

**Federal Communications Commission**

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

In the Matter of	)	
	)	
Western NY Public Broadcasting Association	)	File No. EB-04-BF-012
Owner of Tower # 1033427	)	
Olean, New York	)	NOV No. V20043228022
	)	
Attention: Mr. Donald K. Boswell/President	)	

**NOTICE OF VIOLATION**

**Released: February 18, 2004**

By the Resident Agent, Buffalo Office, 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 Western New York Public Broadcasting Association ("WNYPBA"), owner of Tower # 1033427.

2. On January 26, 2004 Resident Agent, Gene Stanbro, from the Buffalo Office visually inspected tower # 1033427 and with preliminary and subsequent investigation, observed the following violations:

- a. 47 C.F.R. § 17.47(a)(1): "The owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part: Shall make an observation of the antenna structure's lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights, to insure that all such lights are functioning properly as required: or alternatively, ....." WNYPBA does not have an automated system and the only record provided to the Buffalo Office was the statement of Mr. Hal Elsigan reporting the lights were operating on January 16, 2004, contradicting a report of light outage by the Olean, New York Fire Department, reporting tower # 1033427 lights were out on January 16, 2004. The lights were not functioning on the date of inspection.
- b. 47 C.F.R. § 17.49: "The owner of each antenna structure which is registered with the Commission and has been assigned lighting specifications

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<sup>1</sup> 47 C.F.R. § 1.89.

## Federal Communications Commission

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referenced in this part must maintain a record of any observed or otherwise known extinguishment or improper functioning of a structure light and include the following information for each such event:

- (a) The nature of each extinguishment or improper functioning.
- (b) The date and time the extinguishment or improper operation was observed or otherwise noted.
- (c) Date and time of FAA notification, if applicable.
- (d) The date, time and nature of adjustments, repairs, or replacements made.”

WNYPBA was unable to produce a maintained record of the date, time or nature of any extinguishment or improper functioning of tower # 1033427 or the nature of adjustments, repairs, or replacements made to the tower. WNYPBA only produced a statement of the last time the tower lights were observed on and a number for the NOTAM opened on January 22, 2004.

3. Pursuant to Section 308(b) of the Communications Act of 1934, as amended,<sup>2</sup> and Section 1.89 of the Commission's Rules, Western New York Broadcasting Association, must submit a written statement concerning this matter within 20 days of release of this Notice. The response must fully explain each violation, must contain a statement of the specific action(s) taken to correct each violation and preclude recurrence, and should include a time line for completion of pending corrective action(s). The response must be complete in itself and signed by a principal or officer of the licensee with personal knowledge of the matter. 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  
Room 1307 Federal Building  
111 W. Huron Street  
Buffalo, New York 14202

4. This Notice shall be sent to Western New York Public Broadcasting Association, Horizon Plaza, P.O. Box 1263, Buffalo, New York 14240

5. The Privacy Act of 1974<sup>3</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. Any false statement made knowingly

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<sup>2</sup> 47 U.S.C. § 308(b).

<sup>3</sup> P.L. 93-579, 5 U.S.C. § 552a(e)(3).

**Federal Communications Commission**

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and willfully in reply to this Notice is punishable by fine or imprisonment under Title 18 of the U.S. Code.<sup>4</sup>

FEDERAL COMMUNICATIONS COMMISSION

Gene J. Stanbro  
Resident Agent  
Buffalo Office

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<sup>4</sup> 18 U.S.C. § 1001 *et seq.*