

DICKSTEINSHAPIRO_{LLP}

1825 Eye Street NW | Washington, DC 20006-5403
TEL (202) 420-2200 | FAX (202) 420-2201 | dicksteinshapiro.com
Writer's Direct Dial: (202) 420-3631
E-Mail Address: KerstingA@dicksteinshapiro.com

By FedEx

September 21, 2010

Mr. Nader Haghghat
District Director
Federal Communications Commission
Los Angeles District Office
1800 Studebaker Rd., Suite #660
Cerritos, CA 90703

Re: KCRU(FM), Oxnard, CA (Facility ID 59085)
File Nos. EB-10-LA-0154
NOV No. V201032900019

Dear Mr. Haghghat:

The purpose of this letter is to respond to the above-referenced *Notice of Violation*, File Nos. EB-10-LA-0154, NOV No. V201032900019 (released August 20, 2010) (“NOV”), issued to Santa Monica Community College District (“SMCCD”), licensee of noncommercial educational radio station KCRU(FM), Oxnard, California (“KCRU”), because of alleged violations of Section 11.52(d) of the Commission’s rules, 47 C.F.R. §11.52(d), concerning certain EAS requirements.

In the *NOV*, the Commission noted that an agent of the Enforcement Bureau’s (the “Bureau’s”) Los Angeles field office inspected KCRU’s main studio on June 17, 2010, and found that the station was “not monitoring the correct local primary stations as required by the California and Ventura County EAS plan.” *NOV* at 1, citing 47 C.F.R. §11.52(d). Accordingly, the *NOV* sought additional information concerning the alleged violation and any remedial actions KCRU may have taken in response to the inspection. *NOV* at 1-2.

SMCCD respectfully submits that the *NOV* was issued in error. As demonstrated herein, KCRU is not required to have its own EAS equipment because it operates as a satellite of a hub station for which it rebroadcasts essentially 100% of the programming, and, therefore, it satisfies the Commission’s EAS requirements through the use of a single set of EAS equipment at the hub station pursuant to Section 11.11(b) of the Commission’s rules.

In *Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, 17 FCC Rcd 4055 (2002) (“*Report and Order*”), several public universities, public broadcasters, and government and non-profit entities (collectively, the “Public Broadcasters”) operating noncommercial educational radio and television stations sought permanent waivers of the former requirement to install EAS equipment for satellite/repeater stations which rebroadcast

DICKSTEINSHAPIRO LLP

Mr. Nader Haghghat

September 21, 2010

Page 2

100% of the programming of their lead or hub station. The Public Broadcasters noted that, under the old EBS rules, the Commission permitted licensees with stations whose transmitters were located at different locations, but which were programmed from a common control point (*i.e.*, common studio), to use only one set of EBS equipment so long as that set of equipment could meet the requirements and intent of the EBS rules. 17 FCC Rcd at 4079-80. The Commission noted that its staff had granted permanent waivers of the requirement to install EAS equipment for satellite/repeater stations that rebroadcast 100% of the programming of their hub station where they are located in the same local EAS area as the hub station, but had granted only temporary waivers where the satellite/repeater stations are located outside the hub station's local EAS area. The Public Broadcasters argued that those waivers should be made permanent because they complied with the EAS requirements while permitting the licensees of those stations to forego the additional costs and burdens of installing equipment at each of their satellite/repeater stations. They also argued that they should not be required to install EAS equipment at each of the satellite/repeater locations for the sole purpose of transmitting state and local EAS alerts because participation in state and local EAS activities is voluntary under the EAS rules. *Id.* at 4080.

The Commission accepted the Public Broadcasters' argument and exempted those satellite/repeater stations which rebroadcast 100% of the programming of their hub station from the requirement to install EAS equipment. In doing so, the Commission stated the following:

... [W]e will consider the use of a single set of EAS equipment at a hub station (or common studio/control point where there is no hub station) to satisfy the EAS obligations of the satellite/repeater stations which rebroadcast 100% of the hub station's programming. This exemption will apply to existing satellite/repeater stations and any proposed new satellite/repeater stations. As the Public Broadcasters point out, the satellite/repeater stations will comply with the requirement to transmit all national EAS alerts because all national alerts will be passed through from the hub station. In addition, *we acknowledge that it may be unnecessarily burdensome for the governmental and educational institutions operating these satellite/repeater stations to incur the substantial cost of installing EAS equipment at each such satellite/repeater station for the sole purpose of being able to transmit state and local EAS alerts, which are voluntary under our rules.*

17 FCC Rcd at 4080 (emphasis added).

Accordingly, the Commission revised Section 11.11(b) of the rules to provide in pertinent part:

Analog and digital broadcast stations that operate as satellites or repeaters of a hub station (or common studio or control point if there is no hub

DICKSTEINSHAPIRO LLP

Mr. Nader Haghghat

September 21, 2010

Page 3

station) and rebroadcast 100 percent of the programming of the hub station (or common studio or control point) may satisfy the requirements of this part through the use of a single set of EAS equipment at the hub station (or common studio or control point) which complies with §§11.3 and 11.33.

47 C.F.R. §11.11(b).

The facts regarding KCRU's operation satisfy the requirements of Section 11.11(b) of the Commission's rules. As demonstrated in the attached Declaration of Steven P. Herbert annexed hereto as Exhibit A, KCRU is one of three (3) full-power noncommercial educational ("NCE") FM stations that operate as a satellite of NCE station KCRW(FM), Santa Monica, California (Facility ID 59086) ("KCRW"). As reflected in Appendix 1 to Exhibit A, KCRU rebroadcasts over 99% of KCRW's programming. The only times during which KCRU does not rebroadcast the programming of KCRW are on the second and fourth Tuesday evenings of each month when KCRW airs the meetings of the local Santa Monica City Council (the "City Council"). Those meetings are broadcast live on KCRW beginning at 8:00 p.m. until either they are adjourned or until midnight, at which time KCRW returns to its regular programming. Exhibit A at ¶2.

Rather than broadcast the City Council meetings on KCRU, which would be of little or no interest to listeners in the Oxnard area, at the commencement of each City Council meeting KCRU airs alternative programming from KCRW's "Eclectic24" web format (the "Replacement Programming"). As stated above, upon the adjournment of each City Council meeting (or at midnight, if the City Council meeting continues that long), KCRW resumes its normal programming and KCRU recommences its rebroadcasting of that programming until the next City Council meeting. Exhibit A at ¶3.

The single set of EAS equipment that was in SMCCD's common studio facility (or hub station) at the time of the FCC's inspection of KCRU on June 17, 2010, is capable of being used, and is used, by all four (4) full-power NCE FM stations, including KCRU. SMCCD's EAS system is not affected in any way during the *de minimis* time periods (amounting to less than one percent (1%) in the aggregate) that KCRU is airing the Replacement Programming. KCRU has the ability to broadcast emergency alerts at all times, including during its broadcasts of the Replacement Programming. *Id.* at ¶4.

As reflected in Exhibit A hereto, SMCCD has been aware that (i) the express language of Section 11.11(b) suggests that broadcast stations which operate as satellites of a hub station and intend to take advantage of the EAS exemption provided by that rule provision must rebroadcast 100% of the hub station's programming, and (ii) KCRU does not meet that literal rebroadcast programming requirement. See Exhibit A at ¶¶5-6, and Appendix 1 thereto. Accordingly, Mr. Herbert contacted SMCCD's communications counsel in October 2004 to inquire whether it was necessary for SMCCD to obtain a waiver of Section 11.11(b) of the rules. In response to his inquiry, SMCCD's counsel contacted the Deputy Director of the FCC's Office

DICKSTEINSHAPIRO LLP

Mr. Nader Haghghat

September 21, 2010

Page 4

of the Homeland Security (“OHS”), who informed him that, because all of the programming broadcast by SMCCD’s satellite stations would emanate from a common control point (*i.e.*, KCRW’s main studio), the Commission would allow the satellite stations (including KCRU) to rebroadcast less than 100% of KCRW’s programming without a waiver.¹ Therefore, SMCCD has always believed that KCRU’s operation has complied with Section 11.11(b) of the Commission’s rules. See Exhibit A at ¶7.

If the Bureau now were to require SMCCD to install separate EAS equipment for KCRU and KCRW’s other two satellite stations at its common studio or hub station (despite the fact that each of those satellites is also rebroadcasting over 99% of KCRW’s programming), such a result not only would be inconsistent with the Commission’s intent in revising Section 11.11(b) of the rules, but it would have a significant financial impact upon SMCCD, which is the very type of government institution that the full Commission had in mind in the *Report and Order* for whom “incur[ring] the substantial cost of installing EAS equipment at each [of its satellite stations] for the sole purpose of being able to transmit state and local EAS alerts, which are voluntary under our rules” would be “unnecessarily burdensome.” *Report and Order*, 17 FCC Rcd at 4080.

SMCCD recognizes that it may get some notoriety for the success achieved by its primary station, KCRW. However, SMCCD receives only ten percent (10%) of its annual budget from government sources. The licensee must generate the remaining amount of its budget from listeners and corporate donations. See Exhibit A at ¶8. SMCCD’s broadcast operations employ only 55 full-time employees; the licensee is largely dependent upon approximately 120 volunteer employees plus hundreds of other volunteers who answer phones during station pledge drives. Thus, given the current downturn in the economy and the significant resulting decline in underwriting revenues, SMCCD should not be forced to incur the added expense of installing separate EAS equipment for each of its satellite stations – all within one common studio facility, for no purpose other than being able to transmit state and local EAS alerts which are voluntary under the Commission’s rules. As the full Commission recognized in the *Report and Order*, imposing such a requirement would place a substantial and unreasonable burden on the noncommercial educator. See *Report and Order*, 17 FCC Rcd at 4080. Indeed, the burden of that increased expenditure during this difficult economic climate undoubtedly would have a corresponding adverse effect on SMCCD’s continued ability to provide the same quality of NCE service to its listening audience, and, therefore, would disserve the public interest. See Exhibit A at ¶8.

Annexed hereto as Exhibit B is a declaration executed by Randal Lawson, Executive Vice President of SMCCD, stating that he has reviewed this response.

¹ Copies of the email correspondence between SMCCD’s counsel and the Deputy Director of the OHS are annexed hereto as Appendix 2 to Exhibit A.

DICKSTEIN SHAPIRO LLP

Mr. Nader Haghghat

September 21, 2010

Page 5

Conclusion

As demonstrated herein, SMCCD's operation of KCRU complies in all respects with Section 11.11(b) of the rules, but for the *de minimis* amount of time when KCRU airs Replacement Programming during the Santa Monica City Council meetings. SMCCD was informally advised by the Deputy Director of the FCC's OHS in November 2004 that no waiver was required under Section 11.11(b) of the Commission's rules because all the programming broadcast by KCRU during those limited time periods would continue to emanate from a common control point. Therefore, for the reasons stated herein, SMCCD respectfully requests that no further action be taken with respect to the *NOV* and that this proceeding be terminated.

Should any questions arise concerning this matter, please communicate directly with the undersigned.

Very truly yours,
DICKSTEIN SHAPIRO LLP

Attorneys for
Santa Monica Community College District

By: Andrew Kersting
Andrew S. Kersting

Enclosures

Mr. Nader Haghghat
September 21, 2010
Page 6

bc: Jennifer Ferro (w/ encl.) (by email)
Steve Herbert (w/ encl.) (by email)*
Lew Paper, Esq. (w/ encl.)

* Please ensure that a copy of this Response is placed in KCRU's public file.

EXHIBIT A

Declaration of Steven P. Herbert

DECLARATION

Steven P. Herbert hereby declares as follows:

1. I currently serve as the Chief Engineer for noncommercial educational (“NCE”) radio station KCRU(FM), Oxnard, California (Facility ID 59085) (“KCRU”), and have held this position for the past 13 years. I have served on the engineering staff of Santa Monica Community College District (“SMCCD”), the licensee of KCRU, for nearly 30 years. This Declaration is being provided in support of SMCCD’s response to a *Notice of Violation* released August 20, 2010 by the District Director of the FCC Enforcement Bureau’s Los Angeles field office for apparent EAS violations that were observed during an inspection of KCRU on June 17, 2010.

2. KCRU is one of three (3) full-power NCE FM stations that operate as a satellite of NCE station KCRW(FM), Santa Monica, California (Facility ID 59086) (“KCRW”). As reflected in Appendix 1 hereto, KCRU rebroadcasts over 99% of KCRW’s programming. The only times during which KCRU does not rebroadcast the programming of KCRW are on the second and fourth Tuesday evenings of each month when KCRW airs the meetings of the local Santa Monica City Council (“City Council”). Those meetings are broadcast live on KCRW beginning at 8:00 p.m. until either they are adjourned or until midnight, at which time KCRW returns to its regular programming.

3. The City Council meetings would be of little or no interest to listeners residing in the Oxnard area. Thus, at the commencement of each City Council meeting KCRU airs alternative programming from KCRW’s “Eclectic24” web format (the “Replacement Programming”). Upon the adjournment of each City Council meeting (or at midnight, if the City

Council meeting continues that long), KCRW returns to its normal programming and KCRU recommences its rebroadcasting of KCRW's programming until the next City Council meeting.

4. SMCCD has been utilizing a single set of EAS equipment which is located at its hub station or, specifically, within the main studio facility of KCRW. That facility also serves as the main studio of KCRU. The single set of EAS equipment is capable of being utilized by KCRU, and is not affected in any way by KCRU's broadcast of the Replacement Programming. KCRU has the ability to broadcast emergency alerts at all times, including during its broadcast of the Replacement Programming.

5. I became aware in 2002 that Section 11.11(b) of the FCC's rules was revised to permit stations that operate as satellites of a hub station to operate with a single set of EAS equipment if they rebroadcast 100% of the programming of the hub station. Although I knew that KCRU was not rebroadcasting 100% of KCRW's programming, the only times that KCRU was not rebroadcasting KCRW's programming was during the City Council meetings. I regarded the small percentage of Replacement Programming as negligible, and therefore believed that SMCCD's satellite stations were operating in compliance with Section 11.11(b) of the rules.

6. As a representative example, attached hereto as Appendix 1 is an exhibit demonstrating (i) the total amount of time that KCRU aired Replacement Programming during the first six months of 2010, and (ii) the percentage that the Replacement Programming constitutes of KCRU's total programming time over that same six-month period. As demonstrated therein, KCRU rebroadcasted KCRW's programming more than 99% of the time during the first six months of 2010. The duration of the City Council meetings and the amount of Replacement Programming aired by KCRU reflected in Appendix 1 are consistent with what took place in prior years.

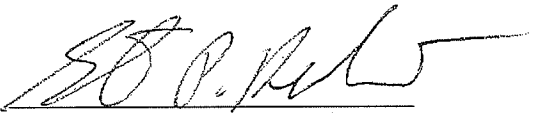
7. Nevertheless, I subsequently consulted our Washington communications counsel in October 2004 and inquired whether it was necessary for SMCCD to obtain a waiver of Section 11.11(b) of the rules because its satellite stations were not rebroadcasting 100% of KCRW's programming. SMCCD's counsel contacted the Deputy Director of the FCC's Office of the Homeland Security (the "OHS"), who informed him that, because all of the programming broadcast by the satellite stations would continue to emanate from a common control point (*i.e.*, KCRW's main studio), the FCC would allow KCRU to rebroadcast less than 100% of the hub station's programming without a waiver. Copies of the email correspondence between our counsel and the Deputy Director of the OHS are attached hereto as Appendix 2. Based on the informal advice we received from the FCC's Deputy Director of the OHS, we have always believed that KCRU's operation has complied with Section 11.11(b) of the FCC's rules.

8. SMCCD is a political subdivision of the State of California and government exempt entity. Accordingly, SMCCD does not pay FCC filing fees or annual regulatory fees for any of its NCE FM stations, its FM translators or related broadcast auxiliary authorizations. However, SMCCD receives only ten percent (10%) of its annual budget from government sources. The licensee must generate the remaining amount of its budget from listener support and corporate donations. With the ever-rising costs facing NCE broadcasters in this difficult economic climate, if the FCC were to require KCRU, and, thus, SMCCD's other two satellite stations to have their own EAS equipment, it would have a significant financial impact upon the licensee, and, in turn, a corresponding effect on SMCCD's continued ability to provide the same quality of NCE service to the public.

[Signature on the Following Page]

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Signed this 20th day of September, 2010.

A handwritten signature in black ink, appearing to read "S.P. Herbert", written over a horizontal line.

Steven P. Herbert

Appendix 1

KCRU Replacement Programming

(attached)

KCRU REPLACEMENT PROGRAMMING
(2010)

Month	Total Amount of Replacement Programming Per Month (hours: minutes)	Total Programming Hours Per Month	Percentage (%) of Total Programming That Constitutes Replacement Programming Per Month
January	6:38	744	0.89
February	6:01	672	0.90
March	6:51	744	0.92
April	8:00	720	1.11
May	6:35	744	0.88
June	1:26	720	0.20

**Totals and Average Amount of Replacement Programming
Over First Six Months of 2010**

Months	Total Amount of Replacement Programming (hours: minutes)	Total Hours Over Six-Month Period	Average Percentage (%) of Replacement Programming Over Six-Month Period
January-June	35:31	4344	0.82

Appendix 2

Email Correspondence Between SMCCD's Counsel and Deputy Director of FCC's Office of Homeland Security

(attached)

From: Felgar, Robert
Sent: Tuesday, October 19, 2004 12:03 PM
To: 'gregory.cooke@fcc.gov'
Cc: Paper, Lew
Subject: Question regarding an EAS issue

Greg,

A little while ago we spoke on the phone regarding an EAS issue. I was asked to put the information that I conveyed to you in an email. This email responds to that request. The situation is the following:

Our client has a hub station and three satellite stations. The satellite stations have been rebroadcasting 100 percent of the programming from the hub station. Some of that programming includes city council meetings that last for approximately four hours and that are held on a bi-weekly basis. These city council meetings are of little or no interest to listeners of the satellite stations who are not located in the same community as the listeners of the hub station. As a result, the licensee would like to be able to broadcast different programming (the "Replacement Programming") on the satellite stations during the approximately eight hours per month. The eight hours of Replacement Programming will originate from the hub station.

The EAS equipment that is currently in use by all four stations is located at the hub station's studio. The functioning of the EAS system will not be affected in any way by the broadcast of the Replacement Programming. The satellite stations will continue to have the ability to broadcast emergency alerts at all times, including during the broadcast of the Replacement Programming. Accordingly, public safety would not be compromised at all. If, however, the three satellite stations were required to have their own EAS equipment, the cost to the licensee would be significant.

The question is whether the licensee must obtain a waiver of section 11.11(b) of the rules in order for the satellite stations to broadcast the Replacement Programming.

Thanks for your help and I look forward to talking with you further about this matter.

Sincerely,
Rob Felgar

From: Felgar, Robert
Sent: Friday, November 05, 2004 10:21 AM
To: 'Steve Herbert (steve.herbert@kcrw.org)'
Cc: Paper, Lew
Subject: EAS issue

Steve, the FCC finally got back to me yesterday about your EAS question. The Deputy Director of the FCC's Office of Homeland Security informed me that in light of the fact that all programming broadcast by the satellite stations will continue to emanate from a "common control point," the FCC will allow Santa Monica's satellite stations to rebroadcast less than 100 percent of the hub station's programming. Also, no waiver will be required.

If you have any questions, please call me at (202) 955-6668. Thanks.

From: Felgar, Robert
Sent: Tuesday, November 09, 2004 2:36 PM
To: 'steve.herbert@kcrw.org'
Cc: Paper, Lew
Subject: FW: EAS question

Steve,
Below is the email I sent to the FCC. If there is anything else I can do on this matter, please let me know.
Rob

-----Original Message-----

From: Felgar, Robert
Sent: Tuesday, November 09, 2004 2:29 PM
To: 'gregorycooke@fcc.gov'
Cc: Paper, Lew
Subject: EAS question

Gregory:

This email is intended to confirm the opinion your office provided to me regarding an EAS question. My understanding is that it is your office's position -- based on facts I conveyed to you in an email dated October 19, 2004 -- that since my client's HUB and satellite stations will be served by EAS equipment at one "common studio or control point" that my client does not need to request a waiver of Section 11.11(b) of the rules even though the satellite stations will not be rebroadcasting 100 percent of the HUB stations' programming. If my understanding is incorrect, please let me know.

Thanks again for your assistance in this matter.

Regards,
Rob

EXHIBIT B

Declaration of Randal Lawson

DECLARATION

Randal Lawson hereby declares as follows:

1. I am an Executive Vice President of Santa Monica Community College District (“SMCCD”), whose offices are located at 1900 Pico Blvd., Santa Monica, California 90405. SMCCD is the licensee of radio station KCRU(FM), Oxnard, California (the “Station”).

2. This Declaration is being provided in support of SMCCD’s response (the “Response”) to a *Notice of Violation* released August 20, 2010 by the District Director of the FCC Enforcement Bureau’s Los Angeles field office for EAS violations that apparently were observed during an inspection of the Station on June 17, 2010.

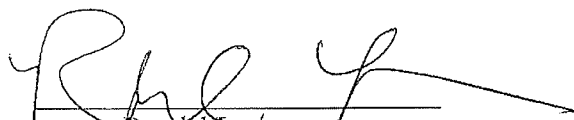
3. I have reviewed the foregoing Response, and all statements of fact contained therein are accurate and complete to the best of my information and belief.

4. To the best of my information and belief, all of the documents requested by the *Notice of Violation* within SMCCD’s possession, custody or control have been included in this Response.

[Signature on the Following Page]

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Signed this 10th day of September, 2010.


Randal Lawson