

# FCC Enforcement Monitor

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## HEADLINES

- ⑒ TV Broadcaster Agrees to \$55,000 “Civil Penalty” for Airing False EAS Tones
- ⑒ Radio Broadcaster to Donate or Surrender Nine FM Stations to Resolve Investigation of Stations Being Silent for Extended Periods
- ⑒ FCC Proposes \$6,000 Fine Against California TV Station for Public File and Related Violations

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### **B**roadcast of False EAS Tones Leads to \$55,000 Settlement with FCC

The FCC entered into a Consent Decree with the parent company of a Florida TV station to resolve an investigation into whether the station transmitted Emergency Alert System (“EAS”) tones outside of an actual emergency.

Section 325(a) of the Communications Act prohibits any person from transmitting “any false or fraudulent signal of distress” or similar communication. Further, Section 11.45 of the FCC’s Rules prohibits transmission of “the EAS codes or Attention Signal, *or a recording or simulation thereof,*” unless it is “an actual National, State, or Local Area emergency or authorized test of the EAS” (emphasis added).

On August 9, 2016, the FCC received a complaint alleging that the station had “aired a commercial multiple times that improperly used the EAS data burst and tone.” The FCC subsequently began an investigation into whether the station had violated its rules governing EAS, and directed the station to respond to the allegations. In its response, the station explained that it started airing an advertisement on August 6, 2016 for a professional football team which opened with EAS Tones, the sounds of wind and thunder, and a voiceover stating: “This is an emergency broadcast transmission. This is not a test. This is an emergency broadcast transmission. This is not a test. Please remain calm. Seek shelter.”

The station claimed that its policies and practices do not allow transmission of false EAS tones, but that it received the advertisement from an outside source and the station’s “employees apparently

failed to screen the Promotion before airing it.” The station explained that when a senior member of the station’s staff saw the advertisement on August 8, 2016, he notified the general manager that it contained a prohibited use of an EAS tone, and told staff not to air it again.

The station’s parent company subsequently entered into a consent decree with the FCC to resolve the investigation, under which the company (1) admitted that the station aired material that contained simulated EAS tones absent an actual emergency or authorized test of the EAS, (2) agreed to pay a \$55,000 civil penalty, and (3) agreed to implement a three-year compliance plan.

### **Radio Broadcaster Agrees to Donate or Surrender Nine FM Station Licenses for Failure to Operate Stations**

The owner of a number of radio stations entered into a Consent Decree with the FCC to resolve an investigation into the company’s alleged failure to operate its stations during their most recent license terms.

Section 312(g) of the Communications Act prohibits extended periods of silence by licensed stations because of their obligation to serve the public by broadcasting on their allocated spectrum.

Specifically, a station’s license will automatically terminate if it remains silent for twelve consecutive months unless the FCC acts to extend or reinstate the license where “the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness.” Additionally, the Act authorizes the FCC to revoke any station license for failure to operate substantially as set forth in that license, and Section 73.1740 of the FCC’s Rules establishes minimum operating requirements for broadcast stations.

Under Section 309(k) of the Communications Act, a station’s license renewal application should be granted if “(1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations by the licensee of [the Act or the FCC’s Rules]; and (3) there have been no other violations by the licensee of [the Act or the FCC’s Rules] which, taken together, constitute a pattern of abuse.” The FCC has stated that “a licensee will face a very heavy burden in demonstrating that it has served the public interest where it has remained silent for most or all of the prior license term.”

In considering the 2013 license renewal applications of 21 of the company’s FM stations, the FCC found that many of the stations remained silent for long periods of time, ranging (in the aggregate) from 201 days to 5.2 years of their most recent license term. The FCC also observed that the company’s stations would resume operations for short periods of time before the twelfth month of silence—sometimes for as little as one day—to avoid silences lasting a year.

The FCC concluded that the company had a “chronic failure to operate its stations” and “that the record of service to the public by these stations is too sporadic and irregular to support a finding that these stations served the public interest in the last license term.” At the same time, however, the FCC reasoned that an evidentiary hearing to assess the public service records of the 21 stations would be

time-consuming and administratively burdensome for both the FCC and the company. Accordingly, the FCC entered into a Consent Decree with the company to “have all silent stations promptly resume service to the public,” and agreed to grant certain renewals with conditions.

Specifically, the terms of the Consent Decree provide that the company must either donate the licenses of 10 stations to non-profit organizations or surrender them for cancellation. The company will retain the licenses of the other 11 stations, and the FCC will grant the license renewal applications for those stations for a shortened license term of one year (instead of the regular eight-year term). If any of the retained stations fails to comply with the FCC’s minimum operating rules, the company will be required to surrender such station’s license to the FCC for cancellation.

### **California TV Station Faces \$6,000 Fine for Public File and Related Violations**

The FCC proposed a \$6,000 fine against a California TV station for failing to place required documents in its online public inspection file in a timely manner, and for failing to disclose those violations in its license renewal application.

Section 73.3526 of the FCC’s Rules requires each commercial broadcast station to maintain a public inspection file containing specific information related to station operations, and Subsection 73.3526(b)(2) requires TV and non-exempt radio stations to upload most of that information to the FCC-hosted online public inspection file. For example, subsection 73.3526(e)(11) requires TV stations to place in their public inspection file (i) Quarterly Issues/Programs Lists describing the “programs that have provided the station’s most significant treatment of community issues during the preceding three month period” and (ii) certifications of compliance with the commercial limits on children’s programming. In addition, Section 73.3514(a) of the FCC’s Rules requires stations to include all information requested by an application form when filing it with the FCC. The license renewal application form specifically requires stations to certify that they have complied with Section 73.3526.

The station filed its license renewal application in April 2014. The station was placed on “red light” status after the FCC’s initial evaluation of the application revealed delinquent regulatory fees. Red light status prevents the FCC from providing any government benefit to a station, including license renewal.

When red light status was lifted in February 2017 after payment of the delinquent regulatory fees, the FCC resumed its review and found that the station failed to timely place required materials in the public inspection file; specifically, the station was late to upload TV Issues/Programs Lists for all of 2013 and the second, third, and fourth quarters of 2016, and commercial limit certifications for all of 2013, the third and fourth quarters of 2015, and the second, third, and fourth quarters of 2016.

The station amended its license renewal application in April 2017 to disclose its failure to timely upload copies of its TV Issues/Programs Lists and commercial limit certifications documents in the last three quarters of 2016. It blamed the failure on a software glitch in the station’s scanner, and did not

address its apparent failure to timely upload documents in 2013 and 2015. In response, the FCC stated that regardless of the scanner glitch, it is the station's responsibility to confirm that all public file documents are timely uploaded.

The FCC's base fine for public inspection file violations is \$10,000, and the base fine for failing to provide required information in an application is \$3,000. The FCC can adjust the fine upwards or downwards depending on the circumstances of the violation. Here, acknowledging that the station prepared and eventually uploaded all required public file documents, the FCC proposed a fine of \$3,000 for failure to timely upload required public file documents. It also proposed a \$3,000 fine for failure to disclose the violations on its license renewal application, for a total proposed fine of \$6,000.

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