
FCC Enforcement Monitor

by Scott R. Flick and Lauren A. Birzon

Headlines:

- *FCC Assesses \$68,000 in Fines for Unauthorized STL Operations*
 - *EAS Failures Lead to \$8,000 Fine*
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Licensee in Wyoming Slammed with \$68,000 in Proposed Fines for STL Operations

July was not a good month for the licensee of FM radio stations located in Casper, Wyoming. The FCC issued four separate Notices of Apparent Liability for Forfeiture (“NAL”) against the licensee for a total forfeiture amount of \$68,000.

In August 2011, an agent from the FCC’s Enforcement Bureau inspected the main studios of the licensee’s four FM radio stations and the corresponding studio transmitter links (“STL”) for each station. In the first of the four NALs, the agent discovered that although the station’s STL was operating on its authorized frequency, the STL was operating at the site of the station’s main studio, 0.3 miles away from the STL’s authorized location.

In December 2011, the Enforcement Bureau issued a Letter of Inquiry (“LOI”) to investigate. In the licensee’s delayed response to the LOI in April 2012, the licensee admitted that the STL had been the primary delivery mechanism for the FM station’s programming since 2001 and that an application to change the location of the STL “should have been filed” when the station moved its main studio 10 years earlier. Only after the fact (in May 2012) did the licensee file an application to modify the STL’s authorized location. According to Section 1.903(a) of the FCC’s Rules, stations must operate in accordance with applicable rules and with a valid authorization granted by the FCC, and the base forfeiture for operating at an unauthorized location is \$4,000. Here, the FCC decided that an upward adjustment of an additional \$4,000 was warranted because the STL had been operating at the unauthorized location for 10 years.

For each of the other three NALs issued against the licensee, the agent inspected the stations’ main studios to discover that each FM station had an operational STL for which there was no corresponding FCC authorization. In one instance, the station’s STL had been the primary mechanism for relaying programming for 11 years. In the other two instances, the licensee had been operating the STLs as the primary delivery mechanism for programming for 17 years without an authorization from the FCC.

Section 301 of the Communications Act prohibits operating without proper FCC licenses, and the base forfeiture for operating without a license is \$10,000. However, because the licensee admitted it had been continuously operating the STLs without FCC authorizations for periods of 11 to 17 years, the FCC determined that an upward adjustment of \$10,000 was warranted for each of the three violations. As a result, the FCC proposed a fine of \$60,000 for the operation of the three STLs without a license. When added to the \$8,000 fine proposed for operating the authorized STL outside the parameters of its authorization, the licensee found itself on the receiving end of \$68,000 in proposed fines.

While operating any type of FCC-licensed facility without the required FCC license invites adverse action by the FCC, the startling amount of the proposed fines in this case seem designed to send a message, particularly to those operating unlicensed STLs, that the FCC will be taking a very harsh view of non-compliant operations. It is also a safe bet that there will be more fines coming from the FCC for such violations. In fact, the FCC just in the past few hours has issued an NAL against a Puerto Rico TV station for \$10,000 based upon—you guessed it—operation of an STL without a license.

Station Fined \$8,000 for Failing to Maintain Emergency Alert System (EAS) Equipment and Records

A Florida radio station was fined \$8,000 this month after the FCC determined it had failed to comply with EAS requirements. In July 2011, in response to a complaint alleging that the station was not complying with EAS obligations, agents from the FCC's field office visited the station's main studio and transmitter site. The agents found that the EAS Encoder and Decoder had been disconnected from the station's transmitter since December 2010, that there were no logs or records of EAS tests being sent after September 15, 2010, and that there were no logs or records of any EAS test ever having been received by the Station. The station manager informed the agents that the EAS Decoder did not work.

In the Notice of Apparent Liability, the FCC explained that every broadcast station is a "participating national EAS source unless the station affirmatively requests" not to be, and that request is approved by the FCC. The FCC stressed that a functional EAS system is critical to public safety because the EAS system enables the President, and state and local governments, to provide immediate information to the public in emergency situations. Broadcasters, according to the NAL, play a "vital role" in ensuring the success of the EAS system.

The FCC's EAS requirements are found in Part 11 of its Rules. Pursuant to Section 11.35, a broadcaster must ensure that its EAS Encoders, EAS Decoders, Attention Signal generating and receiving equipment, and Intermediate Devices used to encode or decode EAS signals are installed and operational so that the monitoring and transmitting functions are available while the station is in operation. EAS Participants must also determine the cause of any failure to receive the tests required under Part 11. A record of such failures must be made in the broadcast station log and retained for two years, during which time it must be available for inspection upon request, in compliance with Sections 73.1820 and 73.1840 of the Rules.

Although not noted in the NAL, if an EAS Encoder, EAS Decoder or Intermediary device becomes defective, a broadcast station may only operate for 60 days without seeking FCC authority for additional time to make repairs. The dates and times of any equipment removal or restoration must be kept in the station log, and the monthly test script must still be transmitted notwithstanding equipment deficiencies.

In the NAL, the FCC found the station liable for the amount of the base forfeiture for EAS equipment not installed or operational—\$8,000. The FCC also ordered the licensee to submit a sworn statement within 30 days of the NAL stating that the station's EAS equipment is installed and operational or stating the timeframe for when the equipment will be installed and operational.

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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