

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Beasley Media Group Licenses, LLC	)	File No.: EB-IHD-20-00031587
	)	NAL/Acct. No.: 202132080029
Licensee of KDWN(AM), Las Vegas, Nevada	)	FRN: 0004077426
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: December 10, 2021**

**Released: December 10, 2021**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. We propose a penalty of \$20,000 against Beasley Media Group Licenses, LLC (Beasley) for apparently willfully violating the Commission’s rules that prohibit the transmission of false or deceptive emergency alert system (EAS) codes or EAS Attention Signals, or simulations thereof (together, EAS Tones). On September 26, 2020, Beasley apparently transmitted, or caused the transmission of, EAS Tones during *The Doug Basham Radio Show*, in the absence of any actual emergency, authorized test of the EAS, or qualified public service announcement (PSA).

2. 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 supply the communications capability to the President of the United States to address the American public during a national emergency.<sup>1</sup> Federal, state, and local authorities may also use the EAS to deliver important emergency information, such as AMBER alerts and weather information targeted to specific areas.<sup>2</sup>

3. To preserve the unique purpose and effectiveness of the EAS Tones, the Commission enforces laws that prohibit their use, or simulations of them,<sup>3</sup> except for specific Permitted Uses.<sup>4</sup> The Commission has warned that the use of simulated or actual EAS Tones for non-authorized purposes—such as commercial or entertainment purposes—can lead to “alert fatigue,” whereby the public becomes

<sup>1</sup> See *CBS Broadcasting Inc. d/b/a CBS Television Network, CBS Television Stations, Inc., CBS Stations Group of Texas LLC, CBS LITV LLC*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 8417, para. 1 (2019) (forfeiture paid) (*CBS NAL*); FEMA, Emergency Alert System, <https://www.fema.gov/emergency-managers/practitioners/integrated-public-alert-warning-system/public/emergency-alert-system> (last visited July 8, 2021).

<sup>2</sup> *CBS NAL*, 34 FCC Rcd at 8417, para. 1.

<sup>3</sup> A “simulation” of the EAS tones includes not only recordings of actual EAS codes or Attention Signals, *see* 47 CFR § 11.31, 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. *Emergency Alert System: False, Fraudulent or Unauthorized Use of the Emergency Alert System Attention Signal and Codes is Strictly Prohibited*, Public Notice, 28 FCC Rcd 15438, 15440 (EB 2013) (*2013 EAS Enforcement Advisory*). By contrast, general alarms or other loud noises, including bells and police or fire sirens, are not considered “simulations” of the EAS tones and are not prohibited under section 11.45 of the Commission’s rules. *Id.*

<sup>4</sup> Permitted uses of the EAS are limited to alerts of actual emergencies, authorized tests of the EAS, or qualified PSAs (collectively Permitted Uses). *See* 47 CFR § 11.45(a).

desensitized to the alerts, questioning or simply disregarding whether a particular alert is intended to warn about a real, imminent threat or some other cause.<sup>5</sup> Moreover, because the EAS Tones include operative data elements,<sup>6</sup> the misuse of simulated or actual EAS Tones may result in false activations of the EAS that can spread false information or lock out legitimate activations of the EAS. Unauthorized use of the EAS Tones thus undermines the integrity and effectiveness of the EAS and presents a substantial threat to public safety.

4. In this Notice of Apparent Liability for Forfeiture, we find that Beasley apparently willfully violated section 11.45(a) of the Commission's rules<sup>7</sup> on September 26, 2020 when it transmitted or caused the transmission of EAS Tones during *The Doug Basham Radio Show* on Station KDWN(AM)<sup>8</sup> in the absence of any actual emergency, authorized test of the EAS, or qualified PSA.<sup>9</sup> The prohibition on such transmissions has been in place for many years, and the Commission has repeatedly made its requirements clear.<sup>10</sup> Accordingly, based on our review of the facts and circumstances surrounding this apparent violation of section 11.45(a) of the Commission's rules, we propose a forfeiture of \$20,000 against Beasley.

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<sup>5</sup> See, e.g., *CBS NAL*, 34 FCC Rcd at 8418, para. 2; *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System, Wireless Emergency Alerts*, PS Docket Nos. 15-94, 15-91, Report and Order and Further Notice of Proposed Rulemaking, 33 FCC Rcd 7086, 7091, para. 9 (2018) (*2018 EAS/WEA Report and Order*); *2013 EAS Enforcement Advisory*, 28 FCC Rcd at 15438.

<sup>6</sup> See 47 CFR § 11.31(a). The EAS uses a four-part message for an emergency activation, consisting of: Preamble and EAS Header Codes; audio Attention Signal; message; and Preamble and EAS End of Message (EOM) Codes. *Id.* The sounds of an EAS message serve the dual purposes of capturing a listener's or viewer's attention and conveying specially coded information for equipment that is activated by the EAS message as part of an actual emergency or authorized test. See *Viacom, Inc., NBC Universal Media, LLC, ESPN Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 2548, 2548, para. 1. (*Viacom NAL*), *aff'd*, *Viacom, Inc., ESPN, Inc.*, Forfeiture Order, 30 FCC Rcd 797 (2015) (forfeiture paid) (*Viacom FO*). The EAS codes consist of audible sounds in which encoded information regarding the specific alert is embedded. See *Viacom NAL* at 2548, para. 1. The separate EAS Attention Signal that follows the EAS codes includes two tones that are transmitted simultaneously. *Id.*

<sup>7</sup> See 47 CFR § 11.45(a).

<sup>8</sup> The EAS Tones were also transmitted on KKLZ-HD2, which simulcasts KDWN, and on FM fill-in translator station K268CS, which retransmits KKLZ-HD2, both in Las Vegas and licensed to Beasley. See Response to Letter of Inquiry from Sally A. Buckman and F. Scott Pippin, Lerman Senter PLLC, Counsel to Beasley Media Group Licenses, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission at 2 (Feb. 4, 2021) (on file in EB-IHD-20-00031587) (LOI Response); see also Response to Letter of Inquiry from Sally A. Buckman and F. Scott Pippin, Lerman Senter PLLC, Counsel to Beasley Media Group Licenses, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission at 2 (Nov. 12, 2021) (on file in EB-IHD-20-00031587, correcting Beasley's incorrect statement made in its LOI Response that the EAS Tones were only transmitted on KDWN and K268CS) (LOI Response Supplement).

<sup>9</sup> See LOI Response at 2-3; LOI Response Supplement at 2.

<sup>10</sup> See generally *False, Fraudulent, or Unauthorized Use of the Emergency Alert System or Wireless Emergency Alert Codes or Attention Signals is Strictly Prohibited*, Public Notice, 34 FCC Rcd 7041 (EB 2019) (Enforcement Advisory promoting understanding of the regulations governing the appropriate use of EAS Tones); *Viacom FO*, 30 FCC Rcd 797 (affirming findings that Viacom and ESPN committed violations of the Commission's rules by transmitting or causing transmission of EAS Tones in a promotional announcement for the movie, "Olympus Has Fallen," on cable networks); *2013 EAS Enforcement Advisory*, 28 FCC Rcd 15438 (promoting understanding of the laws governing appropriate use of EAS Tones to address concerns about misuse of EAS Tones aired in order to capture audience attention when there is no actual emergency or test). See also *Enforcement Bureau Reminds Emergency Alert System (EAS) Participants of Compliance Obligations*, Public Notice, 36 FCC Rcd 44, 47 (EB 2021) (reiterating that failure to comply with the EAS rules may subject a violator to sanctions, including monetary forfeitures).

## II. BACKGROUND

### A. Legal Framework

5. Pursuant to section 503(b)(1) of the Communications Act of 1934, as amended (Act), any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>11</sup> Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of such act, irrespective of any intent to violate” the law.<sup>12</sup> The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,<sup>13</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>14</sup> In order to impose such a penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.<sup>15</sup> The Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.<sup>16</sup>

6. Under section 11.45(a) of the Commission’s rules, “[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, and 11.61 of this chapter.”<sup>17</sup> The Commission adopted section 11.45 in 1994 to protect the integrity and operation of the EAS,<sup>18</sup> acknowledging that while existing laws prohibited false distress signals and broadcast hoaxes, “a specific prohibition against the misuse of the EAS attention signal and codes is necessary . . . because it is more specific and directly addresses the proper use of EAS codes and Tones.”<sup>19</sup>

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<sup>11</sup> 47 U.S.C. § 503(b)(1)(B); *see also* 47 CFR § 1.80(a)(2).

<sup>12</sup> 47 U.S.C. § 312(f)(1).

<sup>13</sup> H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., [s]ection 503) . . . . As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in [s]ections 312 and 503, and are consistent with the Commission’s application of those terms . . .”).

<sup>14</sup> *See, e.g., Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

<sup>15</sup> 47 U.S.C. § 503(b)(4); 47 CFR § 1.80(g).

<sup>16</sup> *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002) (forfeiture paid).

<sup>17</sup> 47 CFR § 11.45(a). Section 11.46 of the Commission’s rules provides that “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.” *Id.* § 11.46. Section 11.61 of the Commission’s rules provides that “EAS Participants shall conduct tests [of EAS procedures] at regular intervals . . .” *Id.* § 11.61(a).

<sup>18</sup> *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 and Further Notice of Proposed Rulemaking, 7 FCC Rcd 6903, 6907, para. 39 (1992).

<sup>19</sup> *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). In enforcing Section 11.45 of the Commission’s rules, the Commission explained:

(continued...)

## B. Factual Background

7. Beasley is 100% owned by Beasley Media Group, LLC, which is 100% owned by Beasley Mezzanine Holdings, LLC, which is 100% owned by Beasley Broadcast Group, Inc., a publicly traded company based in Delaware.<sup>20</sup> Beasley Broadcast Group, Inc. is a “multi-platform media company whose primary business is operating radio stations throughout the United States”<sup>21</sup> and it owns and operates radio stations in several radio markets, including Las Vegas, Nevada.<sup>22</sup> *The Doug Basham Radio Show* is a talk show, which Beasley aired on KDWN(AM) as a paid programming block purchased by host Doug Basham.<sup>23</sup> *The Doug Basham Radio Show* aired live on KDWN, and incorporated pre-recorded audio clips produced and provided by Doug Basham.<sup>24</sup> Beasley’s station KKLZ(FM) rebroadcasts KDWN’s signal on its digital subchannel KKLZ-HD2<sup>25</sup> and Beasley’s FM translator, K268CS, rebroadcasts KKLZ-HD2’s signal.<sup>26</sup>

8. On October 7, 2020, the Commission received a complaint<sup>27</sup> alleging that KDWN transmitted EAS Tones, or a simulation thereof, on September 26, 2020, during *The Doug Basham Radio Show* absent an actual emergency, authorized EAS test, or qualified PSA.<sup>28</sup> The Enforcement Bureau issued a Letter of Inquiry on January 5, 2021,<sup>29</sup> directing Beasley to submit, among other things, recordings of the September 26, 2020, broadcast of *The Doug Basham Radio Show*, and sworn written statements as to whether it had transmitted, or caused the transmission of, the EAS Tones.<sup>30</sup>

9. In its LOI Response, Beasley admits that the September 26, 2020, broadcast of *The Doug Basham Radio Show* included an audio clip that “appears to contain portions of an EAS Attention Signal or a simulation thereof.”<sup>31</sup> Beasley further admits that the transmission was not in connection with any permitted use, i.e., an actual emergency, authorized test of the EAS, or qualified PSA.<sup>32</sup> In addition,

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The plain language of the rule prohibits *any* transmission of the EAS Tones in the absence of an actual emergency or authorized test . . . . Moreover, [s]ection 11.45 contains no provision limiting liability under the rule to cases where intent to deceive exists, nor does the rule make exceptions for, or protect, “dramatic” uses of the EAS Tones. Instead, the rule provides that the transmission of the EAS Tones is prohibited in “any circumstance” except when an actual emergency or authorized test warrants their use. *Viacom FO*, 30 FCC Red at 801-02, para. 12.

<sup>20</sup> See LOI Response at 1-2, Response to Question 1; Beasley Broadcast Group, Inc., 2020 Annual Report (Form 10-K) at 3 (Feb. 19, 2021), <https://www.sec.gov/Archives/edgar/data/1099160/000119312521048932/d48230d10k.htm> (Beasley 2020 Annual Report).

<sup>21</sup> Beasley 2020 Annual Report at 3.

<sup>22</sup> *Id.*

<sup>23</sup> See LOI Response at 2, Response to Question 2.

<sup>24</sup> See *id.* at 2, Response to Question 2(c).

<sup>25</sup> See LOI Response Supplemental at 2.

<sup>26</sup> *Id.*

<sup>27</sup> Complaint No. 4277878, dated Oct. 7, 2020 (on file in EB-IHD-20-00031587).

<sup>28</sup> See *id.*

<sup>29</sup> See Letter of Inquiry from Christopher J. Sova, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Caroline Beasley, Chief Executive Officer, Beasley Media Group Licenses, LLC (Jan. 5, 2021) (on file in EB-IHD-20-00031587) (LOI).

<sup>30</sup> See *id.* at 6-7.

<sup>31</sup> LOI Response at 2, Response to Question 3. Beasley provided a recording of *The Doug Basham Radio Show* episode containing the false EAS Tones that it aired on September 26, 2020 on KDWN(AM), which Beasley downloaded from Doug Basham’s website. *Id.* at 7, Response to Question 16.

<sup>32</sup> *Id.* at 3, Response to Question 4.

Beasley states that KDWN did not review the audio clip containing the actual or simulated EAS Tones prior to broadcast.<sup>33</sup> Beasley explains that the programming containing the EAS Tones was transmitted on KDWN(AM), Las Vegas, Nevada, and, as a result, was also rebroadcast on KKLZ-HD2 and FM translator K268CS.<sup>34</sup> Beasley states that “immediately after” transmission of the false EAS Tones on September 26, 2020, KDWN’s board operator “confronted Basham and informed him that the broadcast was impermissible.”<sup>35</sup> On the same day, the board operator also sent an e-mail to KDWN’s program director, notifying him about the transmission of false EAS Tones.<sup>36</sup>

### III. DISCUSSION

10. We find that Beasley apparently willfully violated section 11.45(a) of the Commission’s rules. Beasley confirms that the September 26, 2020, broadcast of *The Doug Basham Radio Show* included the EAS Tones.<sup>37</sup> Beasley admits that KDWN transmitted the show with the EAS Tones.<sup>38</sup> Beasley also admits that none of the material in question was transmitted in connection with an actual national, state, or local emergency, authorized test, or qualified PSA.<sup>39</sup> Beasley provides an e-mail from Doug Basham, in which the host asserts that he used the EAS Tones as a “stunt.”<sup>40</sup> Beasley also provides e-mails from KDWN’s Master Control Operator, Program Director, and Vice President/Market Manager, all of whom acknowledge that KDWN’s broadcast of the false EAS Tones was impermissible.<sup>41</sup>

11. Based on Beasley’s admissions and our review of the audio recording of the radio show provided by Beasley in its LOI Response, Beasley transmitted an EAS Tone on September 26, 2020 on station KDWN(AM) in the absence of any actual emergency, authorized test of the EAS or qualified public service announcement. We therefore find that Beasley apparently willfully violated section 11.45(a) of the Commission’s rules.

### IV. PROPOSED FORFEITURE

12. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that “willfully or repeatedly fail[s] to comply with . . . any rule, regulation, or order issued by the Commission . . . .”<sup>42</sup> In exercising our forfeiture authority, we must consider the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>43</sup> The Commission has established forfeiture guidelines, base penalties for certain violations and has identified criteria that it considers when determining the appropriate penalty in any given case.<sup>44</sup> Under these guidelines, we may adjust a forfeiture downward for violations that are minor, violations that are voluntarily disclosed, where

<sup>33</sup> *Id.* at 4, Response to Question 7.

<sup>34</sup> *Id.* at 2, Response to Question 2(a); LOI Response Supplement at 2.

<sup>35</sup> LOI Response at 6, Response to Question 13.

<sup>36</sup> *Id.* at 6, Response to Question 13, and Attach. B.

<sup>37</sup> *See* LOI Response at 2, Response to Question 3.

<sup>38</sup> *Id.* at 2, Responses to Question 2, 3; LOI Response Supplement at 2.

<sup>39</sup> *See* LOI Response at 3, Response to Question 4.

<sup>40</sup> *See id.* at Attach. B.

<sup>41</sup> *Id.*

<sup>42</sup> 47 U.S.C. § 503(b)(1)(B).

<sup>43</sup> 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10). *See Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 35 FCC Rcd 14879 (EB 2020), amended by Erratum, 36 FCC Rcd 1349 (EB 2021); *see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 86 Fed. Reg. 3830 (Jan. 15, 2021) (setting January 15, 2021, as the effective date for the increases).

<sup>44</sup> 47 CFR § 1.80(b)(10).

there is a history of compliance, or where there is an inability to pay.<sup>45</sup> We may adjust a forfeiture upward for violations that are egregious, intentional, repeated, that cause substantial harm or generate substantial economic gain for the violator, where there is an ability to pay, or where there is a history of prior violations of FCC requirements.<sup>46</sup>

13. Section 1.80(b) of the Commission's rules provides for a base forfeiture of \$8,000 for various EAS and false distress rule violations, for each violation or each day of a continuing violation.<sup>47</sup> The Commission has previously applied an \$8,000 base forfeiture for violations of section 11.45(a) of the Commission's rules.<sup>48</sup> We have discretion, however, to depart from the base forfeiture guidelines, taking into account the particular facts of each individual case.<sup>49</sup>

14. The nature of EAS violations requires particularly serious consideration because, among other issues, such violations undermine the integrity of the EAS by desensitizing the public to the potential importance of warning tones. EAS violations therefore implicate substantial public safety concerns. As explained in *CBS NAL*, our forfeiture determination in such cases is based on multiple factors associated with the nature of the violation and the violator.<sup>50</sup> When applying the statutory factors concerning the circumstances, extent, and gravity of an EAS violation, we take into account a number of specific factors, including: (1) the number of repetitions (i.e., the number of individual transmissions); (2) the duration of the violation (i.e., the number of days or months over which the violation occurred); (3) the audience reach of the transmissions (e.g., nationwide, regional, or local); and (4) the extent of the public safety impact (e.g., whether an EAS activation is triggered).<sup>51</sup> While each of these factors may be significant in a given case, no single factor (e.g., the number of transmissions) is controlling.

15. In determining the proposed forfeiture amount, we considered the factors outlined in the Commission's *Forfeiture Policy Statement*, section 1.80 of the Commission's rules, and section 503 of the Act. We have considered the number of transmissions at issue, the amount of time over which the transmissions took place, the Stations' sizeable audience reach, and the serious public safety implications of the apparent violations, as well as the other factors outlined in the Commission's *Forfeiture Policy Statement* and section 1.80 of the Commission's rules. In this case, Beasley transmitted programming on KDWN(AM) containing the false EAS Tones on September 26, 2020.<sup>52</sup> The fact that KDWN(AM) is in a large market increases the extent and gravity of the instant violation.<sup>53</sup> Here, the effect of the violation was exacerbated by rebroadcasts on Beasley's station KKLZ-HD2 and its FM translator K268CS.<sup>54</sup> With

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<sup>45</sup> *Id.* at Table 3.

<sup>46</sup> *Id.*

<sup>47</sup> 47 CFR § 1.80(b)(10), Table 1.

<sup>48</sup> *See, e.g., CBS NAL* at 8431, para. 36.

<sup>49</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17098–99, para. 22 (1997) (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

<sup>50</sup> *See CBS NAL*, 34 FCC Rcd at 8431, para. 37.

<sup>51</sup> *See id.*

<sup>52</sup> *See* LOI Response at 2, Response to Question 3; LOI Response Supplement at 2.

<sup>53</sup> *See CBS NAL*, 34 FCC Rcd at 8431, para. 38.

<sup>54</sup> Beasley initially reported that the programming aired on KDWN(AM) and FM translator K268CS, but did not notify the Bureau that the transmission was also carried on KKLZ-HD2, the primary station rebroadcast by K268CS. LOI Response at 2, Response to Question 2(a). Beasley did not correct its inaccurate LOI Response until November

(continued....)

respect to audience reach, the Beasley stations and FM translator are located in Las Vegas, Nevada, a top 50 Nielsen-rated market.<sup>55</sup> Thus, Beasley aired the false EAS Tones on stations serving a large radio market, thereby increasing the potential harm by increasing the potential reach of the transmissions.<sup>56</sup> Given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, we conclude that an \$8,000 base forfeiture plus an upward adjustment in the amount of \$12,000 is warranted for Beasley's apparent violation of section 11.45(a) of the Commission's rules. We find no basis for a downward adjustment.<sup>57</sup> We therefore propose a total forfeiture of \$20,000, for which Beasley is apparently liable.<sup>58</sup>

## V. CONCLUSION

16. In view of the foregoing, we determine that Beasley apparently willfully violated section 11.45(a) of the Commission's rules and propose a total forfeiture of \$20,000.

## VI. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act<sup>59</sup> and section 1.80 of the Commission's rules,<sup>60</sup> Beasley Media Group Licenses, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for willful violation of section 11.45(a) of the Commission's rules.<sup>61</sup>

18. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,<sup>62</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Beasley Media Group Licenses, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 21 below.

19. Beasley Media Group Licenses, LLC shall send electronic notification of payment to Jeffrey Gee at [Jeffrey.Gee@fcc.gov](mailto:Jeffrey.Gee@fcc.gov), Christopher Sova at [Christopher.Sova@fcc.gov](mailto:Christopher.Sova@fcc.gov), Frederick Giroux at [Frederick.Giroux@fcc.gov](mailto:Frederick.Giroux@fcc.gov), and Jennifer Lewis at [Jennifer.Lewis@fcc.gov](mailto:Jennifer.Lewis@fcc.gov) on the date said payment is made. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit

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12, 2021, after the Bureau requested clarification. LOI Response Supplement at 2 (correcting the LOI Response to Question 2(a)). KKLZ-HD2's rebroadcast of the false EAS Tones could be construed as a second separate violation of section 11.45(a) of the Commission's rules, and the Commission could construe similar such rebroadcasts as additional violations of section 11.45(a) going forward. Nonetheless, we have decided instead here to consider the additional audience reach occasioned by the extension of KDWN's transmission over K268CS and KKLZ-HD2 by upwardly adjusting the forfeiture assessed against KDWN.

<sup>55</sup> See Spring 2020 Nielsen Rankings at 1.

<sup>56</sup> The Las Vegas market is ranked in the top 35 markets according to Nielsen ratings. See Radio Market Survey Population, Rankings, & Information at 1 (Spring 2020), <https://www.nielsen.com/wp-content/uploads/sites/3/2020/07/radio-market-survey-population-rankings-information.pdf> (listing the Las Vegas market as ranked 31 out of 262 markets) (Spring 2020 Nielsen Rankings).

<sup>57</sup> 47 CFR § 1.80(b)(10), Table 3 (downward adjustment factors include minor violations, good faith or voluntary disclosure, history of overall compliance, and inability to pay).

<sup>58</sup> Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

<sup>59</sup> 47 U.S.C. § 503(b).

<sup>60</sup> 47 CFR § 1.80.

<sup>61</sup> *Id.* § 11.45(a), (b).

<sup>62</sup> 47 CFR § 1.80.

from a bank account using the Commission's Fee Filer (the Commission's online payment system),<sup>63</sup> or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:<sup>64</sup>

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov) on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).<sup>65</sup> For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

20. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554.<sup>66</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

21. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(f)(3) of the Commission's rules.<sup>67</sup> The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Investigations and Hearings Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Jeffrey Gee at

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<sup>63</sup> Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

<sup>64</sup> For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

<sup>65</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>66</sup> See 47 CFR § 1.1914.

<sup>67</sup> *Id.* §§ 1.16, 1.80(f)(3).

[Jeffrey.Gee@fcc.gov](mailto:Jeffrey.Gee@fcc.gov), Christopher Sova at [Christopher.Sova@fcc.gov](mailto:Christopher.Sova@fcc.gov), Frederick Giroux at [Frederick.Giroux@fcc.gov](mailto:Frederick.Giroux@fcc.gov), and Jennifer Lewis at [Jennifer.Lewis@fcc.gov](mailto:Jennifer.Lewis@fcc.gov).

22. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status.<sup>68</sup> Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation.

23. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Ms. Caroline Beasley, Chief Executive Officer, Beasley Media Group Licenses, LLC, 3033 Riviera Drive, Suite 200, Naples, Florida 34103, and to Beasley's attorneys, Sally A. Buckman, Esq. and F. Scott Pippin, Esq., Lerman Senter PLLC, 2001 L Street, NW, Suite 400, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold  
Chief  
Enforcement Bureau

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<sup>68</sup> 47 U.S.C. § 503(b)(2)(E).