



Virginia Association of Broadcasters Legal Review



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Legal Memorandum

FCC Issues Four EAS Fines Totaling Over \$600,000 for False Alerts

On Thursday, August 15, 2019, the FCC's Enforcement Bureau released four Orders adopting Consent Decrees to resolve investigations into alleged violations of the Commission's rules prohibiting the misuse of EAS tones, including simulated or false alerts. The Consent Decrees included payments to the FCC totaling more than \$600,000 in the aggregate and imposed onerous three-year compliance plans and reporting obligations on the parties involved. The Commission found violations committed by both broadcasters and cable networks—the ABC Network, AMC, Discovery, and a radio station licensee were all caught in the Enforcement Bureau's crosshairs.

These enforcement actions present an opportunity to review with station personnel the seriousness with which the FCC approaches the EAS system and the significant costs of misuse of EAS tones for comedic or dramatic (or even for educational) purposes. Station on-air talent, production personnel, and others should be reminded that EAS alerts, including simulations and recordings, should never be used except for actual activations, required tests, and certain PSAs. More information about the FCC's EAS rules (and prohibited activity under the EAS rules) is available in an [Enforcement Advisory](#) also released by the FCC on August 15.

The FCC's EAS rules generally prohibit the transmission of EAS codes or attention signals, or a *recording or simulation* of EAS codes or attention signals, in any circumstance other than to provide (1) an actual national, state, or local area emergency, (2) authorized testing of the EAS, or (3) educational PSAs (which must meet certain, defined criteria) to raise awareness about emergency alerting. Use of the tones for any other purpose—including entertainment and commercial purposes—is strictly forbidden by the rules. The Commission takes the position that use of EAS or Wireless Emergency Alert (WEA) attention signals for any unpermitted reason can cause confusion or lead to “alert fatigue” so that the public becomes “desensitized” to the alerts—which in turn could cause people to ignore “potentially life-saving” emergency information and

warnings. False activations can also technically lock out legitimate activations of the EAS system. Either result, according to the Commission, poses a serious threat to public safety.

The four recently adopted Orders and Consent Decrees are briefly summarized below:

- The [ABC Network](#) was fined \$395,000 for incorporating WEA tones in a “Jimmy Kimmel Live!” sketch that aired on ABC stations.
- [AMC](#) was fined \$104,000 for incorporating simulated EAS tones in two scenes of an episode of “The Walking Dead.”
- [Discovery](#) was fined \$68,000 for including a recording of actual WEA tones in a program distributed through its Animal Planet cable channel. The program was a pre-recorded and edited segment that followed Texas Game Wardens responding in real-time to Hurricane Harvey.
- A [radio broadcaster](#) was fined \$67,000 for including a simulation of the EAS attention signal during a promotion for its morning program that aired more than 100 times on one station and 33 times on a simulcast station.

The Consent Decrees require each of the parties to submit to a three-year compliance plan that includes appointment of a compliance officer, EAS training, and reporting obligations.

Moreover, the EAS rules, themselves, include a self-reporting requirement for false alerts that recently took effect. Specifically, EAS participants (including all broadcast stations) are required to report to the FCC by email within 24 hours if they have transmitted or otherwise sent a false alert to the public. Because the self-reporting rule was not yet in effect when the underlying incidents occurred, the Consent Decrees did not cite this self-reporting requirement as the basis for any aspect of the enforcement action or investigation. In fact, the false alerts were discovered by the FCC staff through news reporting (in the case of ABC, the *New York Times* published a story the following day), by watching the show in question first-hand (FCC staff heard the false alert while watching “The Walking Dead” episode), or through complaints from the public. But, in light of these significant enforcement activities, stations should be mindful of the requirement to disclose false alerts and should contact legal counsel immediately if they think that they have aired a false alert.

These enforcement actions come on the heels of the recently concluded nationwide EAS test, which occurred August 7, 2019. It is fair to wonder whether the FCC timed the release of these Orders shortly after the nationwide test to underscore the importance of the EAS system in its overall regulatory purview.

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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