



Virginia Association of Broadcasters Legal Review



Brooks, Pierce, McLendon, Humphrey & Leonard, LLP
Counsel to VAB • (919) 839-0300

250 West Main Street, Suite 100
Charlottesville, VA 22902 • (434) 977-3716

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FCC WAIVER PERMITS BROADCAST OF FEDERAL WIRELESS EMERGENCY ALERT PSAs

The Commission now authorizes, for a limited time, the broadcast of simulated Wireless Emergency Alert (WEA) attention signals in public service announcements developed by the Federal Emergency Management Agency (FEMA). These signals would otherwise not be permitted under the Commission's EAS rules, but a limited waiver of the rules will allow FEMA to educate the public about the program. The limited waiver will be in effect until May 31, 2014.

The WEA alerts themselves are geographically targeted emergency messages transmitted to wireless subscribers over mobile devices. The attention signal is a loud two-tone audio signal using the same frequencies as the familiar signal used by the broadcast Emergency Alert System. FEMA wishes to broadcast PSAs in order to educate the public about the sounds they may hear from their mobile devices alerting them to such a message.

The waiver allows the broadcast and transmission of simulated attention signals in a non-misleading manner. In other words, it should be clear that the simulated message is not an actual emergency message.

If your station has questions about a PSA containing the attention signal or other EAS rules, please contact your communications counsel.

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REQUIREMENT TO VIDEO DESCRIBE EMERGENCY CRAWLS WILL TAKE EFFECT MAY 24, 2015

As previously reported, the FCC has adopted rules to require the video description of emergency information presented visually during a broadcast (for example, through an on-screen crawl). By publication of the rules in the *Federal Register*, the Commission has now set the deadline for compliance with the new requirement: May 24, 2015.

The new rules will require broadcasters who provide emergency information to viewers through visual-only means during non-newscast programming (for example, through an on-screen crawl) to video describe the information concurrently on a secondary audio stream. The FCC will continue to require that an aural tone accompany the video crawl to alert the audience that emergency information is available and will further require that an aural tone accompany the information available on the secondary audio stream.

The Commission has not adopted a “technical capability” exception to the new rules. In other words, all television stations must get the equipment necessary to make a secondary audio stream available for description of emergency alerts by the May 24, 2015, deadline.

For more information regarding the new rules, please see our Legal Review dated April 25, 2013.

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WEBPAGE INTERFACE AVAILABLE TO UPDATE TV TRANSLATOR, LPTV, AND CLASS A STATION INPUT CHANNELS

In connection with the operation of white spaces devices now authorized nationwide, the Commission has developed a special webpage interface where TV translator, low power TV, and Class A TV stations can update their input channel data in the Commission’s Consolidated Database System (CDBS).

These updates to the FCC’s records will be important for broadcasters to protect these services against interference from white spaces devices, which are separately registered in the FCC-approved white spaces databases. White spaces databases, in turn, pull data regarding protected services by broadcasters from CDBS. Thus, in order to ensure protection against interference, broadcasters must keep their information up to date with the FCC.

The new input channel update facility for TV translators, low power TV, and Class A TV stations is available at the following URL: <https://apps.fcc.gov/oet/translator/>. In order to log in, each licensee must provide its FCC registration number, password, Facility ID, and call sign.

As a reminder, certain broadcaster auxiliary services must also register in a white spaces database (such as SpectrumBridge or Telcordia) to receive protection of those operations. Those registrations are good for a maximum of one year and must be renewed annually to maintain protection.

Should you have questions about what registrations may be required for your station and facilities, please contact your communications counsel.

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RECENT ENFORCEMENT ACTIVITY REMINDS ALL STATIONS OF IMPORTANT FCC OBLIGATIONS

A recent FCC case involving a noncommercial radio station examined several compliance issues that can affect noncommercial and commercial broadcasters alike. The Commission issued a Notice of Apparent Liability (the “*Notice*”) against a noncommercial radio station for violations of various Commission rules. The *Notice* serves as a reminder to all stations regarding the requirements for issue-responsive programming, prohibited tobacco advertising, rules against payola, and prohibited commercial announcements on noncommercial stations.

The enforcement activity in this case arose on the Commission’s review of the noncommercial station’s license renewal application. A former officer of the station licensee filed an objection to the renewal application making several serious allegations, including an alleged failure of the station to air issue-responsive programming during the last 6 months of the license term, other than a handful of public service announcements, and the airing of questionable promotional announcements and advertisements, including a concert promotional announcement, a “menu listing” of services for a retail establishment, and sponsored promotion of a band. The FCC also discovered during its investigation that the station had aired old-time cigarette advertisements contained in programming that was rebroadcast by the station.

Here is an overview of the lessons for broadcasters apparent from the *Notice*.

- * *Stations Should Not Rely Primarily On PSAs For Issue-Responsive Programming.*

The *Notice* examined the station’s disclosures regarding issue-responsive programming, finding in favor of the station that deficiencies during a 6-month period will not determine a station’s compliance over the full, eight-year license term. Rather, the Commission reiterated that it will evaluate a station’s service to the public interest over the entire license term. In this case, the FCC found that the station aired a variety of programming and was fully responsive to community needs for the vast majority of the license term.

The FCC admonished the station for poor performance over the final 6 months of the license term—when the only issue-responsive programming aired on the station was in the form of PSAs—but did not impose a fine on this basis. The *Notice* also cautioned that stations generally should not rely on PSAs as the primary method of responding to community needs because they are too brief to address issues in depth, although they can be an effective means of meeting community needs on a limited budget. The *Notice* identified other ways to address community issues, such as a combination of public affairs programs, editorials, free speech messages, community bulletin boards, religious programming, and news programming.

* *Advertising Cigarettes, Little Cigars, And Smokeless Tobacco Is Prohibited.*

The *Notice* also reminds all broadcasters that federal laws and the FCC's rules prohibit broadcast advertising for cigarettes, little cigars, and smokeless tobacco products. In this case, the station aired old-time radio shows without removing original commercials for cigarettes. Because there was no evidence of remuneration to the station for the old-time commercials, these particular advertisements did not meet the definition of prohibited advertisements under the FCC's rules. However, the Commission cautioned that cigarette advertising may violate other federal laws, specifically under the Public Health Cigarette Smoking Act of 1969, and could expose the station to enforcement by the U.S. Department of Justice. In any event, the lesson for all broadcasters is clear that they must exercise caution to avoid prohibited advertising of tobacco products even in unusual circumstances.

* *Payola Is Prohibited.*

The FCC's rules prohibit the airing of sponsored material without appropriate disclosure, i.e., without appropriate sponsorship identification. Here, the station disclosed that an officer of the station's licensee promoted his own band on air and the band paid money to the station. In this instance, however, the FCC found no violation of the payola rules because the station actually disclosed the financial contributions of the band in announcements shortly after airing the band's music.

* *Noncommercial Stations May Not Air Commercial Advertisements.*

According to the FCC, advertisements are defined as program material broadcast in exchange for any remuneration and intended to promote any service, facility, or product of for-profit entities. Although contributors of funds to noncommercial stations may receive on-air acknowledgements, such acknowledgements may be made for identification purposes only.

The Commission permits broadcasters to exercise reasonable, "good faith" judgment in deciding what crosses the line between identification and advertisement, within certain guidelines and as further developed by the FCC over time in its cases. The acknowledgements may not promote the contributor's products, services, or businesses. Specifically, the announcements may not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent, or lease. The Commission has stated that announcements containing an excessively detailed "menu listing" of services offered by the sponsor exceed the identification-only purpose of donor acknowledgements.

In this case, the FCC fined the station for announcing such excessively detailed menu listings, for example, announcing that a local building supplier sold “custom metal roofing, siding, hardware, trim, insulation, trusses, and perma felt paper,” and that another local business offered “bulk and bag mulch, peat moss, potting soil, bulk top soil, and decorative borders. . . pickup and delivery.” According to the *Notice*, the FCC concluded that these excessively detailed menus of products and services offered by the sponsors exceeded the type of information that would enable listeners to identify supports of noncommercial programming.

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Noncommercial and commercial stations with questions about these important obligations and prohibitions should contact their FCC counsel.

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LOW POWER FM FILING WINDOW OPENS OCTOBER 15, 2013

The FCC recently announced in a Public Notice that the upcoming low power FM (LPFM) new station and major change filing window will open October 15, 2013. Certain filing requirements and procedures will apply for filings during the window. The LPFM filing window will remain open until 6:00 p.m. EDT on October 29, 2013.

As previously reported, recent orders have modified the Commission’s rules to implement the Local Community Radio Act. Each applicant during the filing window must be a nonprofit educational organization, or a Tribe or Tribally-controlled organization, or a state or local government or a non-government entity that will provide a noncommercial public safety radio service. Stations with questions regarding other eligibility requirements and required procedures should contact their communications counsel.

LPFM applications are required to protect all FM, FM translator, FM booster, and TV Channel 6 authorizations, as well as pending broadcast applications that were already filed before the Notice was released, on June 17, 2013.

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

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

Wade H. Hargrove
Mark J. Prak
Marcus W. Trathen
David Kushner
Coe W. Ramsey
Charles E. Coble
Charles F. Marshall
Stephen Hartzell
J. Benjamin Davis
Julia C. Ambrose
Elizabeth E. Spainhour
Eric M. David
Mary F. Peña
Dorrian H. Horsey
Laura S. Chipman
Timothy G. Nelson

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This Legal Review should in no way be construed as legal advice or a legal opinion on any specific set of facts or circumstances. Therefore, you should consult with legal counsel concerning any specific set of facts or circumstances.

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