



PUBLIC NOTICE

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FCC ENFORCEMENT ADVISORY

FALSE, FRAUDULENT, OR UNAUTHORIZED USE OF THE EMERGENCY ALERT SYSTEM OR WIRELESS EMERGENCY ALERT CODES OR ATTENTION SIGNALS IS STRICTLY PROHIBITED

The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission or FCC) issues this Enforcement Advisory to promote an understanding of the regulations governing the appropriate use of the codes and Attention Signals associated with the Emergency Alert System (EAS) and the Attention Signals associated with Wireless Emergency Alerts (WEA).¹

The EAS is a national public warning system through which broadcasters, cable television operators, wireless cable operators, wireline video service providers, satellite digital audio radio service providers, and direct broadcast satellite providers (EAS Participants) supply communications capability to the President to address the American public during a national emergency.² Federal, state, and local authorities may also use the EAS to deliver important emergency information, such as weather information and AMBER alerts³ targeted to specific areas. The Commission takes seriously its role in safeguarding the EAS and WEA systems, as they are critical, life-saving components of our nation's public safety communications infrastructure. As we act to protect the integrity of the EAS and WEA systems, we remain diligent in protecting against the misuse of the EAS codes and the EAS and WEA Attention Signals.

¹ *Amendment to Part 11 of the Commission's Rules Regarding the Emergency Alert System; Wireless Emergency Alerts*, PS Docket Nos. 15-94 and 15-91, Report and Order and Further Notice of Proposed Rulemaking, 33 FCC Rcd 7086 (2018) (2018 EAS R&O).

² See FEMA, Fact Sheet: Emergency Alert System (EAS) (2016), https://www.fema.gov/media-library-data/1465326763240-4152791226bbd49cf46aff8cd5f43bb1/Emergency_Alert_System_Fact_Sheet_2016.pdf.

³ America's Missing: Broadcast Emergency Response (AMBER) alerts inform the public via radio, television, highway signs, and other means about possible child abductions. See U.S. Department of Justice, Office of Justice Programs, AMBER Alert, Frequently Asked Questions, <https://www.amberalert.gov/faqs.htm> (last visited Oct. 5, 2018).

Federal regulations prohibit the use of EAS codes (which are audible tones) or the EAS and WEA Attention Signals, or simulations of them, except in actual emergencies, authorized tests of the EAS, or authorized Public Service Announcements (PSAs). The use of simulated or actual EAS codes or the EAS or WEA Attention Signals (which are composed of two tones transmitted simultaneously), for non-authorized purposes—such as commercial or entertainment purposes—can confuse people or lead to “alert fatigue,” whereby the public becomes desensitized to the alerts, leading people to ignore potentially life-saving warnings and information. Also, because the EAS audible tones representing the EAS codes include operative data elements, the misuse of simulated or actual EAS tones could result in false activations of the EAS. False activations spread false information and can lock out legitimate activations of the EAS. False activations therefore present a substantial threat to public safety.

The EAS. The EAS uses a four-part message to signal an emergency.⁴ It gains the public’s attention by delivering three distinctive EAS sound bursts (EAS codes), followed by the EAS Attention Signal. These introductory sounds are followed by an audio message containing basic information concerning the alert, and then ends with the sound of the EAS codes. The EAS codes are transmitted in the form of distinctive audible tones that activate equipment needed during a real emergency and contain basic information concerning the type, location, and duration of the alert. These audible tones also include an end of message code that prompts EAS Participants to resume regular programming.

Any transmission of the EAS codes or Attention Signals, or simulations thereof, by any person under any circumstances other than a genuine alert, an authorized test of the EAS system, or an authorized PSA, violates federal regulations and undermines the important public safety protections the EAS provides.⁵

WEA. Wireless Emergency Alerts deliver critical warnings and information to the public on their mobile phones and other wireless devices. Participation by wireless providers is voluntary, but those wireless providers that elect to participate (WEA Participants) must adhere to the technical and operational requirements established by the FCC. Authorized public safety officials send the alerts through FEMA’s Integrated Public Alert and Warning System to wireless providers, which then forward the alerts from cell towers to mobile devices in the affected area. The alerts appear like text messages on mobile devices. Like the EAS, a WEA alert is preceded by a distinctive two-tone attention signal.⁶ Also like the EAS, the use of the WEA common audio attention signal, or a recording or simulation thereof, in any circumstance other than in an actual National, State or Local Area emergency, authorized test, or except as designed and used for PSAs by federal, state, local, tribal and territorial entities, is strictly prohibited.⁷

We remain concerned about the misuse of the EAS codes and EAS and WEA Attention Signals, or simulations thereof, to capture audience attention during advertisements; dramatic, entertainment, and educational programs; and at any other time that there is no genuine alert, authorized test, or authorized

⁴ The four parts are: (1) Preamble and EAS Header Codes; (2) audio Attention Signals; (3) audio message; and (4) Preamble and EAS End of Message (EOM) Codes. 47 CFR § 11.31. The preamble and codes are composed of data that is modulated into audio tones.

⁵ See 47 U.S.C. § 325(a) (prohibiting false or fraudulent distress signals); see also 47 CFR § 11.45(a) (prohibiting persons from transmitting or causing the transmission of the EAS codes or Attention Signals, or simulations thereof, under any circumstances other than a real alert, an authorized test of the EAS system, or in a public service announcement provided by federal, state, and local government entities and non-governmental organizations to raise awareness about emergency alerting).

⁶ 47 CFR § 10.520.

⁷ *Id.*

PSA about the EAS or WEA that is accompanied by an appropriate disclaimer. The FCC may issue sanctions for such violations, including, but not limited to, monetary forfeitures.⁸

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 in EAS administration includes establishing certain specifications for the EAS, procedures for EAS Participants to follow in the event the EAS is activated, and EAS testing protocols. In addition, the FCC ensures that the EAS state and local plans developed by industry representatives within each state also conform to the FCC's EAS regulations.

What is the FCC's role in overseeing the WEA?

The FCC, in conjunction with FEMA, implements the WEA at the federal level. Pursuant to the WARN Act, the FCC's role in WEA administration includes adopting relevant technical standards, protocols, procedures, and other technical requirements for the system.⁹ The FCC enforces the regulations governing the EAS and WEA to ensure that the EAS codes and the EAS and WEA Attention Signals are not used for unauthorized purposes.

What rules govern the use of EAS codes and EAS and WEA Attention Signals?

EAS. Section 11.45(a) of the Commission's rules (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; or as specified in [sections] 10.520(d), 11.46 [for EAS public service announcements], and 11.61 of this chapter [authorized tests]."¹⁰ A "simulation" of the EAS codes or Attention Signals includes not only recordings of actual EAS codes or Attention Signals,¹¹ but also sounds that mimic or are substantially similar to them, such that an average listener could reasonably mistake the sounds for actual EAS codes or Attention Signals. By contrast, general alarms or other loud noises, including bells; klaxons; and police, fire, or civil defense sirens, are not considered "simulations" of the EAS codes or Attention Signals, and therefore are not prohibited under sections 11.45(a) or 10.520(d) of the Rules. Thus, content such as advertisements, entertainment programming, promotional announcements, and other programming that includes the EAS codes or Attention Signals (or simulations thereof), is illegal if it is not employed in connection with an actual emergency, authorized EAS test, or as specified in sections 10.520(d), 11.46, and 11.61 of the Rules.¹²

PSAs for EAS are permitted under section 11.46 of the Rules, which states that:

⁸ 47 CFR § 1.80.

⁹ See Warning, Alert and Response Network (WARN) Act, Title VI of the Security and Accountability for Every Port Act of 2006, 120 Stat. 1884, *codified at* 47 U.S.C. § 1200, *et seq.* (2006) (WARN Act).

¹⁰ 47 CFR § 11.45(a).

¹¹ *Id.* § 11.31.

¹² *Id.*; see *Viacom Inc., ESPN Inc., Forfeiture Order*, 30 FCC Rcd 797, 797-98, para. 2 (2015) (affirming findings that Viacom and ESPN committed violations of Communications Act of 1934, as amended, and Rules by transmitting or causing transmission of EAS tone in a promotional announcement for the movie, "Olympus Has Fallen," on cable networks) (*Viacom*).

EAS Participants may use the EAS Attention Signal and a simulation of the EAS codes as provided by FEMA in EAS Public Service Announcements (PSAs) (including commercially-sponsored announcements, infomercials, or programs) provided by federal, state, and local government entities, or non-governmental organizations, to raise public awareness about emergency alerting. This usage is only permitted if the PSA is presented in a non-misleading and technically harmless manner, including with the explicit statement that the Attention Signal and EAS code simulation are being used in the context of a PSA for the purpose of educating the viewing or listening public about emergency alerting.¹³

Live code tests for the EAS, covered by section 11.61 of the Rules, are exempt from the prohibition against false or misleading use of the EAS codes or Attention Signals under section 11.45.¹⁴ EAS participants may undertake two live code exercises voluntarily per calendar year, so long as live code tests are conducted in accordance with specific parameters.¹⁵

WEA. Section 10.520(d) of the Rules prohibits any person from transmitting the WEA common audio 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, except:

as designed and used for Public Service Announcements (PSAs) by federal, state, local, tribal and territorial entities, and non-governmental organizations in coordination with those entities, to raise public awareness about emergency alerting, provided that the entity presents the PSA in a non-misleading manner, including by explicitly stating that the emergency alerting attention signal is being used in the context of a PSA for the purpose of educating the viewing or listening public about emergency alerting.¹⁶

Who is covered by these rules?

The Rules governing the EAS and WEA apply to any “person” who “transmit[s]” or “cause[s] to transmit” a prohibited signal.¹⁷ The prohibition thus applies to entities that distribute programming containing a prohibited signal intended for subsequent or simultaneous transmission to the public, 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

¹³ 47 CFR § 11.46.

¹⁴ *Id.* § 11.61, 11.45; *see 2018 EAS R&O*, 33 FCC Rcd at 7089-90, paras. 5, 9.

¹⁵ 47 CFR § 11.61. EAS Participants may participate in no more than two (2) “Live Code” EAS Tests per calendar year where the entity conducting the test: (1) notifies the public before the test that live event codes will be used, but that no emergency is, in fact, occurring; (2) to the extent technically feasible, states in the test message that the event is only a test; (3) coordinates the test among EAS Participants and with state and local emergency authorities, the relevant State Emergency Communication Committee (SECC) (or SECCs, if the test could affect multiple states), and first responder organizations, such as Public Safety Answering Points (PSAPs), police, and fire agencies; and (4) consistent with the Commission’s rules, provides in widely accessible formats the required notification to the public that the test is not, in fact, a warning about an actual emergency. *2018 EAS R&O*, 33 FCC Rcd at 7089-90, para. 5.

¹⁶ 47 CFR § 10.520(d); *see also id.* § 10.530 (stating that, like the WEA attention signal, the WEA vibration cadence “must be restricted to use for Alert Messages under part 10”).

¹⁷ 47 CFR § 11.45(a); *see Viacom*, 30 FCC Rcd at 797-98, paras. 1, 4 (assessing monetary forfeitures of \$1,120,000 against Viacom Inc. and \$280,000 against ESPN Inc., respectively, for violations of the Commission’s laws that prohibit misuse of tones reserved for the EAS). *See also* 47 CFR § 10.520(d).

signal in the first instance.¹⁸ Therefore, the prohibition also applies to a broadcaster, cable operator, or satellite carrier that transmits programming containing a prohibited signal, even if the programmer that embedded the sound is not under common ownership or control with the respective broadcaster, operator, or carrier.

What other legal requirements apply?

False or fraudulent use of the EAS codes or EAS and WEA Attention Signals (or simulations thereof) also may violate section 325(a) of the Communications Act of 1934, as amended (Act), which prohibits transmission of false distress signals.¹⁹ 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 EAS Attention Signal. The Commission held that using the tone to “cry wolf” undermined the integrity of the Emergency Broadcast System (EBS), the immediate predecessor of the EAS, and endangered the effectiveness of the EBS warning tone as a method of alerting the public to real danger.²⁰ 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.²¹ 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). In 1992, the Commission proposed the prohibition contained in section 11.45, which was adopted in 1994.²²

In addition, for broadcast licensees, false or fraudulent EAS signals also may violate the Commission’s prohibition against broadcast 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 information does in fact directly cause substantial public harm.²³ For purposes of this rule, “public harm” must begin immediately and cause direct and actual

¹⁸ *SM Radio Productions, Inc.*, Citation and Order, 29 FCC Rcd 14313, 14315, para. 10 (EB 2014) (finding SM Radio violated section 11.45 by inserting material containing the EAS Attention Signal into programming that it intentionally transmitted to Sirius XM for retransmission to members of the public); *Viacom*, 30 FCC Rcd at 806, para. 23 (noting in EAS context, Commission has previously held a cable programmer responsible for transmitting objectionable material produced by a third party).

¹⁹ 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 . . .”).

²⁰ *Emmis Broadcasting Corp. of St. Louis*, Notice of Apparent Liability for Forfeiture, 6 FCC Rcd 2289 (1991) (prior to existence of section 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 and 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).

²¹ *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).

²² *See Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding the Emergency Broadcast System*, FO Docket Nos. 91-301 and 91-171, Notice of Proposed Rulemaking/Further Notice of Proposed Rulemaking, 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*, FO Docket Nos. 91-301 and 91-171, Report and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 1786, 1815, para. 84 (1994) (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”) (subsequent history omitted).

²³ 47 CFR § 73.1217.

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.²⁴

No later than 24 hours after an EAS Participant discovers (i.e., has actual knowledge) that it has transmitted or otherwise sent a false alert to the public, the EAS Participant must send an e-mail to the Commission at the FCC Ops Center at FCCOPS@fcc.gov, informing the Commission of the event and of any details that the EAS Participant may have concerning the event.²⁵ If an EAS Participant has no actual knowledge that it has issued a false alert, it would not be required to take any action.²⁶

What is the consequence for violating the Commission's requirements?

Failure to comply with the Act or Rules may subject a violator to sanctions including, but not limited to, substantial monetary forfeitures.²⁷ The Bureau may, at its discretion, treat each unauthorized transmission as a separate apparent violation for purposes of calculating the proposed forfeiture amount.²⁸ In addition, because Attention Signals for EAS and WEA are the same, the unlawful transmission of an EAS or WEA attention signal could be considered a violation of both the EAS and WEA Rules. The Bureau will continue to monitor and enforce compliance with these Rules due to 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 unauthorized EAS code or EAS or WEA Attention Signal on the radio, television, wireless handset, or other transmission media may contact the FCC, by telephone, at: (888) CALL-FCC ((888) 225-5322), or file an online complaint, at: <https://consumercomplaints.fcc.gov>.

Need more information?

Media inquiries should be directed to Will Wiquist of the Office of Media Relations, by telephone, at: (202) 418-0509, or, by e-mail, at: Will.Wiquist@fcc.gov. Questions about substantive obligations should be sent to Christopher Sova of the Enforcement Bureau, by telephone, at: (202) 418-1868, or, by e-mail, at: Christopher.Sova@fcc.gov, or David Munson of the Public Safety and Homeland Security Bureau, by telephone, at: (202) 418-2921, or by e-mail, at: David.Munson@fcc.gov.

For additional information regarding use of the Emergency Alert System, please visit: <https://www.fcc.gov/general/emergency-alert-system-eas-0>.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, or audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), (202) 418-0432 (TTY). You may also contact the Enforcement Bureau

²⁴ See *id.*, Note. In contrast, section 11.45(a) does not require a showing of “harm” to demonstrate a violation. *Id.* § 11.45(a).

²⁵ *Id.* § 11.45(b).

²⁶ 2018 EAS R&O, 33 FCC Rcd at 7092, para. 18.

²⁷ See, e.g., *Viacom*, 30 FCC Rcd at 797-98, paras. 1, 4 (assessing monetary forfeitures of \$1,120,000 against Viacom Inc. and \$280,000 against ESPN Inc., respectively, for violations of the Commission's laws that prohibit misuse of tones reserved for the EAS).

²⁸ See *id.* at 806-07, para. 24 (treating each transmission of false EAS tones contained in a movie trailer as a separate violation rather than a single, ongoing violation).

on its TTY line at (202) 418-1148 for further information about this Enforcement Advisory, or the FCC on its TTY line at 1-888-TELL-FCC (1-888-835-5322) for further information about the Emergency Alert System.

Issued by: Chief, Enforcement Bureau