

**Federal Communications Commission**

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

In the Matter of )  
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University of Toledo )  
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Licensee of Station WXUT ) File No.: EB-FIELDNER-19-00029455  
Facility ID: 69200 )  
 )  
Toledo, Ohio )

**NOTICE OF VIOLATION**

**Released: October 7, 2019**

By the Regional Director, Region One, 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 the University of Toledo, licensee of FM station WXUT in Toledo, Ohio. Pursuant to section 1.89(a) of the Commission's 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 violations noted herein.<sup>2</sup>

2. On August 1, 2019, an agent of the Enforcement Bureau's Columbia Office investigated a complaint into the operating schedule of FM station WXUT and observed the following violations:

- a. 47 C.F.R. § 73.1635(a)(3): "A request for a STA<sup>3</sup> necessitated by unforeseen equipment damage or failure may be made without regard to the procedural requirements of this section (e.g. via telegram or telephone). Any request made pursuant to this paragraph shall be followed by a written confirmation request conforming to the requirements of paragraph (a)(2) of this section. Confirmation requests shall be submitted within 24 hours." The University of Toledo failed to submit a request for Special Temporary Authority with the Commission for FM station WXUT to remain silent between mid- February 2019 and July 16, 2019 when the station's transmission equipment failed.

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<sup>1</sup> 47 CFR § 1.89.

<sup>2</sup> 47 CFR § 1.89(a).

<sup>3</sup> A special temporary authorization (STA) is the authority granted to a permittee or licensee to permit the operation of a broadcast facility for a limited period at a specified variance from the terms of the station authorization or requirements of the FCC rules applicable to the particular class of station.

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- b. 47 C.F.R. § 73.561(c): “A departure from the regular schedule set forth in a time-sharing agreement will be permitted only in cases where a written agreement to that effect is reduced to writing, is signed by the licensees of the stations affected thereby, and is filed in triplicate by each licensee with the Commission, Attention: Audio Division, Media Bureau, prior to the time of the proposed change. If time is of the essence, the actual departure in operating schedule may precede the actual filing of the written agreement, provided that appropriate notice is sent to the Commission in Washington, DC, Attention: Audio Division, Media Bureau.” The license for FM station WXUT (File # BLED-19900110KF) authorizes Toledo to share time with co-channel FM station WXTS in Toledo, Ohio. While FM station WXUT was silent between mid-February 2019 and July 16, 2019, Toledo failed to notify the Commission that it was departing from its regularly scheduled time-sharing agreement and having WXTS broadcast 24/7 on the frequency 88.3 MHz.

3. Pursuant to section 308(b) of the Communications Act of 1934, as amended (Act), and section 1.89 of the Commission’s rules, we seek additional information concerning the violations and any remedial actions taken.<sup>4</sup> Therefore, the University of Toledo 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.<sup>5</sup>

4. In accordance with section 1.16 of the Commission’s rules, we direct the University of Toledo to support its response to this Notice with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of the University of Toledo with personal knowledge of the representations provided in the University of Toledo’s response, verifying the truth and accuracy of the information therein, 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.<sup>6</sup> 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.<sup>7</sup>

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<sup>4</sup> 47 U.S.C. 308(b); 47 CFR § 1.89.

<sup>5</sup> 47 CFR § 1.89(c).

<sup>6</sup> Section 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 CFR § 1.16.

<sup>7</sup> 18 U.S.C. §§ 1001, *et seq.*; *see also* 47 CFR § 1.17.

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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  
Columbia Regional Office  
9050 Junction Drive  
Annapolis Junction, MD, 20701

6. This Notice shall be sent to the University of Toledo at its address of record.

7. The Privacy Act of 1974<sup>8</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.

FEDERAL COMMUNICATIONS COMMISSION

David Dombrowski  
Regional Director, Region One  
Enforcement Bureau

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<sup>8</sup> 5 U.S.C. § 552a(e)(3).