

Federal Communications Commission

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

In the Matter of)	
)	
Howard N. Henderson)	File No.: EB-FIELDWR-14-00014979
Licensee of Station KDAP-FM)	NOV No.: V201432940042
)	
Douglas, Arizona)	Facility ID No.: 33761
)	

NOTICE OF VIOLATION

Released: May 8, 2014

By the 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 (Rules),¹ to Howard N. Henderson (Mr. Henderson), licensee of radio station KDAP-FM in Douglas, Arizona. 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 March 26, 2014, an agent of the Enforcement Bureau’s San Diego Office inspected radio station KDAP-FM located at 2031 N. Sulphur Springs Road, Douglas, AZ, and observed the following violation:

- 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 Common Alert 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 ...” At the time of the inspection, there were no entries explaining why the March 2014 required monthly test (RMT) was not received or transmitted and why required weekly tests (RWTs) were not received from the station’s monitoring assignment, Station KWCD, from March 2 through March 22, 2014. The station logs did not have any entries by the Chief Operator why the RMT was not received or

¹ 47 C.F.R. § 1.89.

² 47 C.F.R. § 1.89(a).

Federal Communications Commission

transmitted and why RWTs were not received during March 2014. According to Station KWCD, the RMT for March was transmitted on March 21, 2014.

- b. 47 C.F.R. § 11.52(d)(2): “ With respect to monitoring for EAS messages that are formatted in accordance with the EAS protocol, EAS Participants must monitor two EAS sources. The monitoring assignments of each broadcast station . . . are specified in the State EAS Plan and FCC Mapbook.” At the time of inspection, Station KDAP-FM was unaware that it was not monitoring its required assignment, Station KWCD, until advised by the San Diego agent.

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, Mr. Henderson 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 Mr. Henderson to support his response to this Notice with an affidavit or declaration under penalty of perjury, signed and dated by Mr. Henderson, 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 regulatee’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. § 308(b).

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.

Federal Communications Commission

Federal Communications Commission
San Diego Office
4542 Ruffner St., Suite 370
San Diego, CA 92111

7. This Notice shall be sent to Howard N. Henderson, at his 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

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

⁷ P.L. 93-579, 5 U.S.C. § 552a(e)(3).