

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

In the Matter of )
Fox Corporation d/b/a ) File No.: EB-IHD-21-00033079
Fox Television Stations, LLC ) NAL/Acct. No.: 202332080001
Fox Television Holdings, LLC ) FRNs: 0027991975; 0005795067;
Fox Broadcasting Company, LLC ) 0007322548; 0022705396
NW Communications of Texas, Inc. )
NW Communications of Phoenix, Inc. )
NW Communications of Austin, Inc. )
New World Communications of Atlanta, Inc. )
New World Communications of Tampa, Inc. )
New World Communications of Detroit, Inc. )

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 23, 2023

Released: January 24, 2023

By the Commission:

I. INTRODUCTION

1. We propose a penalty of \$504,000 against Fox Corporation d/b/a Fox Television Stations, LLC; Fox Television Holdings, LLC; Fox Broadcasting Company, LLC; NW Communications of Texas, Inc.; NW Communications of Phoenix, Inc.; NW Communications of Austin, Inc.; New World Communications of Atlanta, Inc.; New World Communications of Tampa, Inc.; and New World Communications of Detroit, Inc. (collectively, FOX) for apparently willfully violating the Federal Communications Commission’s (Commission or FCC) rules that prohibit the transmission of, or causing the transmission of, false or deceptive emergency alert system (EAS) codes or EAS Attention Signals, or simulations thereof (together, EAS Tones). On November 28, 2021, FOX apparently transmitted, or caused the transmission of, EAS Tones during a FOX National Football League (NFL) promotional segment in the absence of any actual emergency, authorized test of the EAS, or qualified public service announcement (PSA).

2. The EAS is a national system that federal, state, and local government authorities use to disseminate public warnings of impending emergencies, such as hurricanes and other dangerous weather conditions, wildfires, and child abductions (AMBER alerts), over broadcast, cable, and satellite networks to consumers’ radios, televisions, and other audio and video devices.1 Broadcasters, cable television operators, wireless cable operators, wireline video service providers, satellite digital audio radio service providers, and direct broadcast satellite providers also are required to supply the communications capability for delivery of nationwide messages to the American public during a national emergency via the EAS.2

1 See Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System, Report and Order, PS Docket No. 15-94, FCC 22-75, para. 3 (released Sept. 30, 2022).

2 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-

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3. To preserve the unique purpose and effectiveness of the EAS Tones, the Commission enforces laws that prohibit their use or simulation,<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 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 FOX apparently willfully violated section 11.45(a) of the Commission’s rules<sup>7</sup> on November 28, 2021, when it transmitted or caused the transmission of EAS Tones during a FOX NFL promotional segment in the absence of any actual emergency, authorized test of the EAS, qualified PSA, or other Permitted Uses.<sup>8</sup> The prohibition on such transmissions has been in place for many years, and the Commission has repeatedly made its requirements clear.<sup>9</sup> Accordingly, based on our review of the facts and circumstances surrounding this

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[managers/practitioners/integrated-public-alert-warning-system/public/emergency-alert-system](#) (last visited Aug. 16, 2022).

<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).

<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*, 29 FCC Rcd 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> *See* Response to Letter of Inquiry from Matthew S. DelNero and Brooke Kahn, Covington & Burling LLP, counsel to FOX, to Anya Baez, Enforcement Bureau, Federal Communications Commission at 4 (Feb. 3, 2022) (on file in EB-IHD-21-00033079) (LOI Response). This NAL does not disclose material identified as confidential in the LOI Response, and we defer ruling on the Confidentiality Request unless and until necessary. *See* 47 CFR 0.459(d)(3) (the Commission may defer acting on requests for confidential treatment of materials submitted to the Commission until a request for inspection has been made pursuant to § 0.460 or § 0.461; such material will be accorded confidential treatment until the Commission acts on the confidentiality request and all subsequent appeal and stay proceedings have been exhausted).

apparent violation of section 11.45(a) of the Commission's rules, we propose a forfeiture of \$504,000 against FOX.

## 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>10</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>11</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>12</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>13</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>14</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>15</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>16</sup> The Commission adopted section

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<sup>9</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).

<sup>10</sup> 47 U.S.C. § 503(b)(1)(B); see also 47 CFR § 1.80(a)(2).

<sup>11</sup> 47 U.S.C. § 312(f)(1).

<sup>12</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>13</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>14</sup> 47 U.S.C. § 503(b)(4); 47 CFR § 1.80(g).

<sup>15</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002) (forfeiture paid).

<sup>16</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

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11.45 in 1994 to protect the integrity and operation of the EAS,<sup>17</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>18</sup>

## B. Factual Background

7. Fox Corporation is the ultimate parent of Fox Television Stations, LLC; Fox Television Holdings, LLC; Fox Broadcasting Company, LLC; NW Communications of Texas, Inc.; NW Communications of Phoenix, Inc.; NW Communications of Austin, Inc.; New World Communications of Atlanta, Inc.; New World Communications of Tampa, Inc.; and New World Communications of Detroit, Inc. FOX, a publicly traded Delaware corporation, is a news, sports, and entertainment company.<sup>19</sup> FOX owns and operates a television broadcast network that produces and distributes programming on its 29 full power broadcast television stations, and to its more than 200 domestic affiliate stations.<sup>20</sup> FOX programming is available in “essentially all U.S. households,” and its owned-and-operated television stations include 14 of the 15 largest television markets in the United States.<sup>21</sup> FOX maintains that it is a “leader in marquee live sports broadcasts,” and that FOX Sports programming, including the NFL is “#1 in live sports viewership among all television networks.”<sup>22</sup>

8. The Commission received information from multiple sources alleging that at approximately 12:20 p.m. Eastern Standard Time on November 28, 2021, FOX apparently transmitted, or caused the transmission of, EAS Tones during a FOX NFL promotional segment (Promotional Segment), in the absence of any actual emergency, authorized test of the EAS, or qualified PSA.<sup>23</sup> The Enforcement Bureau’s Investigations and Hearings Division issued a letter of inquiry (LOI) on January 4, 2022,

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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>17</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>18</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:

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 Rcd at 801-02, para. 12.

<sup>19</sup> LOI Response at 1.

<sup>20</sup> FOX Corporation, Sec. & Exch. Comm’n Annual Report (2021 SEC Form 10-K) at I-1 (Aug. 10, 2021, For the fiscal year ended June 30, 2021), <https://investor.foxcorporation.com/static-files/76a77e3f-866f-4f29-8e72-cb650226368b>.

<sup>21</sup> *Id.* at I-3.

<sup>22</sup> *Id.* at I-2.

<sup>23</sup> See, e.g., FEMA notification email, dated November 28, 2021 (on file in EB-IHD-21-00033079).

directing FOX to submit, among other things, recordings of the Promotional Segment and sworn written statements as to whether it had transmitted, or caused the transmission of, the EAS Tones.<sup>24</sup>

9. In its LOI Response, FOX describes the Promotional Segment as a short comedic advertisement for an upcoming game, aired as part of the FOX NFL SUNDAY pre-game show.<sup>25</sup> FOX admits that the Promotional Segment used an approximately three-second excerpt of the EAS Attention Signal commonly used to precede broadcast emergency alerts: two simultaneous tones of 853 Hz and 960 Hz.<sup>26</sup> The three-second excerpt of the EAS Attention Signal was downloaded or recorded from a YouTube video.<sup>27</sup> FOX further admits that its transmission of the Promotional Segment, and the EAS Tones, was not made in connection with any Permitted Use, i.e., an actual emergency, authorized test of the EAS, or qualified PSA.<sup>28</sup> FOX acknowledges that it broadcast the Promotional Segment over 18 of its owned-and-operated stations, and transmitted it to 190 network affiliated stations nationwide.<sup>29</sup> In addition to television distribution, FOX caused the transmission of the Promotional Segment on Fox Sports Radio, the “leading voice in sports talk entertainment,” broadcasting to radio stations nationwide and reaching nearly 15 million listeners on iHeartRadio and FOXSportsRadio.com,<sup>30</sup> and on the “Fox Sports on XM” channel, which is carried nationwide on the Sirius XM satellite digital audio radio service.<sup>31</sup> FOX asserts that the Promotional Segment was provided and distributed by the Fox Broadcasting Company, LLC, an indirect wholly owned subsidiary of Fox Corporation.<sup>32</sup> Certain members of FOX’s production team reviewed the Promotional Segment following its development, and prior to its public transmission, but provided no comments or changes.<sup>33</sup>

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<sup>24</sup> See Letter from Christopher Sova, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Joseph M. Di Scipio and Ann W. Bobeck, FCC Legal and Business Affairs, FOX Corporation (Jan. 4, 2022) (on file in EB-IHD-21-00033079) (LOI).

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

<sup>26</sup> *Id.* at 4-5.

<sup>27</sup> *Id.* at 5-6.

<sup>28</sup> *Id.* at 4.

<sup>29</sup> *Id.* at 2, Exhibits D-E. FOX maintains that its additional owned-and-operated and affiliated stations did not transmit the Promotional Segment. See Letter from Matthew S. DelNero and Brooke Kahn, counsel to FOX, to Anya Baez, FCC (Feb. 18, 2022) (on file in EB-IHD-21-00033079) (Supplemental LOI Response).

<sup>30</sup> FOX transmitted the Promotional Segment on its FOX NFL SUNDAY programming, and licensed its distribution on Fox Sports Radio. See LOI Response at 2-3 (“While FOX does not maintain a list of all radio stations affiliated with Fox Sports Radio, it is FOX’s understanding that such stations typically broadcast FOX NFL SUNDAY”). Therefore, FOX knowingly caused the transmission on iHeartRadio and FOXSportsRadio.com. See, e.g., *Viacom NAL*, 29 FCC Rcd at 2558, para. 23 (section 11.45 clearly applies to actions that cause to transmit the restricted tones and is not limited to direct transmissions); *CBS NAL*, 34 FCC Rcd at 8423, para. 13 (“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”). Fox Sports Radio is owned and operated by Premiere Networks, a subsidiary of iHeartMedia, Inc. See LOI Response at 2-3; FOX Sports Radio, <https://foxsportsradio.iheart.com/featured/fox-sports-radio/>; <https://foxsportsradio.iheart.com/howtolisten/> (last visited Oct. 13, 2022).

<sup>31</sup> FOX caused the transmission of the Promotional Segment by programing the Fox Sports on XM channel on the Sirius XM Audio Entertainment Service, which is owned and operated by Sirius XM Radio Inc. See LOI Response at 2-3. The Promotional Segment was also posted to Twitter, Instagram, and Facebook accounts controlled by FOX. See LOI Response at 8.

<sup>32</sup> *Id.* at 2.

<sup>33</sup> *Id.* at 6.

### III. DISCUSSION

10. We find that FOX apparently willfully violated section 11.45(a) of the Commission's rules. FOX confirms that the November 28, 2021 broadcast of the Promotional Segment included the EAS Tones.<sup>34</sup> FOX admits that its wholly owned subsidiary created and distributed the Promotional Segment with the EAS Tones, and that it was broadcast by 18 of FOX's owned-and-operated television broadcast stations and 190 network-affiliated television broadcast stations nationwide.<sup>35</sup> FOX further admits the Promotional Segment that included the EAS Tones was transmitted nationwide over Fox Sports Radio and Fox Sports on XM.<sup>36</sup> FOX 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>37</sup>

11. Based on FOX's admissions and our review of the video recording of the Promotional Segment, we find that FOX apparently violated section 11.45(a) of the Commission's rules in its capacity as a broadcast programming network and, separately, as a multi-station broadcast licensee.<sup>38</sup> Therefore, we find FOX responsible for broadcasting the Promotional Segment containing the EAS Tones on 18 of its owned-and-operated broadcast stations, transmitting the Promotional Segment to 190 of its network-affiliated television broadcast stations, and causing the transmission of the Promotional Segment on Fox Sports Radio and the Fox Sports on XM channel.

12. Despite being shorter in duration than the full EAS Tones,<sup>39</sup> the three-second EAS Tone used in the Promotional Segment possessed the same dual-tone frequency, pitch, and timbre as the actual EAS Tones, and was recognizable by viewers or listeners as substantially similar to the EAS Tones.<sup>40</sup> The Promotional Segment's "comedic tone"<sup>41</sup> also did not alter or neutralize its overall effect of falsely warning listeners and viewers of a non-existent emergency, as the EAS Tones were clearly audible, cognizable, and appropriated for a non-emergency use.<sup>42</sup> This manner of appropriation of the EAS Tones is exactly the type of simulation that the Commission's rules seek to address and prohibit in order to avoid diluting the EAS Tones' real meaning over time.<sup>43</sup>

### IV. PROPOSED FORFEITURE

13. 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>44</sup> Section 503(b)(2)(A) of the Act and section 1.80(b)(1) of the rules authorize us to assess a forfeiture against FOX as the licensee of broadcast stations of up to \$59,316 per violation or for each day of a continuing violation, except that the amount assessed for any continuing violation shall not

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<sup>34</sup> *Id.* at 4-5.

<sup>35</sup> *Id.* at 2, Exhibits D-E.

<sup>36</sup> *Id.* at 2-3.

<sup>37</sup> *Id.* at 4.

<sup>38</sup> See LOI Response at 2. See *CBS NAL*, 34 FCC Rcd at 8426-27, paras. 23-24.

<sup>39</sup> LOI Response at 4-5.

<sup>40</sup> See *CBS NAL*, 34 FCC Rcd at 8424, para. 17.

<sup>41</sup> LOI Response at 2.

<sup>42</sup> See *CBS NAL*, 34 FCC Rcd at 8425-26, paras. 19-21.

<sup>43</sup> See *CBS NAL*, 34 FCC Rcd at 8425-26, paras. 20-22.

<sup>44</sup> 47 U.S.C. § 503(b)(1)(B).

exceed a total of \$593,170 for a single act or failure to act.<sup>45</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>46</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>47</sup> Under these guidelines, we may adjust a forfeiture downward for violations that are minor, violations that are voluntarily disclosed, where there is a history of compliance, or where there is an inability to pay.<sup>48</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>49</sup>

14. 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>50</sup> The Commission has previously applied an \$8,000 base forfeiture for violations of section 11.45(a) of the Commission's rules.<sup>51</sup> We have discretion, however, to depart from the base forfeiture guidelines, taking into account the particular facts of each individual case.<sup>52</sup> 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, FOX's sizeable nationwide audience reach, the gravity of the violation, the violator's degree of culpability, ability to pay, 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.

15. 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 the *CBS NAL*, our forfeiture determination in such cases is based on multiple factors associated with the nature of the violation and the violator.<sup>53</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

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<sup>45</sup> 47 U.S.C. § 503(b)(2)(A); 47 CFR § 1.80(b)(1). *See Amendment of Section 1.80(b) of the Commission's Rules, Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, DA-22-1356, 88 Fed. Reg. 783 (Jan. 5, 2023) (setting January 15, 2023, as the effective date for these inflation adjusted forfeiture penalties).

<sup>46</sup> 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10).

<sup>47</sup> 47 CFR § 1.80(b)(10).

<sup>48</sup> *Id.* at Table 3.

<sup>49</sup> *Id.*

<sup>50</sup> 47 CFR § 1.80(b)(10), Table 1.

<sup>51</sup> *See, e.g., CBS NAL*, 34 FCC Rcd at 8431, para. 36.

<sup>52</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>53</sup> *See CBS NAL*, 34 FCC Rcd at 8431, para. 37.

public safety impact (e.g., whether an EAS activation is triggered).<sup>54</sup> While each of these factors may be significant in a given case, no single factor (e.g., the number of transmissions) is controlling.

16. In this case, we find FOX responsible for broadcasting the EAS Tones during the Promotional Segment over 18 television broadcast stations that it owns and operates. In its capacity as a broadcast licensee, FOX transmitted the EAS Tones one time over each of its 18 television broadcast stations, resulting in a base forfeiture of \$144,000.

17. Reviewing the factors in this case, we find that an upward adjustment is warranted. FOX stated that its programming is available in “essentially all U.S. households,” and its television broadcast stations are located in the five largest, and fifteen of the top twenty, television markets in the United States.<sup>55</sup> As such, the audience reach of each of the FOX owned-and-operated stations is considerable and warrants an upward adjustment of the base forfeiture levied against FOX’s 18 television broadcast stations. Moreover, in this particular case, the creation and transmission of the Promotional Segment involved a self-promotion by FOX for its upcoming pre-game programming and NFL game.<sup>56</sup> As a leader in live sports broadcasts,<sup>57</sup> and a longstanding broadcast licensee, FOX was well aware of the importance and implementation of the EAS rules.<sup>58</sup> We find that, in view of the gravity of the violation and the violator’s degree of culpability, this self-promotion for the purposes of additional economic gain<sup>59</sup> at the expense of the integrity of the EAS constitutes egregious misconduct warranting an additional upward adjustment.

18. We also find FOX responsible for transmitting the Promotional Segment containing the EAS Tones to its television station affiliates nationwide for broadcast, as well as Fox Sports Radio and Fox Sports on XM. These were separate actions that resulted in separate transmissions of the simulated EAS Tones.<sup>60</sup> The Commission is not pursuing a forfeiture in this case for FOX’s transmissions and responsibilities in its capacity as a programming network due to the expiration of the statute of limitations period. However, we emphasize that these actions constitute violations of the Commission’s rules, and we find that they warrant an additional upward adjustment.<sup>61</sup>

19. Given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, section 1.80 of the Commission’s rules, and the statutory factors, we conclude that a proposed forfeiture of \$504,000 is appropriate in this case for FOX’s apparent egregious violation of section 11.45(a) of the Commission’s rules.

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<sup>54</sup> See *id.*

<sup>55</sup> See 2021 SEC Form 10-K, *supra* note 20, at I-3; LOI Response at Exhibit D – Fox Owned & Operated Stations.

<sup>56</sup> LOI Response at 2.

<sup>57</sup> 2021 Form SEC 10-K, *supra* note 20, at I-2.

<sup>58</sup> LOI Response at 6-9.

<sup>59</sup> FOX reported a quarterly revenue of \$4.44 Billion for October 1 - December 31, 2021, which encompassed the date this Promotional Segment aired. See, e.g., PRNewswire, FOX Corporation Revenues, <https://www.prnewswire.com/news-releases/fox-reports-second-quarter-fiscal-2022-revenues-of-4-44-billion-301478704.html> (last visited Aug. 29, 2022) (FOX Corporation Revenues).

<sup>60</sup> See *CBS NAL*, 34 FCC Rcd at 8431, para. 36.

<sup>61</sup> See, e.g., *Sound Around, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 3478, 3486, note 65 (2020) (“Although some violations are not actionable due to the expiration of the statute of limitations period... the Commission has determined such violations may be relevant in determining adjustments to base forfeiture levels in setting the forfeiture amount”); *Enserch Corp.*, Forfeiture Order, 15 FCC Rcd 13551, 13554, para. 11 (2000) (the Commission can consider facts that occurred outside the statute of limitations period in assessing an appropriate forfeiture amount).

20. Based on our review of the current record, we find no basis for a downward adjustment.<sup>62</sup> First, this was not a minor violation. FOX had clear and unambiguous notice of the requirements and applicability of the EAS rules to its advertising programming,<sup>63</sup> as evidenced in its advertising guidelines, which clearly prohibited the use of EAS Tones, or simulation thereof, in advertisements “under any circumstances.”<sup>64</sup> Yet, despite touting that it is fully knowledgeable and has a policy “barring the improper use of the EAS Attention Signals,” which was purportedly “made known generally to employees of FOX involved in the production of programming,” FOX admits that “all personnel involved in creation and review of the Nov. 28 Segment ... lacked full understanding of FOX’s policy against use of EAS Attention Signals.”<sup>65</sup> Second, this case involved a mandatory, not voluntary, disclosure. Commission rule 11.45(b) requires EAS participants to notify the Commission within 24 hours of discovering it has transmitted a false alert to the public.<sup>66</sup> FOX’s having sent an e-mail to the FCC Ops Center<sup>67</sup> as required by the Commission’s rules, does not constitute the type of good faith disclosure that warrants a reduction to the proposed forfeiture amount.<sup>68</sup> Third, as FOX acknowledges, it has been the subject of previous enforcement actions.<sup>69</sup> We therefore find no countervailing downward adjustment to be appropriate based on compliance history.<sup>70</sup> Finally, we note that FOX reported substantial revenue of \$4.44 billion for the relevant quarter.<sup>71</sup> FOX clearly has an ability to pay, and there is nothing in the record that would indicate that the penalty is otherwise excessive.<sup>72</sup> Therefore, we find FOX apparently liable for a total forfeiture of \$504,000.<sup>73</sup>

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<sup>62</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>63</sup> See, e.g., *Viacom NAL*, 29 FCC Rcd at 2558-59, para. 23.

<sup>64</sup> LOI Response at 6-7; Exhibit G.

<sup>65</sup> *Id.* at 7-8.

<sup>66</sup> 47 CFR § 11.45(b).

<sup>67</sup> LOI Response at 6.

<sup>68</sup> FOX acknowledges that it received multiple notifications from representatives of broadcast affiliates concerning this matter. See LOI Response at 9. Corrective action taken in compliance with Commission rules “is expected, and does not nullify or mitigate any prior forfeitures or violations.” See, e.g., *R.J.’s Late Night Ent. Corp.*, Memorandum Opinion and Order, 30 FCC Rcd 1121, 1123, para. 6 (EB 2015) (citing *Seawest Yacht Brokers*, Notice of Forfeiture, 9 FCC Rcd 6099, 6099, para. 7 (1994); *Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973); *Exec. Broad. Corp.*, Memorandum Opinion and Order, 3 FCC 2d 699, 700, para. 6 (1966) (“The fact that prompt corrective action was taken ... does not excuse the prior violations”)).

<sup>69</sup> LOI Response at 9. See, e.g., *Fox Television Stations, Inc.*, Forfeiture Order, 26 FCC Rcd 9485 (EB 2011) (violated Commission’s sponsorship identification rule) (forfeiture paid); *Fox Television Stations, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 7074 (EB 2010) (failed to respond to Letter of Inquiry and upward adjustment for egregiousness) (forfeiture paid).

<sup>70</sup> See, 47 CFR § 1.80(b)(10), Table 3. See, e.g., *Cumulus Radio LLC; Radio License Holding Cbc, LLC; Cumulus Licensing LLC; & Radio License Holdings LLC*, Forfeiture Order, 36 FCC Rcd 738, 748, para. 27 (2021) (declining to reduce the forfeiture when licensee’s history of overall compliance includes past violations).

<sup>71</sup> See FOX Corporation Revenues, *supra* note 59.

<sup>72</sup> While ability to pay and a history of prior violations of any FCC requirements could be used as a basis for an upward adjustment, 47 CFR § 1.80(b)(10), Table 3, we find doing so here unnecessary in light of the upward adjustment factors discussed above. See *supra* paras. 17-18.

<sup>73</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.

## V. CONCLUSION

21. In view of the foregoing, we determine that FOX apparently willfully violated section 11.45(a) of the Commission's rules and propose a total forfeiture of \$504,000.

## VI. ORDERING CLAUSES

22. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act<sup>74</sup> and section 1.80 of the Commission's rules,<sup>75</sup> Fox Corporation is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR FORFEITURE** in the amount of five hundred and four thousand dollars (\$504,000) for willful violation of section 11.45(a) of the Commission's rules.<sup>76</sup>

23. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,<sup>77</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Fox Corporation **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 26 below.

24. In order for Fox Corporation to pay the proposed forfeiture, Fox Corporation shall notify Kenneth Scheibel at [Kenneth.Scheibel@fcc.gov](mailto:Kenneth.Scheibel@fcc.gov), and Anya Baez at [Anya.Baez@fcc.gov](mailto:Anya.Baez@fcc.gov), of its intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. Upon payment, Fox Corporation shall send electronic notification of payment to Kenneth Scheibel at [Kenneth.Scheibel@fcc.gov](mailto:Kenneth.Scheibel@fcc.gov), and Anya Baez at [Anya.Baez@fcc.gov](mailto:Anya.Baez@fcc.gov), Enforcement Bureau, Federal Communications Commission, on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/cores/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. 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>78</sup>

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159<sup>79</sup> or printed CORES form<sup>80</sup> 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 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, 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>81</sup> For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>

<sup>74</sup> 47 U.S.C. § 503(b).

<sup>75</sup> 47 CFR § 1.80.

<sup>76</sup> *Id.* § 11.45(a).

<sup>77</sup> *Id.* § 1.80.

<sup>78</sup> For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

<sup>79</sup> FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

<sup>80</sup> Information completed using the Commission's Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://apps.fcc.gov/cores/userLogin.do>.

<sup>81</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- Payment by credit card must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, 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 CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, 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.

25. 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>82</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).

26. 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>83</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 Kenneth Scheibel at [Kenneth.Scheibel@fcc.gov](mailto:Kenneth.Scheibel@fcc.gov), and Anya Baez at [Anya.Baez@fcc.gov](mailto:Anya.Baez@fcc.gov).

27. 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>84</sup> Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.<sup>85</sup>

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<sup>82</sup> See 47 CFR § 1.1914.

<sup>83</sup> *Id.* §§ 1.16, 1.80(f)(3).

<sup>84</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>85</sup> See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18–21 (2019); (continued....)

28. **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 Joseph M. Di Scipio, SVP, and Ann W. Bobeck, VP, FCC Legal and Business Affairs, Fox Corporation, 101 Constitution Avenue NW, Suite 200 West, Washington, D.C. 20001, with a copy to Matthew S. DelNero and Brooke Kahn, Covington & Burling LLP, One City Center, 850 Tenth Street, NW, Washington, D.C. 20001.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

(Continued from previous page) \_\_\_\_\_  
*Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860–62, paras. 21–25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-904, paras. 32-33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).