

FCC Enforcement Monitor

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HEADLINES

Pillsbury's communications lawyers have published FCC Enforcement Monitor monthly since 1999 to inform our clients of notable FCC enforcement actions against FCC license holders and others. This month's issue includes:

- *Radio Skit Gone Wrong Draws \$20,000 Proposed Fine for False Emergency Alert*
- *Wireless Microphones Operating on Unauthorized Frequencies Generate Hefty Proposed Fine*
- *FCC Issues Citation to Convenience Store Over Errant Surveillance Equipment*

No Laughing Matter: Emergency Alert Parody Leads to Proposed \$20,000 Fine Against New York FM Station

The FCC recently issued a Notice of Apparent Liability for Forfeiture proposing a \$20,000 fine against a New York radio station for airing a false emergency alert. **As we have written in the past**, the FCC strictly enforces its rules against airing false Emergency Alert System (“EAS”) tones, arguing that false alerts undermine public confidence in the alert system.

The EAS system is a public warning system utilizing broadcast stations, cable systems, satellite providers, and other video programming systems to permit the President to rapidly communicate with the public during an emergency. Federal, state and local authorities also use the EAS system to deliver localized emergency information. The FCC's rules expressly forbid airing EAS codes, the EAS Attention Signal (the jarring long beep), or a recording or simulation of these tones in any circumstance other than in an actual emergency, during an authorized test, or as part of an authorized public service announcement. Besides desensitizing the public to alerts in cases of real emergencies, the data embedded in the codes can trigger false activations of emergency alerts on other stations.

On October 3, 2018, FEMA, in coordination with the FCC, conducted a nationwide test of the EAS and Wireless Emergency Alert (“WEA”) systems. Shortly afterwards, the FCC received a complaint that a New York FM station transmitted an EAS tone during an on-air skit lampooning the scheduled test. The FCC issued a Letter of Inquiry to the station, demanding a recording of the program and sworn statements regarding whether the tone was, in fact, improperly transmitted.

In response, the station confirmed that it aired the EAS Attention Signal as part of a skit produced by a station employee. When reviewing the skit before airing, the station spotted an improper EAS header code in it, and told the employee to delete it. However, the employee merely replaced the header code with a one-second portion of the EAS Attention Signal. The station then approved and aired the program.

In response, the FCC found that the segment violated its rules, noting that the “use of the Attention Signal in a parody of the first nationwide test of the EAS and WEA is specifically the type of behavior section 11.45 seeks to prevent.” The FCC also noted that the brief duration of the tone aired was not a defense to a finding of violation.

As a result, the FCC proposed a \$20,000 fine. Although the base fine for airing a false EAS alert is \$8,000, the FCC concluded that the circumstances surrounding this case warranted an upward adjustment. In particular, the FCC stressed the gravity of the situation, noting that the broadcaster aired the false alert on one of the highest-ranking stations in New York City, which itself is the nation’s largest radio market. Given these facts, the FCC proposed a \$20,000 fine. The station has thirty days to either pay the fine, or present evidence to the FCC justifying reduction or cancellation of it.

A Broad Spectrum of Violations Creates Problems for Wireless Microphone Retailer

In a recently-issued Notice of Apparent Liability for Forfeiture, the FCC proposed a \$685,338 fine against a seller of wireless microphones, asserting that the retailer advertised 32 models of noncompliant wireless microphones.

The FCC allocates radiofrequency spectrum for specific uses, with particular attention given to the potential for harmful interference to other users. The FCC has made certain bands available for use by wireless microphones, with technical rules varying depending on the particular band used. For manufacturers and retailers, this means their devices must be designed to operate only within the permitted frequency bands.

Under Section 302(b) of the Communications Act, “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to [FCC Rules]”. Section 74.851(f) of the FCC’s Rules requires devices that emit radiofrequency energy (like wireless microphones) to be approved in accordance with the FCC’s **certification procedures** before being marketed and sold in the United States. Such devices are also subject to identification and labeling requirements.

The FCC initially began investigating the retailer in September 2009 to determine whether it was marketing uncertified wireless microphones. In response to the FCC’s inquiry, the retailer conceded that it had purchased the products in China to market in the United States. It also confirmed that several of the devices operated on frequencies not authorized for wireless microphones in the U.S. Despite this, the retailer asserted that the devices complied with FCC technical standards. It did not, however, provide any documentation demonstrating an FCC certification for the devices. As a result, the FCC issued a Citation to the retailer in 2011, concluding that the retailer had marketed several noncompliant wireless microphone models, including models that impermissibly operated in the 700 MHz band, which in itself made them ineligible for certification. The Citation required the retailer to take immediate steps to cease all marketing efforts in violation of the FCC’s rules, and to remove all noncompliant wireless microphones from its displays.

In 2017, the FCC sent a further Letter of Inquiry to the retailer based on a complaint alleging that the retailer had continued marketing noncompliant wireless microphones following the 2011 Citation. After finding an initial email response from the retailer unresponsive, the FCC noted numerous inconsistencies and contradictions in the retailer’s subsequent submissions. In response to a request for additional information, the retailer provided the operating frequencies and FCC identification numbers for some, but not all of, the 82 models at issue. While the FCC confirmed that some of the models had valid FCC authorizations, it found that 32 models either (1) operated on unauthorized frequencies (including frequencies allocated to aviation services) and lacked proper labeling, or (2) were not certified and therefore lacked an FCC identification number.

The FCC concluded that the retailer had violated its rules by marketing 32 models of noncompliant wireless microphones. Given the retailer’s history of noncompliance, the FCC proposed a significant upward adjustment of \$168,000 to the \$210,000 base fine for marketing 30 of the noncompliant models. Then, noting the risk to public safety from the two noncompliant models operating in the aviation bands, it proposed the maximum fine for each of those two violations (\$153,669 x 2), resulting in a total proposed fine of \$685,338.

New York Convenience Store Receives Citation for Interference-Generating Surveillance Equipment

In another case involving harmful interference to authorized spectrum users, the FCC recently issued a Citation notifying a New York convenience store that its surveillance cameras are causing interference to a wireless carrier's cellular network.

Section 15.5(b) of the FCC's Rules permits the operation of certain low power wireless devices without an FCC license so long as they do not cause interference to authorized uses and accept interference from other radiofrequency sources. Under Section 15.5(c), operators of such devices must cease operations immediately if they are notified by the FCC that the device is causing interference.

In October 2018, a national wireless carrier filed a complaint citing ongoing interference affecting mobile broadband operations in the 700 MHz band. The carrier claimed that the interference appeared to stem from surveillance cameras located at a convenience store in New York City's Bronx borough. The complaint arose following the carrier's unsuccessful attempt to resolve the matter directly with the store.

FCC agents visited the convenience store to assess whether the cameras were in fact the source of the interference. The investigation confirmed the carrier's claims, and the agents issued a warning letter informing the store that the cameras were causing harmful interference in violation of the FCC's rules. Several months later, the FCC issued a second warning, again instructing the store to cease operation of the surveillance cameras until the interference issues were resolved. Neither warning was heeded.

Agents later conducted a further on-site investigation, which confirmed the store cameras were still causing interference. The store owner received another warning but failed to provide a timely response. The FCC therefore issued a Citation to the store owner noting that the surveillance equipment was causing harmful interference to the carrier's operations and that the store had failed to promptly eliminate the interference when notified.

The owner now has 30 days to confirm in writing to the FCC that it has taken corrective measures to eliminate the interference, and must provide a timeline of any future corrective actions. While causing interference often results in significant fines, where the offender is not an FCC regulatee or transmitting in the broadcast spectrum bands, the Communications Act requires the FCC to first (1) issue a citation, and (2) provide the violator a reasonable opportunity to respond before proceeding to a fine. Should the store owner fail to eliminate the interference, additional sanctions, including fines, may follow.