yet, the agent's research indicated a Notice to Airmen (NOTAM) had not been reported by the tower owner. Furthermore, during a telephone call on April 29, 2013 with a representative of Kemp Broadcasting, Inc, the agent was informed that a NOTAM had not been reported.

- c. 47 C.F.R. § 17.51(a): "All red obstruction lighting shall be exhibited from sunset to sunrise unless otherwise specified." During a nighttime observation, the agent observed no flashing red obstruction lighting at the $\frac{1}{4}$ level.
- d. 47 C.F.R. § 17.51(b): "All high intensity and medium intensity obstruction lighting shall be exhibited continuously unless otherwise specified." During a daytime observation, the agent observed no medium intensity obstruction lighting at the top or $\frac{3}{4}$ levels of the structure; only one light was observed at the $\frac{1}{2}$ and $\frac{1}{4}$ levels, where a minimum of two are required.
- e. 47 C.F.R. § 17.57: "The owner of an antenna structure for which an Antenna Structure Registration Number has been obtained must notify the Commission within 24 hours of completion of construction (FCC Form 854-R) and/or dismantlement (FCC Form 854). The owner must also immediately notify the Commission using FCC Form 854 upon any change in structure height or change in ownership information." At the time of the inspection, the FCC's antenna structure registration database listed the status of the antenna structure as "Granted" instead of "Constructed" even though the structure has been constructed. According to information obtained from the FAA, the antenna structure was constructed in 2001.
- f. 47 C.F.R. § 17.57: "The owner of an antenna structure for which an Antenna Structure Registration Number has been obtained must notify the Commission within 24 hours of completion of construction (FCC Form 854-R) and/or dismantlement (FCC Form 854). The owner must also immediately notify the Commission using FCC Form 854 upon any change in structure height or change in ownership information." At the time of the inspection, the FCC's antenna structure registration database did not list the correct owner's name or address.

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3. Pursuant to Section 403 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. Additionally, we request the following information be provided: (1) how were lights on antenna structure 1061958 monitored pursuant to Section 17.47 of the Rules for the period from January 1 to April 29, 2013; (2) the last date when all lighting on antenna structure 1061958 was known to be operational prior to April 29, 2013 and how that determination was made, including providing records of observed or otherwise known extinguishments or improper functioning of structure lights pursuant to Section 17.49 of the Rules; and (3) the current status of the lights on antenna structure 1061958 and if not yet fully restored, provide a timeframe as to when the repairs are expected to be completed.

4. Therefore, Kemp Broadcasting, 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). 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 Kemp Broadcasting, 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 Kemp Broadcasting, Inc with personal knowledge of the representations provided in Kemp Broadcasting, Inc's response, verifying the truth 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:

³ 47 U.S.C. § 403.

⁴ 47 C.F.R. § 1.89(c).

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.

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Los Angeles Office
18000 Studebaker Road, Suite 660
Cerritos, CA 90703

7. This Notice shall be sent to Kemp Broadcasting, Inc 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

Charles A. Cooper
District Director
Los Angeles District Office
Western Region
Enforcement Bureau

⁷ P.L. 93-579, 5 U.S.C. § 552a(e)(3).