

February 21, 2013

VIA HAND DELIVERY

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW – A325
Washington, DC 20554

Attn: Jennifer A. Lewis
Attorney Advisor
Investigations and Hearings Division
Enforcement Bureau
Room 4-C330

Re: File No. EB-12-IH-1224 (Investigation Regarding Compliance With Section 325(a) of the Communications Act of 1934, as amended and Sections 11.45 and 73.1217 of the Commission's rules)

Dear Ms. Dortch:

Cox Radio, Inc. ("Cox"), by its attorneys, hereby responds to the Enforcement Bureau's Letter of Inquiry (the "LOI"), dated January 22, 2013. The LOI seeks information and documents regarding Cox's compliance with the Commission's Emergency Alert System ("EAS") regulations with respect to Cox's station WDUV(FM), New Port Richey, Florida ("Station"). In particular, the LOI asks whether Cox transmitted an EAS Attention Signal on June 6, 2012 at 10:25 a.m. absent an actual emergency or authorized EAS test. As explained below, the attached EAS logs confirm that on June 6, 2012, at 10:23:43 a.m., the Station properly conducted its Required Weekly Test ("RWT"), which, in accordance with Section 11.61(a)(2), does not include the EAS Attention Signal.¹

¹ See 47 C.F.R. §11.62(a)(ii) (stating that RWTs only include the EAS Header Code and EAS EOM Code).

Background

Cox operates and maintains EAS equipment in accordance with the Commission's regulations. As part of its EAS obligations, Cox properly conducts weekly and monthly tests as required by the Commission's rules.² These tests ensure that Cox's EAS equipment will function as intended during an emergency. The Complaint attached to the LOI alleges that the Station aired the EAS Attention Signal immediately prior to its broadcast of a commercial for the Sweet Bay Supermarket. The Complaint implies that the listener believed the EAS Attention Signal was part of the commercial. The listener complains that such use of the EAS Attention Signal is inappropriate under the circumstances.

After receiving the Complaint, Cox immediately conducted an internal investigation, and, based on that investigation, Cox confirms that it did not broadcast the EAS Attention Signal and that it did not violate any Commission rule or requirement. Instead, at approximately 10:23 a.m. on June 6, 2012, the Station transmitted a routine RWT that happened to be followed by a commercial. The sound the listener heard prior was the standard AFSK signal heard at the conclusion of an authorized RWT. The sound was not the EAS Attention Signal described in Section 11.32(a)(9) or Section 11.45 of the Commission's rules, and it was not in any way connected to the broadcast of the commercial that happened to follow the RWT. Indeed, the Complaint acknowledges that signal was separated from the broadcast of the commercial by a brief break.

LOI Inquiries and Cox Responses

1. State whether the Station Broadcast the commercial identified in the Complaint.

The Station did broadcast a commercial for Sweet Bay Supermarket at approximately 10:25 a.m. on June 6, 2012 as alleged in the Complaint. However, as stated above, the commercial and the EAS RWT were completely unrelated.

If so:

a. Provide all dates and times the Licensee Broadcast the commercial described in the Complaint.

As stated in the answer above, the commercial described in the Complaint was and is not related to the EAS RWT the listener heard. To the best of Cox's knowledge – although Cox has not performed an exhaustive inventory of each airing of the commercial on the Station – no other broadcast of the commercial happened to follow an RWT. The fact that the broadcast at approximately 10:25 a.m. followed an RWT was

² 47 C.F.R. § 11.61. See Exhibit A, attached hereto, containing EAS test logs for June 3, 2012 through June 9, 2012.

purely coincidental. To the extent the Commission wishes to review invoices detailing each commercial broadcast by the Station for Sweet Bay Supermarket since May 1, 2012, Cox will provide such invoices on request.

b. Provide an audio recording and transcript of the Broadcast(s).

Cox does not maintain audio recordings of its broadcasts and, therefore, cannot provide a copy of an audio recording of the Broadcast. In any event, as stated above, the commercial described in the Complaint was and is not related to the EAS RWT the listener heard.

c. Provide any other Documents related to the Broadcast(s).

As stated in the answer above, the commercial described in the Complaint was and is not related to the EAS RWT the listener heard. The fact that an RWT happened to air before the commercial was purely coincidental. Therefore, there are no other relevant documents.

- 2. If the response to Inquiry 1, above, is “yes,” state whether the Station Broadcast any portion of the 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.**

As stated above, the EAS code referenced in the Complaint broadcast on the date in question was not connected to the commercial described in the Complaint. Rather, the Station transmitted a routine RWT prior to the commercial. Therefore, Cox’s response to inquiry 2 is “No.”

- 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 not, describe the nature of the commercial, and explain the purpose for using such EAS sound, tone, code, or simulation thereof.**

Cox believes this question is inapplicable because the Station transmitted an RWT that was not in any way connected to the commercial described in the Complaint. It was a pure coincidence that the RWT happened to air before the commercial.

- 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.**

The Station transmitted an RWT that was in no way connected to the commercial. Therefore, Cox believes this question is inapplicable.

- 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.**

The broadcast of the commercial could not have triggered any other station to activate its EAS equipment because the commercial did not include any EAS codes or Attention Signal.

- 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.**

Cox believes this question is inapplicable because it transmitted an RWT that was wholly unrelated to the commercial described in the Complaint.

Indicate whether the Broadcast(s) directly or indirectly caused any reported damage to property or to the health and 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.

Cox believes this question is inapplicable. The EAS code referenced in the Complaint broadcast on the date in question was not connected to the commercial described in the Complaint.

- 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.**

Cox believes this question is inapplicable because the Station transmitted a RWT.

- 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.**

Cox believes this question is inapplicable because the Station transmitted a RWT.

- 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 marking, 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 please entered, and/or the respective dispositions, providing specific documentation and citations where appropriate.**

Cox believes this question is inapplicable because the Station transmitted a RWT.

- 10. Did the Station and/or Licensee discipline any employee in connection with the Broadcast of the commercial identified in Inquiry 1, above.**

As stated above, the commercial broadcast following the EAS code was a standard advertisement and the EAS code broadcast on the date in question was a RWT, which was wholly unrelated to the commercial described in the Complaint. No disciplinary action was necessary.

- 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.**

Neither the Station nor Cox received any complaints, written or verbal, regarding the commercial.

- 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.**

Given Cox’s response to the foregoing questions, Cox believes this question is inapplicable. Nevertheless, Cox will provide this information on request from the Commission.

- 13. Did the Licensee review the commercial identified in Inquiry 1, above, before Broadcasting it? If so, Identify the individuals that conducted such review. If no review was performed, explain why not.**

Given Cox’s response to the foregoing questions, Cox believes this question is inapplicable. Nevertheless, Cox will provide this information on request from the Commission.

14. If the Licensee believes that the commercial identified in Inquiry 1, above, was permissible, explain why, providing citation to relevant authority, if applicable.

As stated above, the commercial was a standard advertisement aired on the Station, and the RWT transmitted prior to the commercial was in no way related to the commercial.

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.

To the extent the Complaint suggests that the RWT was in any way related to the commercial, the Complaint is in error.

16. Provide copies of all Documents that provide the basis for, or otherwise relate to, your responses to Inquiries 1-15, above.

See Exhibit A, attached hereto, containing a printout from Cox EAS equipment demonstrating that the Station transmitted an RWT on June 6, 2012 at 10:23 a.m.

17. To the extent not otherwise provided in response to the preceding Inquiries, provide any additional information that the Licensee believes maybe helpful in our consideration and resolution of this matter.

Cox has provided all information it believes may be helpful to the Commission's review of this matter.

Please contact the undersigned counsel if you have any further questions about this matter.

Respectfully submitted,

Handwritten signature of Robert J. Folliard, III in blue ink. The signature is written in a cursive style and includes the initials "RJK" at the end.

Robert J. Folliard, III

cc: Kenneth M. Scheibel, Jr. (hand delivery and kenneth.scheibel@fcc.gov)
Jeffrey J. Gee (hand delivery and jeffrey.gee@fcc.gov)
Jennifer A. Lewis (jennifer.lewis@fcc.gov)

EXHIBIT A

EAS LOGS PRINTOUT FOR JUNE 6, 2012 RWT



Home

Logs

Streams

Show Input Levels

Upload Firmware

Retrieve Settings

Restore Settings

Files

Tools

Network Diag

Version

Copyright...

Start: Sent
 End: Not CAP
 Per page: Required

Logs for Station WDUV

| Type | Date | Details | Audio |
|------|----------------------|--|-------|
| Sent | 06/06/12 10:23:43 | Required Weekly Test, Sent from header RWT. A Broadcast station or cable system has issued a Required Weekly Test for Pasco, FL beginning at 10:23 am Wed Jun 6 and ending at 11:23 am Wed Jun 6 (WDUV) | |

EXHIBIT B

DECLARATION

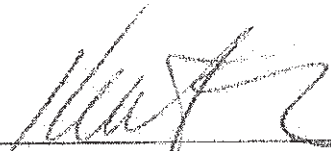
BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
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Cox Radio, Inc.) **File No: EB-12-IH-1224**
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Investigation Regarding Compliance With)
Section 325(a) of the Communications Act of)
1934, as amended and Sections 11.45 and 73.1217)
of the Commission's rules)
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DECLARATION OF KEITH LAWLESS

My name is Keith Lawless and I declare as follows:

1. I am Vice President and General Manager for Cox Radio, Inc.'s Tampa, Florida market stations, which includes WDUV(FM).
2. I have read Cox's response to the Enforcement Bureau's January 22, 2013, Letter of Inquiry, and I am familiar with the contents thereof.
3. The facts contained in Cox's response are true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry.



Keith Lawless