



April 1, 2023

Via Email ([EB-SED-Response@fcc.gov](mailto:EB-SED-Response@fcc.gov)) and US Mail

Federal Communications Commission  
Spectrum Enforcement Division  
45 L Street NE  
Washington, DC 20554

Re: COMPLAINT by Democratic Party of Wisconsin regarding  
Misuse of Common Audio Alert Signal in Violation of 10 CFR 10.520 by  
Republican Party of Wisconsin and Friends of Justice Daniel Kelly

To whom it may concern:

I represent the Democratic Party of Wisconsin (“DPW”) regarding the above-referenced matter. Please direct all correspondence to my attention.

On Tuesday, April 4, 2023, Wisconsin voters will elect a new state Supreme Court Justice. As has been widely reported, this is the most expensive judicial race in history.<sup>1</sup> While this race is nonpartisan, political parties (including both DPW and the Republican Party of Wisconsin) have endorsed candidates and have communicated with voters through various means, including SMS/text messaging, in support of their endorsed candidates.

At approximately 2:30 p.m. on March 31, 2023, amidst widespread severe weather alerts through much of Wisconsin,<sup>2</sup> the Republican Party of Wisconsin (RPW) transmitted or caused to be transmitted via SMS messaging (from the phone number 608-897-1995) a video with a title placard displaying “\*\*\*EMERGENCY ALERT SYSTEM\*\*\* WISCONSIN VOTER ALERT.”<sup>3</sup> The accompanying text message only stated, “\*\*\*STATE OF WISCONSIN VOTER ALERT\*\*\*Stop=End.” The video was attributed as “Paid for by Republican Party of Wisconsin, Authorized by Friends of Justice Daniel Kelly.” While it is unknown to us how many individuals

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<sup>1</sup> <https://www.wpr.org/wisconsins-supreme-court-race-most-expensive-history-how-money-being-used>

<sup>2</sup> [https://www.weather.gov/lot/2023\\_03\\_31\\_SevereStorms](https://www.weather.gov/lot/2023_03_31_SevereStorms)

<sup>3</sup> The video is attached to the email transmitting this letter, and is included on a Flash drive in the mailed version. A screenshot of how the message appeared to recipients is also attached.

received this message, we believe it was widely disseminated within Wisconsin. This is an attack advertisement on behalf of Candidate Kelly (who the RPW has endorsed) against his opponent, Judge Janet Protasiewicz.

Relevant here, the audio began with a series of tones substantially similar to the Common Audio Alert Signal as defined in 10 CFR § 10.520. Transmittal of such audio is a violation of 10 CFR 10.520(d)(2), which not only prohibits unauthorized use of the Common Audio Alert Signal, but unauthorized use of a “simulation” of such a signal. “Simulation” is defined by the FCC<sup>4</sup> to include “not only recordings of actual EAS codes or EAS or WEA Attention Signals, 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 EAS or WEA Attention Signals.”

In addition, such false use of the EAS codes or EAS or WEA Attention Signals may be considered a “false distress signal,” which is prohibited under 47 U.S. Code § 325. The FCC has broad jurisdiction to investigate and remediate offenses under both of the sections cited above, and has proposed or imposed substantial forfeitures for those violations. See, e.g. Forfeiture Order FCC 15-2 (imposing \$1.3 million in forfeitures on Viacom and ESPN for repeated, willful violations of laws prohibiting misuse of emergency alert terms).

Large portions of Wisconsin were under severe weather alerts, and were watching their phones and other devices for *emergency communications*. This storm, generally, had been deemed a “particularly dangerous situation,”<sup>5</sup> of the highest order risk, and millions in the southern part of Wisconsin were under tornado watches. At least three separate tornados were spotted.<sup>6</sup> On the other hand, portions of northern Wisconsin were under blizzard warnings.<sup>7</sup> Threats were severe and widespread.

Emergency alerts are intended to ensure that those in a storm’s path can stay safe, not to generate attention for a political attack advertisement. Misuse of the alert signal while millions of people were wondering whether they needed to seek shelter to protect their lives is not only highly irresponsible, but illegal. Moreover, such use desensitizes the public to emergency alert signals, and risks a “boy who cried ‘wolf’” scenario in the face of an actual emergency.

We ask that the FCC investigate this unlawful use of a simulated Common Audio Alert Signal and take all appropriate remedial and punitive measures.

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<sup>4</sup> <https://www.fcc.gov/enforcement/areas/misuse-eas-sound>

<sup>5</sup> <https://www.spc.noaa.gov/products/watch/ww0093.html>. A “particularly dangerous situation” involves conditions in which long-lasting, intense tornadoes are “likely.” <https://www.spc.noaa.gov/faq/#2.7>

<sup>6</sup> <https://www.tmj4.com/news/local-news/three-separate-tornados-reported-in-jefferson-and-walworth-counties>

<sup>7</sup> <https://www.mprnews.org/story/2023/03/31/rain-to-snow-by-friday-evening-with-heavy-snow-possible-through-friday-night>

Thank you for your prompt attention to this matter. Please contact me if you require anything further.

Very truly yours,

HALLING & CAYO, S.C.  


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Encl.