



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <http://www.fcc.gov>  
TTY: 1-888-835-5322

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## FCC ENFORCEMENT ADVISORY

### EMERGENCY ALERT SYSTEM

#### **False, Fraudulent or Unauthorized Use of the Emergency Alert System Attention Signal and Codes is Strictly Prohibited**

The FCC's Enforcement Bureau (Bureau) issues this Enforcement Advisory to promote widespread understanding of the laws governing appropriate use of the Emergency Alert System codes and Attention Signal. Any transmission, including broadcast, of the EAS Attention Signal or codes, or a simulation of them, under any circumstances other than a genuine alert or an authorized test of the EAS system violates federal law<sup>1</sup> and undermines the important public safety protections the EAS provides. There is growing concern about the misuse of the EAS tones and Attention Signal to capture audience attention during advertisements and at other times when there is no emergency or test. The FCC may issue sanctions for such violations, including monetary forfeitures.<sup>2</sup>

The EAS is a national public warning system that requires broadcasters, cable television operators, wireless cable operators, wireline video service providers, satellite digital audio radio service providers, and direct broadcast satellite providers to make it possible for the President of the United States to address the American public during a national emergency. Federal, state, and local authorities may also use the EAS to deliver important emergency information, such as AMBER alerts<sup>3</sup> and weather information targeted to specific areas.

In response to numerous consumer complaints, the Bureau recently began several investigations into entities that broadcast, transmitted, or caused to be transmitted content that allegedly used the EAS codes or Attention Signal (or simulations thereof) to capture the audience's attention in connection with unauthorized uses, including advertisements and promotions. In response to these investigations, the Bureau is releasing two enforcement items concurrently with this Enforcement Advisory.

First, the Bureau is issuing a Notice of Apparent Liability for Forfeiture in the amount of \$25,000 to Turner Broadcasting System, Inc. (Turner), for violations of Section 325(a) of the Communications Act of 1934, as

<sup>1</sup> See 47 U.S.C. § 325(a) (prohibiting false or fraudulent distress signals); 47 C.F.R. § 11.45 (prohibiting persons from transmitting or causing the transmission of the EAS Attention Signal or tones, or simulations thereof, under any circumstances other than a real alert or an authorized test of the EAS system). See, e.g., *Emmis Broadcasting Corp. of St. Louis*, Notice of Apparent Liability for Forfeiture, 6 FCC Rcd 2289 (1991) (prior to existence of § 11.45, finding radio station in violation of Section 325(a) for broadcasting a fraudulent distress signal that listeners thought was the Emergency Broadcast System (EBS) announcing that the United States was under nuclear attack) (*Emmis*).

<sup>2</sup> See 47 C.F.R. § 1.80.

<sup>3</sup> America's Missing: Broadcast Emergency Response (AMBER) alerts inform the public via radio, television and highway signs about possible child abductions. See U.S. Department of Justice, Frequently Asked Questions (January 2010), available at <http://www.ojp.usdoj.gov/newsroom/pdfs/amberfaq.pdf>.

amended, and Section 11.45 of the Commission's rules.<sup>4</sup> Following a complaint from the public concerning Turner's misuse of EAS codes or Attention Signal, the Bureau investigated and found that Turner produced and transmitted, or caused the transmission of, a promotion for an evening talk show that included a simulation of the EAS Attention Signal.

Second, the Bureau is entering into a \$39,000 Consent Decree with MMK License LLC, licensee of a television broadcast station, to settle apparent violations of the ban on unauthorized use of the EAS Attention Signal.<sup>5</sup> The licensee acknowledges broadcasting a commercial that included an auditory signal that simulated the EAS Attention Signal. During the course of our investigation, the licensee cooperated with the Bureau's inquiries and requests, and voluntarily proposed, and committed to implement, a comprehensive compliance plan and educational program to help deter future violations of the Commission's EAS rules. The licensee also has agreed to adopt and implement a robust compliance plan that includes employee training and self-reporting of future noncompliance.

#### **How does the EAS work?**

EAS uses a four-part message to signal an emergency.<sup>6</sup> The EAS components gain the listener's or viewer's attention and convey specially coded information to activate equipment needed in a real emergency. In particular, the EAS codes include sound and encoded information concerning the particular kind of emergency. There is a separate Attention Signal that follows the codes and comprises two tones that are transmitted simultaneously.

#### **What is the FCC's role in overseeing the EAS?**

The FCC, in conjunction with the Federal Emergency Management Agency (FEMA) and the National Oceanic and Atmospheric Administration's National Weather Service, implements the EAS at the federal level. The FCC's role includes prescribing rules that establish technical standards for the EAS, procedures for EAS participants to follow in the event the EAS is activated, and EAS testing protocols. Additionally, the FCC ensures that the EAS state and local plans developed by industry conform to the FCC's EAS regulations. Finally, the FCC enforces rules to ensure that the EAS Attention Signal and tones are not used for unauthorized purposes.

#### **What rules govern the use of the EAS Codes and Attention Signal?**

Section 11.45 of the Commission's rules states that "[n]o person may transmit or cause to transmit the EAS codes or Attention Signal, or a recording or simulation thereof, in any circumstance other than in an actual National, State or Local Area emergency or authorized test of the EAS."<sup>7</sup> Thus, if advertisements, promotional announcements, or other programming includes the EAS codes or Attention Signal (or simulations thereof) not in connection with an actual emergency or authorized EAS test, they are illegal.<sup>8</sup> A "simulation" of the EAS codes or

<sup>4</sup> *Turner Broadcasting System, Inc.*, File No. EB-12-IH-0874, Notice of Apparent Liability for Forfeiture, DA No. 13-2125 (Enf. Bur. Nov. 5, 2013).

<sup>5</sup> *MMK License, LLC*, File No. EB-13-IH-0059, Order and Consent Decree, DA No. 13-2124 (Enf. Bur. Nov. 5, 2013).

<sup>6</sup> The four parts are: Preamble and EAS Header Codes; audio Attention Signal; message; and, Preamble and EAS End Of Message (EOM) Codes. See 47 C.F.R. § 11.31.

<sup>7</sup> 47 C.F.R. § 11.45.

<sup>8</sup> The rules permit EAS Participants to use Public Service Announcements (PSAs) or commercial sponsors to explain EAS to the public, but here too they are not permitted to "simulate or attempt to copy alert tones or codes." 47 C.F.R. § 11.46. See *Public Safety and Homeland Security Bureau Reminds Media Outlets and EAS Participants That Broadcast of EAS Tones and Attention Signal Is Prohibited Except During Authorized EAS Activations, Including Tests*, Public Notice, DA 11-1867 (Pub. Safety and Homeland Sec. Bur. Nov. 8, 2011). But cf. *Waiver of Section 11.45 of the Commission's Rules to Allow Broadcast of Public Service Announcements Produced by the Federal Emergency Management Agency to Educate the Public on the Wireless Emergency Alert System*, Order, DA 13-1301 (Pub. Safety and Homeland Sec. Bur. May 31, 2013) (granting a limited waiver of Section 11.45 to allow the broadcast or transmission of a simulated Wireless Emergency Alert (WEA) Attention Signal in PSAs developed by FEMA as part of its campaign to educate the public about the WEA system). The limited, brief waiver applies only to the FEMA-sponsored PSAs described in the waiver request, and the PSAs must not mislead the listening or viewing public

Attention Signal includes not only recordings of actual EAS codes or Attention Signals,<sup>9</sup> but also sounds that mimic or are substantially similar to them, such that an average listener could reasonably mistake the sounds for an actual EAS code or Attention Signal. By contrast, general alarms or other loud noises, including bells, claxons, and police, fire or civil defense sirens, are not considered "simulations" of the EAS codes or Attention Signal and therefore are not prohibited under section 11.45 of the Commission's rules.<sup>10</sup>

The rule applies to any "person" who "transmits" or "causes to transmit" a prohibited signal. The prohibition thus applies to programmers that distribute programming containing a prohibited sound regardless of whether or not they deliver the unlawful signal directly to consumers; it also applies to a person who transmits an unlawful signal even if that person did not create or produce the prohibited programming in the first instance. Therefore, the prohibition also applies to a broadcaster, cable operator, or satellite carrier that transmits programming containing a prohibited sound even if the programmer that embedded the sound is not under common ownership or control with the respective broadcaster, operator, or carrier.

Moreover, false or fraudulent use of the EAS codes or Attention Signal (or simulations thereof) may violate Section 325(a) of the Act, which prohibits transmission of false distress signals.<sup>11</sup> For example, in *Emmis Broadcasting Co. of St. Louis*, the Commission found a radio station in Missouri apparently liable for violating Section 325(a) after the station broadcast a "bleep" that listeners mistook for an authentic emergency signal; the Commission held that using the tone to "cry wolf" undermined the integrity of the Emergency Broadcast System (EBS) and endangered the effectiveness of the EBS warning tone as a method of alerting the public to real danger.<sup>12</sup> The Commission pointed to the broadcast's effect on the EBS as a factor that exacerbated the violation, even though the station did not use the actual EBS attention signal.<sup>13</sup> At that time, in 1991, the Commission lacked a rule that explicitly prohibited unauthorized or false or fraudulent use of emergency broadcast signals, and relied on Section 325(a). The Commission subsequently proposed and adopted the prohibition in Section 11.45.<sup>14</sup>

For broadcast licensees, false or fraudulent EAS signals also may violate the Commission's prohibition against the broadcast of hoaxes. Section 73.1217 of the rules prohibits broadcast licensees or permittees from broadcasting false information concerning a crime or a catastrophe if: (1) the licensee knows this information is false; (2) it is foreseeable that broadcast of the information will cause substantial public harm; and (3) broadcast of the

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into erroneously concluding that an actual emergency exists.

<sup>9</sup> See 47 C.F.R. § 11.31.

<sup>10</sup> Even though these sounds standing alone would not violate Section 11.45 of the rules, Section 325(a) of the Act covers a potentially broader circumstance in which such sounds might contribute to false or fraudulent communication of distress prohibited under the statute. See *infra* note 11.

<sup>11</sup> See 47 U.S.C. § 325(a) ("No person within the jurisdiction of the United States shall knowingly utter or transmit, or cause to be uttered or transmitted, any false or fraudulent signals of distress, or communication relating thereto ...").

<sup>12</sup> See *Emmis*, 6 FCC Rcd 2289-90 (also noting that Emmis announced, with the sound of civil defense sirens in the background, that the tone was not a test and the United States was under nuclear attack). The EBS was the immediate predecessor of the EAS.

<sup>13</sup> *Id.* at 2289-90 (noting that Emmis used a common "bleep" tone rather than the two-tone EBS warning and thus no EBS equipment was activated, but listeners mistook the tone for the authentic EBS signal).

<sup>14</sup> See *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System*, Notice of Proposed Rule Making/Further Notice of Proposed Rule Making, 7 FCC Rcd 6903, 6907-08, paras. 39-45 (1992); *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System*, Report and Order and Further Notice of Proposed Rule Making, 10 FCC Rcd 1786, 1815, para. 84 (1994), *subsequent history omitted* (stating "[s]uch false use and misconduct will be considered a false distress communication and will be subject to Commission penalties, such as monetary forfeiture or other appropriate sanctions").

information does in fact directly cause substantial public harm.<sup>15</sup> For purposes of this rule, "public harm" must begin immediately and cause direct and actual damage to property or to the health or safety of the general public, or cause diversion of law enforcement or other public health and safety authorities from their duties.<sup>16</sup>

**What happens if the Commission's EAS rules are violated?**

Failure to comply with the Communications Act or Commission's rules may subject a violator to sanctions including, but not limited to, substantial monetary forfeitures. As noted above, the Bureau is issuing a \$25,000 Notice of Apparent Liability for Forfeiture to a cable network program provider for violations of Section 325(a) of the Act and Section 11.45 of the Commission's rules, and has also entered into a Consent Decree with a broadcast licensee, whereby the licensee agreed to make a \$39,000 voluntary contribution to the U.S. Treasury, as well as adopt and implement a robust compliance plan. Other investigations remain ongoing, and the Bureau will take further enforcement action if warranted. In the meantime, the Bureau will continue to monitor and enforce compliance with these rules consistent with their importance in promoting and protecting public safety.

**What should consumers do if they hear a false or fraudulent EAS Signal?**

Consumers who believe they have heard an EAS code or EAS Attention Signal on the radio, television, or other transmission media that is not transmitted in connection with an actual national, state or local emergency or authorized test may contact the FCC at 1-888-CALL-FCC (1-888-225-5322) or file a complaint online at [www.fcc.gov/complaints](http://www.fcc.gov/complaints).

**Need more information?**

For additional information regarding this Enforcement Advisory, please contact Gregory Simon of the Enforcement Bureau at 202-418-1764 or [Gregory.Simon@fcc.gov](mailto:Gregory.Simon@fcc.gov), or Jennifer Lewis of the Enforcement Bureau at 202-418-2051 or [Jennifer.Lewis@fcc.gov](mailto:Jennifer.Lewis@fcc.gov). Media inquiries should be directed to Mark Wigfield at (202) 418-0253 or [Mark.Wigfield@fcc.gov](mailto:Mark.Wigfield@fcc.gov).

For additional information regarding use of the Emergency Alert System, please visit <http://fcc.gov/pshs/services/eas/> or contact Gregory Cooke of the Public Safety and Homeland Security Bureau at (202) 418-2351 or [Gregory.Cooke@fcc.gov](mailto:Gregory.Cooke@fcc.gov).

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Issued by: Acting Chief, Enforcement Bureau

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<sup>15</sup> 47 C.F.R. § 73.1217.

<sup>16</sup> See *id.*, Note. In contrast, Section 11.45 does not require a showing of "harm" to demonstrate a violation.