
FCC Enforcement Monitor

by Scott R. Flick and Christine A. Reilly

Headlines:

- *Failure to Monitor and Repair EAS Equipment Nets \$8,000 Fine*
 - *Fines for Late-filled License Renewals Continue*
 - *\$25,000 Fine for Failure to Answer FCC Correspondence*
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Act of Vandalism Ends With \$8,000 Fine

In a recently released Notice of Apparent Liability ("NAL"), the FCC issued a fine totaling \$8,000 against a New Mexico AM broadcaster for violating the FCC's Emergency Alert System ("EAS") rules. The NAL alleges that the broadcaster failed to properly maintain its EAS equipment, a violation of Section 11.35 of the FCC's Rules.

During a June 2011 main studio inspection, an agent from the Enforcement Bureau's San Diego Field Office observed that the station's EAS equipment was not operational. According to the NAL, the Station's EAS equipment had been damaged by vandalism six months prior to the inspection. In addition to the equipment failure, Station employees were unable to provide the required EAS documentation (i.e., logs or other EAS records) associated with the mandatory weekly and monthly tests required by Section 11.61 of the FCC's Rules.

Inoperable EAS equipment is a violation of Section 11.35(a) of the Commission's Rules, which mandates that broadcasters must ensure that the required EAS equipment is installed, maintained and monitored. Section 11.35(a) also requires EAS participants to log, among other things, instances when the station experiences technical issues during participation in the weekly or monthly EAS tests. Pursuant to Section 11.35(b), EAS participants must seek FCC approval if their EAS equipment will not be functioning for more than 60 days. The base fine for an EAS violation is \$8,000. The FCC, stating that "EAS is critical to public safety," levied the full fine against the broadcaster.

Late Filings and Unauthorized Operations Lead to \$10,000 Forfeiture

The FCC recently issued a joint Memorandum Opinion and Order and NAL to the licensee of an AM station in South Carolina for several violations of the FCC's Rules. The licensee was ultimately fined

\$10,000 for failing to file its license renewal application on time and for unauthorized operation of the station following the license's expiration.

Section 73.3539(a) of the FCC's Rules requires license renewal applications to be filed four months prior to the expiration date of the license. The AM station's license was set to expire in December 2003, but no license renewal application was filed. The station licensee later explained that it did not file a renewal application because it did not realize the license had expired. In May of 2011, seven years later, the FCC notified the station that the station's license had expired, its authority to operate had been terminated, and that its call letters had been deleted from the FCC's database.

After receiving this letter, the station filed a late license renewal application and a subsequent request for Special Temporary Authority ("STA") to operate the station until the license renewal application was granted. Because so much time had passed since the station failed to timely file its 2003 license renewal application, the deadline for the station's 2011 license renewal application (for the 2011-2019 license term) also passed without the station filing a timely license renewal application. As a result, the FCC found the station liable for an additional violation of its license renewal filing obligations. The base fine for failing to file required forms is \$3,000. Thus, the FCC found the station liable for a total of \$6,000 relating to these two violations.

Further, the FCC found the licensee liable for violations of Section 301 of the Communications Act because the station continued operating for seven years after its license had expired. The base forfeiture for such a violation is \$10,000, but the FCC lowered the proposed forfeiture to \$4,000 because the station had previously been licensed.

In spite of the rule violations and \$10,000 fine, the FCC decided to grant the station's license renewal application, finding that the station's violations did not evidence a "pattern of abuse."

FCC Fines Unresponsive Party \$21,000 Above Base Fine

A recent NAL released by the Enforcement Bureau provides a reminder that regulatory ignorance is not bliss. According to the NAL, the Enforcement Bureau, as part of an investigation into billing practices, issued a Letter of Inquiry ("LOI") to a provider of prepaid calling cards on July 15, 2011. The LOI mandated that a response be submitted by August 4, 2011.

The provider failed to respond to the LOI by the initial deadline. The Enforcement Bureau, via e-mail on August 29, 2011, provided an additional extension of time to respond until September 8, 2011. The extended deadline again came and went without action by the provider. As of December 9, 2011, the Enforcement Bureau had not received a response to its July 2011 LOI. Pursuant to Section 1.80 of the FCC's Rules, the base fine for failure to respond to FCC correspondence is \$4,000.

The NAL noted that the FCC's authority under Sections 4(i), 218, and 403 of the Communications Act of 1934 "empowers it to compel carriers ... to provide the information and documents sought by the Enforcement Bureau's LOI," and that failure to respond to an Enforcement Bureau request "constitutes a violation of a Commission order." The Enforcement Bureau stated that the provider's "egregious, intentional and continuous" misconduct warranted a \$21,000 upward adjustment to the base \$4,000 fine, for a total fine of \$25,000.

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

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