



FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau
Investigations and Hearings Division
445 12th Street, S.W., Suite 4-C330
Washington, D.C. 20554

January 22, 2013

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED
AND BY FACSIMILE AT (727) 579-2662

Cox Radio, Inc.
11300 Fourth Street North, Suite 300
Saint Petersburg, Florida 33716

Re: Station WDUV(FM), New Port Richey, Florida
Facility ID Number: 1178
File No. EB-12-IH-1224

Dear Licensee:

The Enforcement Bureau (Bureau) is investigating potential violations of Section 325(a) of the Communications Act of 1934, as amended (Communications Act), and Sections 11.45 and 73.1217 of the Commission's rules by Cox Radio, Inc. (Licensee), licensee of Station WDUV(FM), New Port Richey, Florida (Station).¹ Specifically, the attached complaint (Complaint) alleges that on June 6, 2012, at approximately 10:25 a.m., the Station Broadcast a commercial, which included a lead-in auditory signal that resembles the Emergency Alert System (EAS) Attention Signal, absent an actual emergency or authorized EAS test.²

Section 11.45 of the Commission's rules prohibits false or deceptive EAS transmissions. This section specifies that "[n]o person may transmit or cause to transmit the EAS codes or Attention Signal, or a recording or simulation thereof, in any circumstance other than in an actual National, State or Local Area emergency or authorized test of the EAS."³ Such false use and misconduct under this rule is also considered a false distress communication under Section 325(a) of the Communications Act.⁴

¹ 47 U.S.C. § 325(a); 47 C.F.R. §§ 11.45, 73.1217.

² See Complaint, FCC Form 2000, 12-C00401127-1 (Submitted on June 6, 2012) (on file in EB-12-IH-1224).

³ 47 C.F.R. § 11.45.

⁴ 47 U.S.C. § 325(a) ("No person within the jurisdiction of the United States shall knowingly utter or transmit, or cause to be uttered or transmitted, any false or fraudulent signals of distress, or communication relating thereto. . ."). See *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System*, Report and Order and Further Notice of Proposed Rule Making, 10 FCC Rcd 1786, 1815, para. 84 (1994). See, e.g., *Emmis Broadcasting Corp. of St. Louis*, Notice of Apparent Liability for Forfeiture, 6 FCC Rcd 2289 (1991) (finding radio station in violation of Section 325(a) by broadcasting a fraudulent distress signal; station broadcast a mock "bleep" tone that listeners thought was the Emergency Broadcast Signal and announced that the United States was under nuclear attack).

In addition, Section 73.1217 of the Commission's rules provides that no licensee or permittee of any broadcast station shall Broadcast false information concerning a crime or catastrophe if: (a) the licensee knows this information is false; (b) it is foreseeable that Broadcast of the information will cause substantial public harm; and (c) that Broadcast of the information does in fact cause substantial public harm.⁵ For purposes of the rule, "public harm" must begin immediately and cause direct and actual damage to property or to the health or safety of the general public; or cause diversion of law enforcement or other public health and safety authorities from their duties.⁶

The Instructions for responding to this letter and the Definitions for certain terms used in this letter are contained in the attachment hereto. We direct the Licensee, pursuant to Sections 4(i), 4(j), 308(b), and 403 of the Communications Act⁷ to provide the information and Documents specified below within thirty (30) calendar days from the date of this letter. **Requests for confidential treatment or claims of attorney-client privilege or attorney work product must meet the requirements stated in the attached Instructions.**

Unless otherwise indicated, the period of time covered by these Inquiries is May 1, 2012, to the present.

Documents and Information to be Provided

1. State whether the Station Broadcast the commercial identified in the Complaint. If so:
 - a. Provide all dates and times that the Licensee Broadcast the commercial described in the Complaint.
 - b. Provide an audio recording⁸ and transcript of the Broadcast(s).
 - c. Provide any other Documents related to the Broadcast(s).
2. If the response to Inquiry 1, above, is "yes," state whether the Station Broadcast any portion of an EAS code or Attention Signal, or a recording or simulation thereof in connection with the commercial Broadcast on any of the dates and times provided in your response to Inquiry 1.a.
3. If the response to Inquiry 2, above, is "yes," state whether the Station Broadcast the commercial in connection with an actual national, state, or local emergency or authorized test of the EAS. If so, describe the nature of the national, state, or local emergency or authorized test of the EAS. If not, describe the nature of the commercial, and explain the purpose for using such EAS sound, tone, code, or simulation thereof.
4. If the response to Inquiry 2, above, is "yes," was the EAS code or Attention Signal, or recording or simulation thereof, used in the commercial different from any authorized sounds, tones, or codes used by the Station and specified under the Florida State EAS plan? If so, explain how.

⁵ 47 C.F.R. § 73.1217.

⁶ See *id.*, Note.

⁷ 47 U.S.C. §§ 154(i), 154(j), 308(b), 403.

⁸ In particular, provide a compact disc (CD-R) of the complained-of material. Each CD-R should be labeled with the case number, program name, and broadcast date.

Include a tape or transcript of the sounds, tones, or codes normally used by the Station and a description of the Station's role in the Florida State EAS plan.

5. Did the Broadcast of the commercial identified in Inquiry 1, above, trigger activation of the EAS equipment at any other station or system that monitors the Station? If so, provide information including any e-mail communications, complaint letters, or any written communications or Documents that the Station received from any other station or system that monitors the Station's EAS alerts.
6. If the response to Inquiry 2, above, is "yes":
 - a. Indicate whether any emergency response was made by federal, state, and/or local law enforcement or other public health and safety authorities as a result of the Broadcast(s) in question; and describe the nature and extent of the resulting emergency response. Provide copies of any and all Documents that support your response.
 - b. Indicate whether the Broadcast(s) directly or indirectly caused any reported damage to property or to the health or safety of the general public; and describe the nature and extent of the resulting damage. Provide copies of any and all Documents that support your response.
7. If the response to Inquiry 2, above, is "yes," and there was no actual emergency or authorized test of the EAS, did the Station, at any time during the course of the Broadcast(s), reveal to its listeners that there was no actual emergency or authorized test of the EAS? Explain fully, providing audio recordings or transcript evidence to support your account.
8. If the response to Inquiry 2, above, is "yes," answer whether making, or inducing others to make, a false emergency report is prohibited by law in the Station's community of license, and support your response with citations to relevant authority, if applicable.
9. If the response to Inquiry 2, above, is "yes," answer whether any member of the Station's staff has been criminally or civilly charged regarding the making, or inducing others to make, a false emergency report relating to the Broadcast(s) in question. If so, explain by detailing the specific charges filed, the responsive pleas entered, and/or the respective dispositions, providing specific documentation and citations where appropriate.
10. Did the Station and/or Licensee discipline any employee in connection with the Broadcast of the commercial identified in Inquiry 1, above?
11. Did the Licensee receive any listener complaints concerning the commercial? If so, provide copies of all written complaints. If such complaints were verbal, provide written summaries.
12. Identify the individual or entity that produced the commercial identified in Inquiry 1, above. If the individual or entity that produced the commercial was not the Licensee, describe how the Licensee received the commercial and Identify the individuals and/or entities involved.
13. Did the Licensee review the commercial identified in Inquiry 1, above, before Broadcasting it? If so, Identify the individuals that conducted such review and explain what action the Licensee took upon completing such review. If no review was performed, explain why not.
14. If the Licensee believes that the commercial identified in Inquiry 1, above, was permissible, explain why, providing citation to relevant authority, if applicable.

15. Identify any factual errors in the attached Complaint. For each such error identified, describe specifically and in detail why you believe the factual allegation is incorrect.
16. Provide copies of all Documents that provide the basis for, or otherwise relate to, your responses to Inquiries 1-15, above.
17. To the extent not otherwise provided in response to the preceding Inquiries, provide any additional information that the Licensee believes may be helpful in our consideration and resolution of this matter.

Filing Requirements

We direct the Licensee to support its responses with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of the Licensee with personal knowledge of the representations provided in the Licensee's response, verifying the truth and accuracy of the information therein and that all of the information requested by this letter that are in the Licensee's possession, custody, control, or knowledge have been produced. If multiple Licensee employees contribute to the response, and/or if the authorized officer of the company (or any other affiant or declarant) is relying on the personal knowledge of any other person, rather than his or her own knowledge, then in addition to such general affidavit or declaration of the authorized officer of the company noted above, the Licensee must provide separate affidavits or declarations of each such individual with personal knowledge that identify clearly to which responses the affiant or declarant with such personal knowledge is attesting. All such declarations provided must comply with Section 1.16 of the Commission's rules,⁹ and be substantially in the form set forth therein.

To knowingly and willfully make any false statement or conceal any material fact in reply to this inquiry is punishable by fine or imprisonment.¹⁰ Failure to respond appropriately to this letter of inquiry may constitute a violation of the Act and our rules.¹¹

The Licensee shall direct its response, if sent by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554, to the attention of Jennifer A. Lewis, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, with a copy to Kenneth M. Scheibel, Jr., Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, Federal Communications Commission, and Jeffrey J. Gee, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Jennifer A. Lewis, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554, with a copy to Kenneth M.

⁹ 47 C.F.R. § 1.16.

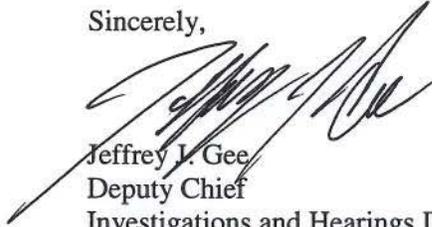
¹⁰ See 18 U.S.C. § 1001. See also 47 C.F.R. § 1.17.

¹¹ See *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589 (2002); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19898 n.36 (2003); *World Communications Satellite Systems, Inc.*, Forfeiture Order, 19 FCC Rcd 2718 (Enf. Bur. 2004); *Donald W. Kaminski, Jr.*, Forfeiture Order, 18 FCC Rcd 26065 (Enf. Bur. 2003).

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Scheibel, Jr., Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554, and Jeffrey J. Gee, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554. The Licensee shall also, to the extent practicable, transmit a copy of the response via e-mail to jennifer.lewis@fcc.gov, kenneth.scheibel@fcc.gov, and jeffrey.gee@fcc.gov.

Sincerely,



Jeffrey J. Gee
Deputy Chief
Investigations and Hearings Division
Enforcement Bureau

Attachment
Enclosure

ATTACHMENT

Instructions

Request for Confidential Treatment. If the Licensee requests that any information or Documents responsive to this letter be treated in a confidential manner, it shall submit, along with all responsive information and Documents, a statement in accordance with Section 0.459 of the Commission's rules. 47 C.F.R. § 0.459. Requests for confidential treatment must comply with the requirements of Section 0.459, including the standards of specificity mandated by Section 0.459(b). Accordingly, "blanket" requests for confidentiality of a large set of Documents, and casual requests, including simply stamping pages "confidential," are unacceptable. Pursuant to Section 0.459(c), the Bureau will not consider requests that do not comply with the requirements of Section 0.459.

Claims of Privilege. If the Licensee withholds any information or Documents under claim of privilege, it shall submit, together with any claim of privilege, a schedule of the items withheld that states, individually as to each such item: the numbered Inquiry to which each item responds and the type, title, specific subject matter and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific ground(s) for claiming that the item is privileged.

Format of Responses. The response must be organized in the same manner as the questions asked, i.e., the response to Inquiry 1 should be labeled as responsive to Inquiry 1.

Method of Producing Documents. Each requested Document, as defined herein, shall be submitted in its entirety, even if only a portion of that Document is responsive to an Inquiry made herein. This means that the Document shall not be edited, cut, or expunged, and shall include all appendices, tables, or other attachments, and all other Documents referred to in the Document or attachments. All written materials necessary to understand any Document responsive to these Inquiries must also be submitted.

Identification of Documents. For each Document or statement submitted in response to the Inquiries stated in the cover letter, indicate, by number, to which Inquiry it is responsive and identify the Person(s) from whose files the Document was retrieved. If any Document is not dated, state the date on which it was prepared. If any Document does not identify its author(s) or recipient(s), state, if known, the name(s) of the author(s) or recipient(s). The Licensee must identify with reasonable specificity all Documents provided in response to these Inquiries.

Documents No Longer Available. If a Document responsive to any Inquiry made herein existed but is no longer available, or if the Licensee is unable for any reason to produce a Document responsive to any Inquiry, identify each such Document by author, recipient, date, title, and specific subject matter, and explain fully why the Document is no longer available or why the Licensee is otherwise unable to produce it.

Retention of Original Documents. With respect only to Documents responsive to the specific Inquiries made herein and any other Documents relevant to those Inquiries, the Licensee is directed to retain the originals of those Documents for sixty (60) months from the date of this letter unless: (a) the Licensee is directed or informed by the Enforcement Bureau in writing to retain such Documents for some shorter or longer period of time; or (b) the Enforcement Bureau or the Commission releases an item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case, the Licensee must retain all such Documents until the matter has been finally concluded by payment of any monetary penalty, satisfaction of all conditions, expiration of all possible appeals, conclusion of any collection action

brought by the United States Department of Justice or execution and implementation of a final settlement with the Commission or the Enforcement Bureau.

Continuing Nature of Inquiries. The specific Inquiries made herein are continuing in nature. The Licensee is required to produce in the future any and all Documents and information that are responsive to the Inquiries made herein but not initially produced at the time, date, and place specified herein. In this regard, the Licensee must supplement its responses: (a) if the Licensee learns that, in some material respect, the Documents and information initially disclosed were incomplete or incorrect; or (b) if additional responsive Documents or information are acquired by or become known to the Licensee after the initial production. The requirement to update the record will continue for sixty (60) months from the date of this letter unless: (a) the Licensee is directed or informed by the Enforcement Bureau in writing that the Licensee's obligation to update the record will continue for some shorter or longer period of time; or (b) the Enforcement Bureau or the Commission releases an item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case the obligation to update the record will continue until the matter has been finally concluded by payment of any such monetary penalty, satisfaction of all conditions, expiration of all possible appeals, conclusion of any collection action brought by the United States Department of Justice or execution and implementation of a final settlement with the Commission or the Enforcement Bureau.

Construction. As used herein, the word "any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any." Additionally, the word "or" shall be construed to include the word "and," and the word "and" shall be construed to include the word "or." The word "each" shall be construed to include the word "every," and the word "every" shall be construed to include the word "each."

Definitions

For purposes of this letter, the following definitions apply:

"Broadcast," when used as noun, shall mean images or sounds or language transmitted or disseminated over a station during the course of a radio or television broadcast.

"Broadcast," when used as a verb, shall mean the transmission or dissemination of radio or television communications intended to be received by the public. The verb "broadcast" may be used interchangeably with the verb "air."

"Document" shall mean the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any taped, recorded, transcribed, written, typed, printed, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made, including but not limited to any Broadcast, radio program, advertisement, book, pamphlet, periodical, contract, correspondence, letter, facsimile, e-mail, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, photograph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, marketing plan, research paper, preliminary drafts, or versions of all of the above, and computer material (print-outs, cards, magnetic or electronic tape, disks and such codes or instructions as will transform such computer materials into easily understandable form).

"Identify," when used with reference to an individual or individuals, shall mean to state his/her full legal name, job title (if any), current business address, business phone number, and e-mail address. If

business address and/or telephone number are not available, state the individual's home address and/or telephone number.

"Identify," when used with reference to a Document, shall mean to state the date, author, addressee, type of Document (e.g., the types of Document, as described above), a brief description of the subject matter, its present or last known location, and its custodian.

"Identify," when used with reference to an entity other than an individual, shall mean to state its name, current or last known business address, current or last known business telephone number, and e-mail address.

"Licensee" shall mean Cox Radio, Inc. and any predecessor-in-interest, parent company, wholly or partially owned or controlled subsidiary, other company or business under common ownership or control, and all owners, including but not limited to, partners or principals, and all directors, officers, employees, or agents, including consultants and any other individuals working for or on behalf of the foregoing at any time during the period covered by these Inquiries, as set forth above.

"Person" shall mean any individual, entity, business, company, association, or organization.

"Station" shall mean WDUV(FM), New Port Richey, Florida.

User Complaint Key: 12-C00401127-1

Submission date: 06/06/2012

Complaint Source: Web

Added User: Consumer

CONSUMER'S INFORMATION

First Name: [REDACTED]

Last Name: [REDACTED]

Submission Date: Jun 6, 2012 11:04:48 AM

Company Name:

(Complete only if you are filing this complaint on behalf of a company or an organization.)

Post Office Box Number:

Street Address 1: [REDACTED]

Street Address 2:

City: HOLIDAY State: FL

Zip Code: 34691

Telephone Number(Residential or Business): [REDACTED]

E-mail Address: [REDACTED]

FORM 2000D

1. What is the name of the company that is the subject of your complaint? **WDUV**
2. If your complaint is about a radio or television station, please provide the following information:
 - a. Station call sign (e.g., "KDID," "WZUF," "KDIU-FM," "WZUE-TV"): **WDUV**
 - b. Radio station frequency (e.g., "1020" or "88.5"): **105.5** or TV channel (e.g., "13"):
 - c. Station location: City: **Tampa** State: **FL**
3. If you are complaining about a cable or satellite operator (e.g., Comcast, Time Warner, DirecTV), please provide the following information:
 - a. Operator name:
 - b. Operator location: City: State:
4. If this complaint is about:
 - Interference generated by a broadcaster or cable operator to emergency/public safety services or devices
 - Compliance with Emergency Alert System (EAS) requirements**
 Provide the following information:
 - a. Date of incident: (mm/dd/yyyy): **06/06/2012**
 - b. Time: **10:25 AM**
 - c. Description of incident: **The broadcaster relayed the EAS sound and then after brief break was a commercial for Sweet Bay Supermarket, that they were having Megameat sale since it was summertime. This is not proper to display this sound in this area just to announce an advertisement for a meat sale. This should only be used during an emergency scenario. Ask for review at FCC.**
5. If you are complaining about interference to emergency/public safety services or devices generated by a piece of equipment, provide the following information:
 - a. Manufacturer/importer:
 - b. Address of manufacturer/importer:
 - c. Model number(s) of equipment:
 - d. Retailer:
 - e. Retailer address:
 - f. Description of incident:
6. If you are complaining about problems with a wireless or broadcast tower, provide the following information:
 - a. Owner of tower:
 - b. Address or approximate location of tower:
 - c. Description of problem:
7. If you are complaining about problems with Enhanced 911 service quality or availability, provide the following information:
 - a. Name of telephone company, wireless carrier, or Voice over Internet Protocol (VoIP) service provider:
 - b. Telephone number involved (including area code): () - Ext:
 - c. Account number (if different from telephone number):
 - d. Date of violation or problem (mm/dd/yyyy):
 - e. Description of Problem:
8. If you are complaining about any other emergency/public safety matter, provide the details of your complaint, including date, times and nature of any conduct or activity complained of and identifying information for any companies, institutions or individuals involved:
 - a. Date (mm/dd/yyyy):
 - b. Time:
 - c.