February 2025

Antenna™

An update on broadcasting law & issues from Donald E. Martin

Rulemakings Paused

After being sworn in on January 20, President Trump issued an Executive Order suspending most rulemaking activities in federal departments and agencies. The Executive Order does not identify any specific agency by name, but it surely includes the FCC. The purpose is to allow the new administration an opportunity to review all ongoing regulatory proceedings.

All executive departments and agencies were directed to take the following steps:

- Refrain from proposing or issuing any rule in any manner, including sending a rule to the office of the Federal Register for publication, until a department or agency head appointed or designated by the President after noon on January 20, 2025, reviews and approves it.
- Immediately withdraw any rules before they can become effective that have been sent to the office of the Federal Register but have not yet published so that they can be reviewed and approved as described above.
- Consider postponing for 60 days the effective date for any

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FCC Ends DEI Promotion

With the change of presidential administrations, a new chairman has been installed at the FCC. In one of his first actions as agency head, Brendan Carr, has issued a statement to announce that the Commission is ending its programs and policies generally identified under the nomenclature of DEI, an acronym for diversity, equity, and inclusion. This policy statement was issued pursuant to President Trump's Executive Order entitled "Ending Radical and Wasteful Government DEI Programs and Preferencing."

Chairman Carr said that he "will focus the agency's work on competently carrying out the Commission's statutory mission, as defined by Congress, without promoting invidious forms of discrimination." He commented that "Promoting invidious forms of discrimination runs contrary to the Communications Act and deprives Americans of their rights to fair and equal treatment under the law. It also represents a wasteful expenditure of taxpayer resources."

Carr identified the following specific FCC programs, functions, and procedures which are being deleted or in

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'Simulating' EAS Nationwide Tests Leads to $300K+ Fine

The FCC has proposed to fine a television station for simulating three years' worth of Nationwide EAS Tests and filing misleading reports about those tests. The Commission has released a *Notice of Apparent Liability for Forfeiture* (FCC 24-133) to KCWX(TV), Fredericksburg, Texas, setting out these allegations and proposing a total fine of $369,190.

The EAS is a national warning system implemented by the Federal Emergency Management Agency ("FEMA"), the National Weather Service, and the FCC, through which broadcasters and other system participants alert the public about impending emergencies and dangers to life and property. The primary purpose of the EAS is to provide the President with a channel to provide immediate communications and information to the public during periods of national emergency. During the history of the EAS and its predecessors dating back to the 1950s there has never been an occasion for the President to deliver a message about a national emergency. The system has been adapted

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FCC Launches Public Broadcasting Investigation

FCC Chairman Brendan Carr has sent a letter to PBS President Paula Kerger and NPR President Katherine Maher informing them that he has asked the Commission's Enforcement Bureau, with the assistance of the Media Bureau, to begin an investigation into whether underwriting announcements aired on public broadcasting stations are in compliance with the statutory and regulatory restrictions on noncommercial broadcasting.

The Chairman intoned the law: "Federal law . . . prohibits an NCE station from airing commercials or other promotional announcements on behalf of for-profit entities. For-profit entities that contribute funds to NCE stations may receive on-air acknowledgments, but the FCC has long held that these underwriting announcements are for identification purposes only. These announcements should not promote the contributor's products, services, or businesses, and they may not contain comparative descriptions, price information, calls to action, or inducements to buy, sell, rent, or lease."

Without identifying specific examples or parties, Carr says that "[He is] concerned that NPR and PBS broadcasts could be violating federal law by airing commercials. In particular, it is possible that NPR and PBS member stations are broadcasting underwriting announcements that cross the line into prohibited commercial advertisements." The Chairman continued, "It is important to me . . . that NCE broadcast stations stay true to their important missions and refrain from operating as noncommercial in name only."

Chairman Carr advised the public broadcasting executives that he would alert relevant members of Congress about this investigation because it "may prove relevant to an ongoing legislative debate" about taxpayer funding of public broadcasting.

Petition to Deny TV Station License Renewal Rejected

The FCC's Media Bureau has granted the 2023 license renewal application for WTXF-TV, Philadelphia, and denied a Petition to Deny the application in a *Memorandum Opinion and Order* (DA 25-57). The Media and Democracy Project and a number of individuals had jointly filed the Petition against the license renewal application of the station owned by Fox Television Stations, LLC ("FTS"). The petitioners' argument for denying license renewal was based on a ruling by the Superior Court of Delaware that Fox News Network, LLC ("FNN"), a company under common with FTS, had disseminated statements about Dominion Voting Systems, Inc. concerning the 2020 presidential election that were false. Fox Corporation ("Fox") is the parent of both FTS and FNN.

The petitioners alleged that the Delaware state court's finding in the civil defamation case, as well as the evidence disclosed in that proceeding, showed that Fox "intentionally manipulated its audience" and "call into serious question whether Fox has operated its stations in the public interest, whether it has violated Commission policies and whether it has the requisite character to remain an FCC licensee." In addition to the state court's decision, the petitioners submitted a declaration from a former Fox employee who stated that, "in [his] opinion, Fox has undermined our democracy and has radicalized a segment of our population by presenting knowingly false narratives about the legitimacy of the 2020 election."

Section 309(k)(1) of the Communications Act spells out the standard for broadcast license renewal. It provides that the FCC "shall grant the [renewal] application if it finds, *with respect to that station*, during the preceding term of its license [that] *the station* has served the public interest, convenience, and necessity . . . ." (Emphasis added.) In adding Section 309(k) to the Communications Act in 1996, the Commission explained that Congress has expressly limited the scope of the license renewal inquiry to matters occurring at the particular station for which license renewal is sought. The Commission noted that in previous decisions it has ruled that its character policy does not override this statutory limitation. Conduct occurring at other affiliated stations or

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Filing Fees Adjusted for Inflation

The FCC imposes fees on applications and informational filings submitted on behalf of commercial broadcast stations. The Communications Act requires the Commission to adjust the schedule of its application fees every even-numbered year to reflect changes in the Consumer Price Index ("CPI"). In compliance with that statutory requirement, the Commission recalculated its fees in 2024 to reflect a net increase in the CPI of 17.41%. The Commission adopted an *Order* (FCC 24-137) announcing the new schedule of fees as adjusted. This new fee schedule will come into effect 30 days after it is published in the Federal Register.

Applications and reports filed by noncommercial stations are exempt from filing fees. Applicants and licensees that are government entities are exempt from filing fees for both commercial and noncommercial stations.

A table showing the new fees and comparing them to the old fees is found on page 5.

Carriage Blackouts To Be Reported

The FCC has mandated the reporting of television carriage blackouts lasting more than 24 hours that result from retransmission consent disputes between television stations and multichannel video programming distributors ("MVPDs") such as cable systems and satellite TV services. Rules for these requirements were adopted in a *Report and Order* (FCC 24-138) in Docket 23-427.

This proceeding produced a mixed record as to whether the incidence of blackouts is increasing or decreasing. However, the Commission does appear to believe that the number of subscribers whose television service is disrupted is on the rise. The agency observes that in 2023 there were blackouts in 207 markets, affecting 351 stations, according to data from SNL Kagan. The FCC typically does not learn about these incidents unless they are reported in the press, or one of the parties complains to the Commission about bad faith negotiating.

The Commission has no authority to force MVPDs and broadcasters to resolve a dispute and resume carriage, although it can require them to negotiate in good faith. Nonetheless, the agency says that accurate and current data about blackouts would be useful. The FCC believes blackout reporting will increase transparency for the public and for policymakers. The data collected in this effort would assist it and Congress in monitoring and developing policy about the retransmission consent regime. The Commission says that there is no existing source of reliable and current information about blackouts to satisfy these needs. Consequently, the FCC has decided to require the submission of blackout reports from the parties with the most information about them – MVPDs.

The Commission defines a broadcast station blackout as any time that an MVPD ceases retransmission of a commercial television broadcast station's signal due to a lapse of the broadcast station's consent for such retransmission. The signal suffering the blackout could be that of a full power, Class A, or low power television station. To qualify for reporting under this rule, a blackout could pertain to some, but need not pertain to all, of a station's multicast streams. An MVPD's rejection of a station's must-carry claim would not be considered to be an event that is subject to this reporting rule.

Under the new rule, when a carriage blackout lasts longer than 24 hours, the MVPD must submit a report

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Class A TV Filing Window Passes Halfway Mark

In December 2023, the FCC adopted a *Report and Order* (FCC 23-119) in Docket 23-126 to implement the Low Power Protection Act. In that legislation, Congress authorized the Commission to establish an opportunity for certain low power television stations to apply for Class A television status. In 2000, also to implement legislation, the FCC had created the Class A TV service and opened a one-time filing window for LPTV licensees to apply for Class A licenses. The current filing window is the only such opportunity that has been available since then.

Last year, the Commission opened a year-long filing window for qualified stations to submit applications. This filing window closes on May 30, 2025. Once again, this is described as a one-time event for which the Commission has no authorization or plans to repeat.

LPTV stations and Class A TV stations have the same technical characteristics. The difference in their legal status is that LPTV stations are secondary and do not enjoy protection from interference from full service stations, whereas Class A stations are considered to be primary, and are protected within their noise-limited contours. Class A stations are subject to most of the regulatory obligations that govern full power stations, including maintaining an online public inspection file and the license renewal processing guideline to air at least three hours per week of

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AI Creations Not Copyrightable

The United States Copyright Office has released Part 2 in its series of reports entitled "Copyright and Artificial Intelligence" ("AI"), concluding and affirming that a work created solely by AI is not eligible for copyright registration or protection under U.S. law.

The Office launched a broad initiative in 2023 to study the intersection of copyright and artificial intelligence. In August of that year, a *Notice of Inquiry* was released, soliciting public comment on a full range of relevant issues. In response to that invitation, the Office received more than 10,000 comments representing a broad range of perspectives and interests. The Office analyzed these comments and supplemented them with input from other government agencies, as well as its own staff research. The result is the three-part series of reports that analyze copyright law and policy issues raised by AI. Part 1 was published on July 31, 2024, and addressed the topic of digital replicas. The newly released Part 2 addresses the copyrightability of outputs created using generative AI. The final, forthcoming Part 3 will address the legal implications of training AI models on copyrighted works, licensing considerations, and the allocation of any potential liability.

In Part 2, entitled "Copyrightability," the Office published its findings and conclusions about the copyrightability of

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DEADLINES TO WATCH

License Renewal, FCC Reports & Public Inspection Files

February 1 — Deadline to place EEO Public File Report in Public Inspection File and on station's Internet website for all nonexempt radio and television stations in **Arkansas, Kansas, Louisiana, Mississippi, Nebraska, New Jersey, New York,** and **Oklahoma.**

February 3 — Deadline for all broadcast licensees and permittees of stations in **Arkansas, Kansas, Louisiana, Mississippi, Nebraska, New Jersey, New York,** and **Oklahoma** to file annual report on all adverse findings and final actions taken by any court or governmental administrative agency involving misconduct of the licensee, permittee, or any person or entity having an attributable interest in the station(s).

February 3 — Mid-Term EEO review begins for certain radio stations in **Kansas, Nebraska,** and **Oklahoma**, and certain television stations in **Arkansas, Louisiana,** and **Mississippi**.

April 1 — Deadline to place EEO Public File Report in Public Inspection File and on station's Internet website for all nonexempt radio and television stations in **Delaware, Indiana, Kentucky, Pennsylvania, Tennessee,** and **Texas**.

April 1 — Deadline for all broadcast licensees and permittees of stations in **Delaware, Indiana, Kentucky, Pennsylvania, Tennessee,** and **Texas** file annual report on all adverse findings and final actions taken by any court or governmental administrative agency involving misconduct of the licensee, permittee, or any person or entity having an attributable interest in the station(s).

April 1 — Mid-Term EEO review begins for certain radio stations in **Texas** and certain television stations in **Indiana, Kentucky,** and **Tennessee**.

Proposed Amendments to the Television Table of Allotments

The FCC is considering petitions to amend the digital television Table of Allotments by changing the channels allotted to the communities identified below. The deadlines for submitting comments and reply comments are shown.

COMMUNITY	STATION	PRESENT CHANNEL	PROPOSED CHANNEL	COMMENTS	REPLY COMMENTS
Monroe, LA	KLTM	*13	*24	FR+30	FR+45
Price, UT	KCBU	11	15	FR+30	FR+45

FR+N means the filing deadline is N days after publication of notice in the Federal Register.

* *The channel is reserved exclusively for noncommercial broadcasting.*

Paperwork Reduction Act Proceedings

The FCC is required by the Paperwork Reduction Act to periodically collect public information on the paperwork burdens imposed by its record-keeping requirements in connection with certain rules, policies, applications, and forms. Public comment has been invited about this aspect of the following matters by the filing deadlines indicated.

TOPIC	COMMENT DEADLINE
EAS, Part 11	Feb. 7
Auction procedures, Sections 1.2105(c), 1.2205	Feb. 10
Audio description of video programming, Section 79.3	Feb. 11
Equipment performance measurement, Section 73.1590	Feb. 12
TV white space bands, Sections 15.709, 15.713, 15.714, 15.715, 15.717, 27.1320	Feb. 21
EEO Policy, Section 73.2080	Mar. 17
Application to participate in an auction, Form 175	Mar. 24
TV station blackout reporting requirements	Mar. 24

DEADLINE FOR QUALIFIED LOW POWER TV STATIONS TO APPLY FOR CLASS A STATUS

MAY 30, 2025

Schedule of Adjusted FCC Filing Fees

APPLICATION TYPE	PRIOR FEE	NEW FEE
Full Power and Class A Television		
New or major change construction permit		
Without auction	$ 4,755	$ 5,000
With auction	5,395	5,675
Minor change construction permit (full power only)	1,490	1,565
New license	425	425
License renewal	370	370
Assignment/transfer of control (long form)	1,390	1,460
Assignment/transfer of control (short form)	450	475
Special temporary authority	300	315
Rulemaking petition (full power only)	3,790	3,985
LPTV and TV Translator		
New or major change construction permit		
Without auction	865	910
With auction	1,505	1,585
New license	240	250
License renewal	160	170
Special temporary authority	300	315
Assignment/transfer of control (all forms)	375	375
Call sign	190	190
AM Radio		
New or major change construction permit		
Without auction	4,440	4,675
Auction	5,085	5,350
Minor change construction permit	1,815	1,910
New license	720	755
License renewal	365	365
Directional antenna	1,405	1,480
Assignment/transfer of control (long form)	1,120	1,180
Assignment/transfer of control (short form)	475	500
Special temporary authority	325	325
FM Radio		
New or major change construction permit		
Without auction	3,675	3,870
With auction	4,290	4,545
Minor change construction permit	1,410	1,485
New license	260	275
License renewal	365	365
Directional antenna	705	705
Assignment/transfer of control (long form)	1,120	1,180
Assignment/transfer of control (short form)	475	500
Special temporary authority	235	235
Rulemaking petition	3,550	3,735
FM translator, FM booster		
New or major change construction permit		
Without auction	785	830
With auction	1,430	1,505
Minor modification construction permit	235	235
New license	200	210
License renewal	195	205
Special temporary authority	190	190
Assignment/transfer of control (all forms)	325	325
TV, Class A TV, AM and FM		
Call sign	190	190
Ownership report	95	95
Permit to Deliver Programs to a Foreign Broadcast Station		
New license	400	425
License modification	205	215
License renewal	175	175
Special temporary authority	175	175
Transfer of control	290	305
Receive-Only Earth Station		
Initial application or registration (single site)	195	205
Initial application or registration (multiple sites, per system)	520	520
(There are other fees for earth station applications not included here.)		
Petition for Declaratory Ruling re Foreign Ownership	2,775	2,920

FCC Ends DEI Promotion *continued from page 1*

which DEI considerations are to be eliminated:

- FCC strategic plan.
- FCC budget.
- DEI advisory group.
- DEI equity action plan.
- DEI task force.
- Advisory committee directive.
- Annual performance plans.
- Economic reports.

The Chairman concluded that "the Commission will take further actions, as necessary and appropriate, to ensure that the FCC's promotion of DEI ends, including consulting and coordinating with other agencies."

Rulemakings Paused *continued from page 1*

rules that have been published in the Federal Register, or any rules that have been issued in any other manner, but that have not yet taken effect. Where appropriate and consistent with applicable law, consider opening a public comment period about the rule(s).

- Following the 60-day postponement, no further action needs to be taken for those rules that raise no substantial questions of fact, law, or policy. For rules that do raise substantial questions of fact, law, or policy, agencies should notify and take further appropriate action in consultation with the director of the Office of Management and Budget.
- Comply in all circumstances with any applicable Executive Orders concerning regulatory management.

The Director of the Office of Management and Budget may exempt from these procedures any rule that he deems necessary to address emergency situations or other urgent circumstances, including rules subject to statutory or judicial deadlines that require prompt action.

FCC Rejects Petition to Deny TV Station License Renewal *continued from page 2*

affiliated subsidiaries that may be "so egregious as to shock the conscience and evoke almost universal disapprobation" is not considered at license renewal time. They are beyond the scope of the limited renewal inquiry under Section 309(k). Neither WTXF-TV nor FTS was a defendant in the Delaware litigation, and the court made no judgment about them. Therefore, the Delaware court decision is irrelevant to license renewal for this station.

The Bureau observed that the petitioners did not identify any content aired on WTXF-TV that they believe warrants a hearing nor did they provide any evidence that the false statements disseminated on FNN were broadcast on WTXF-TV. In any event, the Bureau says that it would have declined to evaluate such content. The Bureau explained that such content review in the context of a renewal application would be contrary to the Commission's obligations under the First Amendment and the statutory prohibition on censorship and interference with free speech rights as set forth in Section 326 of the Communications Act.

Accordingly, the application to renew the license was granted. This ruling was adopted and released prior to the recent change of administrations and change of the FCC chair.

AI Creations Not Copyrightable *continued from page 3*

works created by generative AI. These conclusions can be summarized as follows:

- Questions of copyrightability and AI can be resolved pursuant to existing law. There is no need to amend the existing statute.
- The use of AI tools to assist, rather than replace, human creativity does not diminish the availability of copyright protection for the output.
- Copyright protects the original expression in a work created by a human author, even if the work also includes AI-generated material.
- Copyright does not extend to purely AI-generated material, or material where there is insufficient human control over the expressive elements.
- Whether human contributions to AI-generated works are sufficient to constitute authorship must be analyzed on a case-by-case basis.
- Based on the functioning of currently generally available technology, prompts alone provide insufficient control to call the work a product of human creativity.
- Human authors are entitled to copyright in their works of authorship that are perceptible in AI-generated outputs, as well as the creative selection, coordination, or arrangement of material in the outputs, or the creative modifications of outputs.
- The case has not been made for additional copyright protection for AI-generated content.

The Office says that it will continue to monitor technological and legal developments to determine whether any of these conclusions should be revised. It will also provide assistance to the public through registration guidance and updates to its publication, the *Compendium of U.S. Copyright Office Practices*.

Carriage Blackouts To Be Reported *continued from page 3*

about it to the FCC within two business days – the "Initial Blackout Notification." Likewise, when transmission of the television signal in question resumes, the MVPD is to file a "Final Blackout Notification" within two business days. If after three years, no final blackout notification has been filed, the Commission will assume that the blackout has become permanent. Broadcasters are not required to file reports. However, they may voluntarily submit supplemental information if they believe that the MVPD's report needs to be corrected, supplemented, or clarified.

Reports will be submitted on an electronic form to be developed by the Media Bureau through an online portal to the Commission. The Initial Blackout Report will include the name of the reporting entity, the call sign and facility ID number for the station no longer being carried, the station's network affiliation(s), affected and unaffected multicast streams if any, the Designated Market Area(s) in which subscribers reside, and the date and time that the retransmission was interrupted. If the blackout involves multiple stations being negotiated by the same broadcast group, they can all be identified on one report. All of that data will be viewable by the public. In addition, the MVPD is to disclose its good faith estimate of the number of subscribers affected by the blackout. The subscriber data will be treated as confidential and will not be available to the public. The Final Blackout Notification will merely state the date on which retransmission was resumed for each station.

In the normal course, these new regulations would become effective 30 days after publication in the Federal Register. The new reporting forms to be created by the Media Bureau would become available for use when they have been approved by the Office of Management and Budget. However, Federal Register publication of these rules has not yet occurred. Consequently, this proceeding has been paused in accord with the President's Executive Order to suspend and review all federal government rulemakings and new regulations that have not yet become final.

Class A TV Filing Window Passes Halfway Mark *continued from page 3*

programming directed to children.

To qualify to be eligible to file an application for Class A status, the existing LPTV licensee must meet the following criteria:

- As of January 5, 2023, the station's transmitter site must have been operating in a Nielsen Designated Market Area ("DMA") with not more than 95,000 households. The station will not be disqualified if the number of households in its DMA subsequently increases above that threshold for reasons beyond the licensee's control.
- During the 90-day period preceding enactment of the Low Power Protection Act (from October 7, 2022, to January 5, 2023), the station must have continuously satisfied the basic requirements for both LPTV and Class A TV stations. The Class A obligations include broadcasting at least 18 hours per day, and airing an average of at least three hours per week of locally produced programming. Programming is considered "locally produced" if it is produced within the station's predicted noise-limited contour, or within the contiguous predicted noise-limited contour of any Class A station under common ownership. The applicant must also continue to meet these requirements from the date that the Class A application is filed. A TV translator station would not meet these qualification criteria.
- The station must not be causing interference to the licensed or previously proposed facilities of any full power, Class A, LPTV or TV translator stations.

The Class A TV applicant must submit documentation with the application to demonstrate that it has met the criteria. At a minimum, such documentation should include a statement that the station was on the air during the required period and a list of locally produced programs that were broadcast. Applicants are encouraged to also submit whatever additional documentation they believe would best support the certification that they meet the operating and programming requirements.

The principal benefit that comes from being a Class A station is protection from interference. Class A stations have no more rights to must-carry status than the very limited rights held by LPTV stations in the remote corners of small DMAs.

Applications are to be submitted electronically through the FCC's Licensing and Management System by May 30, 2025.

‘Simulating’ EAS Nationwide Tests Leads to $300K+ Fine *continued from page 1*

to deliver messages about local and regional emergencies as well. Participation by broadcasters in the local and regional signaling is voluntary, whereas it would be mandatory for all broadcasters in the event of a Presidential emergency message. To ensure that the system remains in readiness for a Presidential message about a national emergency, FEMA and the FCC conduct annual Nationwide Tests of the EAS (although none was conducted in 2024). Participation in the Nationwide Test and the submission of related reports are mandatory for all EAS participants, including all broadcast stations. During the Nationwide Test, a test message is intended to air simultaneously on every broadcast station in the country.

The FCC received a complaint in August of 2021 alleging that KCWX had misrepresented its handling and deployment of three Nationwide Tests conducted on October 3, 2018; August 7, 2019; and August 11, 2021. The complaint asserted that the station had not conducted a “live” receipt of the test using the correct FEMA-generated header codes, but instead, used substitute, mismatched, or incorrect header codes. The complaint also claimed that the station used incorrect and outdated test script audio, incorrect activation codes, and “fake crawls” in place of the technical formats required by FEMA and the FCC. The complaint characterized these events as simulated tests rather than authentic participation in the Nationwide Tests.

In September 2022, the FCC’s Enforcement Bureau issued a Letter of Inquiry to KCWX about these allegations. In response, the station admitted that it did not transmit the correct headers, test script audio, activation codes, and crawls in the 2018 and 2019 tests, and that it did not use the correct header in the 2021 test. The station explained that its staff did know how to use the proper elements of the tests. Instead, the staff had substituted and transmitted prior years’ tones that it had collected on the Internet. The station explained that it had not intended to violate the Commission’s Rules and that any failure to transmit the correct materials was due solely to the inexperience of the station’s small operations staff and its lack of knowledge regarding the technical requirements of the EAS tests. KCWX said that its inexperienced manager believed that he had performed the test correctly, and that he prepared an alert in advance because he did not know how to receive and save the alert for playback. He did not realize that alerts are unique to each test. Not realizing that they were not in compliance with the Commission’s rules, the station staff submitted filings to the FCC’s EAS Test Reporting System (“ETRS”), to report that the station had successfully conducted the tests. The station asserted that it had made a good-faith effort to comply with its EAS obligations and thought that it had done so.

The Commission concluded that KCWX had violated Section 11.61(a)(3)(I) of its Rules during each of the three Nationwide Tests in question by not transmitting the FEMA-generated material specific to each test date. Further, the Commission said that station had included incorrect and misleading information in its ETRS reports. The licensee certified in those reports that it had properly received and transmitted the correct test signals and content – which, in fact, it had not done.

The Commission referred to its long-held precedent that a licensee is responsible for the actions of its employees, and that a licensee is not excused for violations due to staff error, deception, or “wishful thinking.” The Commission said that the station’s noncompliance over multiple years based on its staff’s claimed ignorance of the law shows minimal effort on the licensee’s part and hardly constitutes a “good faith effort” at compliance.

To calculate the amount of a fine, the Commission begins with the base amount of the forfeiture suggested for a given rule violation in its *Forfeiture Policy Statement* and in Section 1.80 of the Rules. The Commission found that failing to properly participate in a Nationwide EAS Test constituted a general violation of the EAS rules, for which the base forfeiture is $8,000. The station failed to conduct three Nationwide Tests properly. An $8,000 fine was levied for each of those failures, totaling $24,000. As the circumstances may warrant, the Commission can adjust the base amount upward or downward. In this case, the Commission added a 100 percent surcharge, bringing the new total to $48,000.

KCWX failed to file the third report (Form Three) for the 2018 test. The base amount of the fine for failing to file a required form is $3,000. Considering the totality of the circumstances in this case, the Commission adjusted that figure upward to $15,000 for the missing Form Three.

Section 1.17 of the Commission’s Rules provides that all statements and information submitted to the agency must be truthful and correct. The Commission found that KCWX’s statements in the 2018 Form Two, the 2019 Form Two and Form Three, and the 2021 Form Two and Form Three were misleading in that they indicated that the station had performed completely properly in those Nationwide Tests. Considering the particular circumstances of this case, the Commission imposed the maximum permissible fine for misrepresentation of $61,238 – for each of the five misleading reports. The total for Section 1.17 violations comes to $306,190.

The total proposed forfeiture for all of the described violations is $369,190. The KCWX licensee has 30 days in which to petition for the reduction or cancellation of the fine.