



Virginia Association of Broadcasters Legal Review



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Legal Memorandum

Grabbing Viewers' Attention with EAS Tones Grabs the FCC's Attention Too!

Another media company has been subjected to a significant financial penalty in connection with airing simulated EAS tones for a purpose other than a test or an actual EAS alert. On May 30, 2017, the FCC released an [Order and Consent Decree](#) in which a television station in Florida agreed to pay \$55,000 in the wake of airing a promotional announcement—featuring EAS tones—four times over a three day period during August 2016. In addition, the station must implement a three-year Compliance Plan that includes designation of a Compliance Officer, mandatory employee training, development of a Compliance Manual and Operating Procedures relating to EAS rules, mandatory reporting of non-compliance with EAS rules, and submission of periodic reports to the FCC.

How did the FCC get involved? A viewer complained to the FCC after the station aired a promo for the local professional football team featuring EAS tones and audio suggesting the existence of a weather emergency. More specifically, according to the FCC:

“The advertisement opened with EAS tones accompanied by the sounds of howling winds and thunder claps. Between the EAS tones and the sounds of a storm, a voiceover stated: “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 promotion closes with EAS tones playing in the background.

The station stopped airing the spot after a member of the station staff saw the commercial and contacted station management. But, the fact that the spot made it to air at all means either that some station staff were not aware of the prohibition on the use of EAS tones (or simulated tones) for purposes other than tests and alerts or that the spot was not adequately reviewed prior to being approved for broadcast. (The station advised the FCC that the station has a policy that prohibits

the use of EAS tones except for tests and alerts and that the spot was not screened prior to air.) Either way, the misuse of EAS tones in this situation was entirely avoidable.

To guard against the likelihood that your station will find itself in a situation similar to the media company in this latest case, it may be helpful to remember the following things (each of these applies to both the TV platform and digital platforms):

- When feasible, stations should review each spot, promo, PSA, and other material before transmitting it.
- When stations receive commercial spots that contain tones designed to grab the public's attention, careful evaluation of the tones is warranted. Consult with an engineer and/or a lawyer if necessary to determine whether a particular tone is "too close" to an EAS tone (or wireless EAS tone) such that it could, potentially, be considered an EAS "simulation."
- News reports about the EAS system (or wireless EAS system) should never contain samples of EAS tones, even if the news report is designed to educate the public.
- Stations should never replay an EAS test or EAS alert (or a simulated EAS test or alert) for commentary, news reporting, humor, parody, drama, or any other purpose.
- The only permissible transmission of tones for non-alert/non-test purposes is in the context of a PSA for the WEA (Wireless Emergency Alert) program. More specifically, the FCC now allows stations to broadcast PSAs containing WEA Attention Signals that make "clear that the WEA Attention Signals are being used in the context of the PSA and for the purpose of educating the viewing or listening public about the functions of their WEA-capable mobile devices and the WEA program." To be clear, the FCC does NOT allow stations to air PSAs including EAS tones to educate the public about EAS.

Because it may be difficult to know what the FCC would consider to be a simulated EAS test or alert, stations should be cautious, especially with significant FCC fines at stake.

If you have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

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