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Focus on FCC Fines

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This is a test, this is only a (\$5,000) test – Many readers may recall how a test emergency alert signal is followed by the reassuring phrase “this has been a test.” In contrast to using those words – or any words – a Virginia FM station interrupted programming, broadcast the EAS tone . . . and then returned to regular programming. The result? A \$5,000 for the unaccompanied tone.

Having heard the EAS tone with no explanation, an angry (or perhaps panic-stricken) listener fired off an e-mail reporting the incident to the Commission. In response, the FCC sent an inquiry to the station. (Urgency was apparently not a concern to the Commission – the inquiry went out two months after the complaint arrived.) The station replied that the alert signal was aired by mistake.

According to the station, one of its employees was listening to an EAS weekly test on backup equipment. Unbeknownst to the employee, the back-up gear was hooked up to the studio, providing a data connection link to the live transmission system. The station explained that the back-up equipment was rigged to trigger a live broadcast of the EAS tone –so when the EAS test was fired up on the back-up, the tone went out live on the air. Oops. The station returned to normal programming after the tone aired and the chief engineer logged the mistake in the EAS log.

Although the FCC recognized that the alert was aired by mistake, it went digging through its rules to find a reason to fine the station. Buried in footnote 6 to the “Analog and Digital Broadcast Station” table of Subsection (a) of Section 11.11 of the FCC’s rules is a requirement that the EAS two-tone signal can be used ***only*** before an actual emergency message or a monthly test. The FCC also noted that every licensee is charged with responsibility for “preventing accidental operation of the equipment used to generate the EAS tone.”

This \$5,000 fine should alert stations to take all measures possible to avoid an accidental trigger of the EAS system. The facts of this case should also remind stations that an

unhappy listener can start an FCC investigation by doing little more than writing a quick e-mail to the FCC.

Radio stations fined for broadcasting – A Florida station faces an \$8,100 fine for broadcasting on the wrong frequency while a Michigan station is looking at a \$10,000 fine for broadcasting 18 months after its license expired. In both cases, the stations were fined after the FCC received complaints about the broadcasts.

The Florida station held a valid FCC license to transmit at 93.3 MHz using a Shively antenna. However, when an FCC agent paid the station a visit, the general manager explained that its signal did not work very well at 93.3 MHz, so the station had relocated itself to 92.7 MHz. The station corrected its frequency after the inspector's visit. On a follow-up visit, the FCC noticed that although the station corrected its frequency, it was broadcasting with approximately three times its authorized power through an unauthorized antenna. The FCC fined the station \$8,100 for the failure to operate in accordance with its license.

In the Michigan case, the station was fined \$10,000 for broadcasting with an expired license. The Battle Creek AM station's license to operate (at 1500 kHz) expired in October, 2004. FCC agents from Detroit visited the transmitter in July, 2006, and determined that the station was still up and running. The agents contacted the licensee and advised it that its license had expired. However, the station continued broadcasting.

In its defense, the station explained to the FCC that it could not file a renewal application because it did not have a computer. The FCC did not accept that excuse. Instead, the FCC pointed out that even ten years ago, when it made electronic filing mandatory, Internet access was readily available at public institutions such as libraries. The station was fined \$10,000 (the equivalent of 20 entry-level laptop computers).

Please press "submit" only once, do not reload page – In contrast to the station that failed to renew on time because it had no computer, the FCC fined a station for *not* using its computer properly. FCC rules require stations to submit renewal applications at least four months prior to their license expiration date. Several weeks in advance of its renewal deadline, a Michigan station went on-line, prepared its renewal application and thought that it had submitted the forms on time. Unfortunately, the station's staff had not in fact submitted the application at all. FCC staff determined that the station failed to complete the computer program in the correct order and failed to press one of the buttons during the renewal process. Although the FCC eventually accepted the application, it determined that the station's improper filing was a violation of FCC rules and also issued a \$250 fine. (Note – Upon successful completion of the electronic filing process, the FCC's system provides a clear and unequivocal message confirming that the application

has been received into the system. If you haven't received that message, you should not assume that that you have successfully filed whatever it is that you're trying to file.)

Those of you who may be puzzled by the seeming disparity between (a) the cute little \$250 fine issued here and (b) the much beefier \$10,000 fine dished out to the station described in the immediately preceding story need not fret. The difference in fines reflects substantial differences in the underlying misconduct. In the case of the \$250 fine, the licensee had teed up its renewal application before the deadline for renewal applications – *i.e.*, more than four months before its license actually expired. Thinking that it had filed the application, the licensee was concerned when it saw no indication from the Commission of successful filing and, a month or two after the renewal was due – but still *before* its license expired – the licensee contacted the FCC, was advised that the application had not been filed properly, and was able to correct that mistake *before* the license expired. By contrast, in the \$10,000 fine case, by the time the licensee got around to filing for renewal, its license had been dead and gone for approximately four years already, meaning not only that the renewal application was way late, but also that the station had been engaging in unauthorized operation for a period of years.

Station sold, fine stays with previous owner – During November, 2006, Clear Channel applied to the FCC to sell off a North Dakota radio station. The next month, Clear Channel staff reportedly aired a recorded telephone call without letting the person on the other end know that it would be broadcast. In January, 2007, the station was sold. Ten months after the sale, the FCC wrote a letter to Clear Channel asking about the broadcast of the recorded call, which had occurred just days before the sale. Clear Channel responded that it had sold the station and had no information in its possession to disprove the claims. The FCC determined that Clear Channel could not prove it did not air the call and issued a \$12,000 fine. The FCC also reminded Clear Channel that the FCC has a history of not letting broadcasters off the hook just because they are no longer the licensee, if the violation occurred while the entity was still the licensee. Sellers should bear the “long arm” of the FCC’s enforcement in mind when they sell a station, although the intricacies of the statute of limitations provisions of the Communications Act arguably reduce the length of the FCC’s arms under some circumstances.