CINNAMON MUELLER

www.CinnamonMueller.com

CHICAGO
307 N. Michigan Ave
Suite 1020
Chicago, IL 60601

phone: 312-372-3930
fax: 312-372-3939

WASHINGTON, DC
1875 Eye Street, NW
Suite 700
Washington, D.C. 20006

ST. LOUIS
1714 Deer Tracks Trail
Suite 215
St. Louis, MO 63131

UPDATE
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FCC Adopts Voluntary EAS Code for Blue Alerts

On December 14, 2017, the FCC released a Report and Order adopting a new voluntary Emergency Alert System ("EAS") event code – "BLU" – to enable the delivery of Blue Alerts. The Blue Alert code will cover emergency information related to a law enforcement officer who is missing, seriously injured, or killed in the line of duty, or when there is an imminent credible threat to an officer.

Background. EAS is a nationwide emergency alert program that broadcasters, MVPDs and other service providers (collectively, "EAS Participants") must take part in. EAS Participants must provide communications capability to the President to address the nation in national emergencies. On a state and local level, however, EAS may be implemented on a voluntary basis to transmit local or state emergency information, such as severe weather warnings, Amber Alerts and now Blue Alerts. The FCC, in conjunction with FEMA and the National Weather Service, implement EAS at the federal level.

New Blue Alert Code. EAS equipment manufacturers will have 12 months from the date the Order is published in the Federal Register to make the BLU code available to EAS Participants. As with other state and local level alerts, EAS participants will be permitted to implement the code on a voluntary basis. It is expected that the BLU event code will be implemented either through the purchase of new or upgraded EAS equipment that can utilize the BLU code or through a software update.

The FCC noted that all EAS Participants should be able to add the BLU event code once manufacturers release software updates because all EAS participants should have equipment in place that is capable of being updated to accommodate EAS modifications. The FCC further encouraged EAS stakeholders to work together to implement Blue Alerts swiftly in light of the important public safety objectives involved.

If you have further questions about the EAS system or EAS requirements for cable operators, please contact Scott Friedman at sfriedman@cinnamonmueller.com or (312) 580-8557.

FCC Proposes $13 Million Forfeiture to Sinclair for Violating Broadcast Sponsorship ID Rules

On December 21, 2017, the FCC released a Notice of Apparent Liability for Forfeiture proposing the largest forfeiture in FCC history –$13,376,200 – against Sinclair Broadcasting Group for apparent repeated violations of the Commission's rules requiring identification of paid-for-broadcast programming.

Background and Investigation. The Communications Act and FCC rules require broadcasters to identify commercial content that has been broadcast in exchange for payment or other consideration. In particular, a broadcaster must announce to its viewers at the time a paid program is aired that the broadcaster has been paid to air the programming and the identification of the program sponsor. Also, wherever consideration for the inclusion of material in a broadcast is given to or received by an entity other than a licensee, disclosure of that fact must be made to a station licensee.

Note: Cable operators also have sponsorship identification requirements when engaged in "origination cablecasting."

After receiving an anonymous complaint, the FCC's Enforcement Bureau compiled evidence revealing that Sinclair was paid to air sponsored programming without proper identification. This unidentified, sponsored programing discussing the Huntsman Cancer Institute ("HCI") was aired during local news segments on 64 Sinclair-owned stations more than 1,400 times between January 15, 2016 and July 26, 2016. The Enforcement Bureau's investigation also found that Sinclair provided the paid programming to 13 non-Sinclair stations more than 280 times, without alerting those licensees that the programming was sponsored, and allowed those stations to air the programming without sponsorship information.

NAL. Following a July 2016 letter of inquiry ("LOI") and subsequent investigation, the Enforcement Bureau found that Sinclair willfully and repeatedly violated FCC rules by broadcasting paid programming without disclosing that the programming was in fact sponsored or properly identifying that sponsor. These news segments and long-form programs aired on both Sinclair-owned stations and non-Sinclair-owned stations where Sinclair provided programming.

While Sinclair did not dispute that the sponsored programs in question were aired and that a contract existed between Sinclair and HCI to broadcast the programming, Sinclair argued that no sponsorship identification disclosure was legally required for two reasons. First, Sinclair claimed that the financial compensation from the HCI agreement was for Sinclair's advertising and digital services, not for programming, and second, that the on-air stories were in the public interest and similar to other programming aired without identification. The FCC, however, dismissed both arguments, finding that the agreement with HCI provided that Sinclair would be compensated for implementing an "Integrated Awareness and Development Campaign," including on-air stories, and that, after receiving the July 2016 LOI, Sinclair effectively admitted its mistake by issuing on-air apologies for failing to identify program sponsorships for similarly sponsored HCI news segments. The FCC further stated that even if Sinclair had previously aired similar content without compensation, it in no way negated the clear evidence in this case.

Under FCC rules, sponsorship identification violations incur a base forfeiture of $4,000 for each violation or each day of a continuing violation. Here, the FCC applied the $4,000 base forfeiture to each of Sinclair's apparent violations, for a total of $6,892,000. The FCC then concluded that a significant upward adjustment was warranted given (i) Sinclair's conduct; (ii) Sinclair's repeated history of violating other FCC rules governing commercial messages; (iii) the fact that the agreements with HCI generated significant revenue for Sinclair; and (iv) Sinclair's national reach and reported 2016 revenues in excess of $2.7 billion. In total, the FCC found Sinclair apparently liable for a forfeiture of $13,376,200.

If you have any questions regarding the sponsorship identification rules, please contact Scott Friedman at sfriedman@cinnamonmueller.com or (312) 580-8557.
