
FCC Enforcement Monitor

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Headlines:

- *FCC Assesses \$8,000 Fine for EAS Equipment Installation Problems*
 - *Notice of Violation Issued against FM Station for a Variety of Reasons*
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FCC Proposes Fine for Operational, But Not Fully Functional, EAS Equipment

The FCC has often noted the importance of the national Emergency Alert System (“EAS”) while taking enforcement action against broadcast stations whose EAS equipment is not functioning or who otherwise fail to transmit required EAS messages. In a slightly atypical case, the FCC this month issued a Notice of Apparent Liability for Forfeiture and Order (“NAL”) for \$8,000 against the licensee of an FM radio station in Puerto Rico because, even though the station’s EAS equipment was fully operational, the manner of installation made it incapable of broadcasting the required EAS tests automatically.

In April 2012, agents from the FCC’s Enforcement Bureau inspected the station’s main studio and discovered that the EAS equipment was installed in such a way that it was not able to automatically interrupt programming to transmit an EAS message. Section 11.35 of the FCC’s Rules requires that all broadcast stations have EAS equipment that is fully operational so that the monitoring and transmitting functions are available when the station is in operation. The Rules further require that broadcast stations be able to receive EAS messages, interrupt on-air programming, and transmit required EAS messages. When a facility is unattended, automatic systems must be in place to perform these functions. During the inspection, the station’s director admitted that the EAS equipment was not capable of transmitting an EAS message without someone manually reducing the on-air programming volume. He further admitted that the equipment had been in this condition since at least September 2011, if not earlier.

The station broadcast programming 24 hours a day, but was only staffed from 6:00 am to 7:00 pm. As a result, when the station was unattended, it could not interrupt programming to transmit EAS messages. The base forfeiture for failing to maintain operational EAS equipment is \$8,000, which the FCC thought was appropriate in this case. The FCC also directed the licensee to submit a written statement indicating that the EAS equipment is now fully operational at all times, particularly when unattended, and otherwise in full compliance with the FCC’s rules.

FM Station Receives Notice of Violation for an Assortment of Violations

At the end of last month, the FCC issued a Notice of Violation (“NOV”) against the licensee of an FM radio station in Texas based upon an October 2012 inspection by an agent from the Enforcement Bureau. The agent concluded that the licensee was violating a number of FCC rules.

Section 73.1350 of the FCC’s Rules requires that licensees establish monitoring procedures to ensure that the equipment used by a station complies with FCC rules. Upon inspection, the FCC agents found no records indicating that the licensee had established or implemented such monitoring procedures, and the station’s chief engineer had difficulty monitoring the equipment’s output when asked to do so by the agent. Sections 73.1870 and 73.3526 also require that a chief operator be designated, that designation be posted with the station’s license at the main studio, and a copy of the station’s current authorization be kept in the station’s public inspection file. At the time of the inspection, the NOV indicated there was no written designation of the chief operator and the station’s license renewal authorization was not at the station’s main studio.

During the inspection, the agent also found that the FM station’s EAS equipment was unable to send and receive tests and was not properly installed to transmit the required weekly and monthly tests. The licensee also did not have any EAS logs documenting the tests sent and received and, if tests were not sent or received, the reasons why those tests were not sent or received, all in violation of Section 11.35 of the FCC’s Rules.

Finally, pursuant to Section 73.1560 of the FCC’s Rules, if a station operates at reduced power for 10 consecutive days, it must notify the FCC of that fact. Operation at reduced power for more than 30 days requires the licensee to obtain a grant of Special Temporary Authority from the FCC for such operation. In this instance, the FM station had been operating at reduced power for 14 consecutive days, and the FCC found no indication that it had been notified by the licensee of the station’s reduced power operations.

As a result of the NOV, the licensee must submit a written response, explaining each alleged violation and providing a description and timeline of any corrective actions the licensee will take to bring its operations into compliance with the FCC’s rules. The FCC may elect to assess a fine or take other enforcement action against the station in the future if it ultimately determines the facts call for such a response.

If you have any questions about the content of this Advisory, please contact the Pillsbury attorney with whom you regularly work, or the authors of this Advisory.

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