

FCC Proposes Significant Fine Against Broadcaster for Several Emergency Alert System Violations

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On January 8, 2025, the Federal Communications Commission (FCC or Commission) released a Notice of Apparent Liability for Forfeiture (NAL) proposing a \$369,190 penalty against a television licensee for willfully and repeatedly violating the Commission's Emergency Alert System (EAS) rules. Specifically, the FCC found the licensee liable for several violations, including (1) failure to transmit the Nationwide EAS Test over a three-year period; (2) failure to file the required EAS Test Reporting System (ETRS) forms; and (3) misrepresentation in ETRS filings.

The NAL highlights the importance of complying with the EAS testing and reporting requirements. Compliance with the EAS rules has been a particular focus of the FCC's enforcement activities in recent years, and this action demonstrates that large proposed forfeitures are not reserved for misuse of the EAS tones. Broadcasters should take stock of their internal processes and procedures to ensure employees have appropriate training and understand how to comply with the Commission's EAS obligations.

Background

The EAS serves as a national public warning system for dissemination of alerts to viewers about impending emergencies and dangers. EAS participants, which include broadcasters, cable systems, DBS providers, and other entities, are required to disseminate national-level alerts issued by the President or the Federal Emergency Management Agency (FEMA). The EAS may also be used to disseminate alerts issued by Tribal, state, local, and territorial

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governments and the National Weather Service (NWS).

Under Section 11.61 of the Commission's rules, all EAS Participants must conduct tests at regular intervals. Afterwards, Participants must submit the national test results to ETRS, as determined by the FCC's Public Safety and Homeland Security Bureau. To remind broadcasters of their EAS obligations, the Commission typically issues Public Notices before each EAS Nationwide Test.

On August 17, 2021, the FCC received a Complaint regarding KCWX(TV), a station licensed to Corridor Television L.L.P. (Corridor) in Fredericksburg, Texas. The Complaint alleged that KCWX(TV) misrepresented its handling and deployment of EAS Nationwide Tests and violated multiple Commission EAS rules. In particular, the Complaint alleged that KCWX(TV) improperly participated in three Nationwide Tests and ultimately "simulated three national authorized tests instead of participating in them."

The FCC's Enforcement Bureau sent a Letter of Inquiry (LOI) to Corridor on September 14, 2022. In its response, Corridor admitted that it did not comply with Section 11 of the Commission's rules, by failing to transmit the correct headers, test script audio, activation codes, and crawls. Additionally, Corridor explained that it substituted and transmitted previous years' EAS Tones during the 2021 Nationwide Test because its staff did not know how to transmit the correct header.

The Violations

The Commission found that Corridor violated several Commission rules regarding EAS Nationwide Testing and ETRS filing. Specifically, the Commission concluded that Corridor:

1. Failed to Participate as Required in Nationwide EAS Testing

First, the Commission found that Corridor willfully and repeatedly violated section 11.61(a)(3)(i) of the Commission's rules by failing to participate as required and relaying FEMA-delivered coded EAS messages during the 2018, 2019, and 2021 EAS Nationwide Tests. Corridor admitted to several shortcomings in its EAS Nationwide Test participation:

- Failure to use the FEMA-initiated SAME header and correct activation codes during all three Nationwide Tests;
- Failure to use the proper test script audio and crawls during the 2018 and 2019 EAS Nationwide Tests; and
- Download of EAS headers, test script audio, crawls, and activation from the internet to create its own test segment, in violation of Commission rules.

In its defense, Corridor explained that "any failure to transmit the correct text, headers, codes or crawls ... was due solely to the Station's small operations staff's inexperience and lack of knowledge regarding the technical requirements governing the EAS tests, and certain circumstances that contributed to the Station's alleged EAS omissions." Furthermore, Corridor asserted that in 2018, personnel turnover after a technical server failure led its staff to employ and perpetuate incorrect procedures without realizing they were noncompliant with

Commission rules. Ultimately, Corridor argued that it made a “good faith effort” to comply with its EAS obligations.

The Commission did not accept Corridor’s defenses, emphasizing that “a licensee is responsible for the actions of its employees” and “is not excused for violation due to staff error or deception.” The FCC reasoned that “Corridor’s noncompliance over multiple years based on its staff’s claimed ignorance of the law shows minimal effort on the Station’s part and hardly constitutes a ‘good faith effort’ to comply with its EAS obligations.” Therefore, the Commission found that Corridor willfully and repeatedly violated the Commission’s EAS Nationwide Testing rules.

2. Failed to File the Required 2018 ETRS Report

Additionally, the Commission found during its investigation that Corridor apparently violated Section 11.61(a)(3)(iv)(C) of the Commission’s rules by failing to file a required ETRS Form Three report after the 2018 Nationwide Test. The FCC explained that Corridor’s failure to file “skewed the accuracy” of its reports that tracked the success of Nationwide Tests.

3. Misrepresented Information in ETRS Filings

The Commission also concluded that Corridor made misrepresentations in each of the required five ETRS forms filed after the 2018, 2019, and 2021 Nationwide Tests. For example, “Corridor apparently falsely certified as true that it properly received and retransmitted each FEMA-initiated EAS test message from an identified monitoring station.” Corridor answered “yes” in response to “[d]id this facility receive the EAS test message?” and “[d]id this facility retransmit the EAS test message to the public?” Both answers are incorrect or misleading, as Corridor created its own alert and did not transmit the EAS Nationwide Test.

Corridor also “falsely certified that there were no complications with receipt or retransmission of the EAS test message,” even when it did not successfully receive and instead created an unauthorized alert. Moreover, Corridor “did not exercise due diligence in preparing its ETRS filings in 2018, 2019, and 2021 and, therefore, had no reasonable basis for filing such reports or certifying to their accuracy.” Therefore, Corridor “falsely certified that the information in its ETRS filings was ‘true and accurate.’”

Forfeiture

The Commission did not appear to express any sympathy for Corridor’s explanations, proposing a \$369,190 forfeiture against Corridor:

- \$48,000 for Corridor’s three apparent violations of the EAS Nationwide Testing rules, including a cumulative \$24,000 base forfeiture plus an upward adjustment “to address particularly egregious conduct”;
- \$15,000 for Corridor’s apparent violation of the ETRS filing requirements, which includes an upward adjustment from the \$3,000 base forfeiture for failure to file a required form or information; and

- \$306,190, including the maximum permitted forfeiture for each of Corridor's five instances of misrepresentation through incorrect or misleading ETRS filings.

Looking Ahead: What The Corridor NAL Could Mean for Broadcasters

The Corridor NAL underscores the importance of broadcasters' compliance with EAS obligations. The NAL makes clear that the FCC does not consider inexperience or lack of knowledge as acceptable defenses. Moving forward, broadcasters should ensure that engineering and operations staff are trained and understand how to comply with EAS Nationwide Testing and ETRS filing obligations.

Wiley's Media Practice has a deep bench of attorneys with extensive experience counseling radio and television stations on EAS compliance. If you have any questions, please contact the Wiley attorney who regularly handles your FCC matters or the authors of this alert.