

Licensee of Kentucky FM Station Fined \$3,000 for Failing to Register Antenna Structure

The licensee of a Kentucky FM station has been fined \$3,000 for failing to register its antenna structure, in violation of Section 17.4(a)(2) of the FCC Rules. The violation came to the Commission's attention during a routine inspection by the FCC's Chicago Office. The tower should have been registered with the Commission by July 1, 1998.

The licensee offered no defense, merely noting that it had registered its antenna structure following the FCC inspection. Arguing that the violation was not willful, the licensee, through the station's general manager, said that the failure to register the tower "was not a willful act as much as it was an act that fell through the cracks . . . of the engineer that was filing the registration and myself for not checking with him to make sure it was done."

Rejecting the licensee's arguments, the Chief of the Enforcement Bureau noted that the Commission had recently reiterated its longstanding position that "licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors and has consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations."

Licensee of Florida AM Station Fined \$7,000 for Ineffective Tower Fencing

The licensee of a Florida AM station has been fined \$7,000 for failing to effectively fence its antenna structure, in violation of Section 73.49 of the FCC Rules. The violation came to the Commission's attention through complaints regarding the station's operation made to the FCC's Tampa Office.

The licensee admitted the violation, but still sought cancellation of the forfeiture, arguing that it had not willfully violated the FCC Rules, that it had years of

broadcasting experience, and that it was a "small daytime radio station operating out of a very humble mobile home."

Unimpressed with the licensee's arguments, the Chief of the Enforcement Bureau noted that "willful" means the conscious and deliberate commission or omission of an act, irrespective of any intent to violate statutory or regulatory requirements." The Chief also noted that the licensee did not have an unblemished record with the Commission, having been previously cited for EAS violations and violations of the Commission's cleaning and painting requirements for towers. The Chief also ruled that the fact that the station is a small one is an insufficient basis to support reducing or canceling the forfeiture.

Licensee of South Carolina FM Station Fined \$4,000 for Improper Broadcast of Telephone Conversation

The licensee of a South Carolina FM station has been fined \$4,000 for the improper broadcast of a telephone conversation in violation of Section 73.1206 of the FCC Rules. The violation came to the Commission's attention through a written complaint filed by the woman whose conversation was improperly broadcast.

The licensee admitted the violation and offered no defense. The Chief of the Enforcement Bureau restated the Commission's rule regarding the broadcast of telephone conversations, noting that the rule "requires licensees to so notify parties to a telephone call *before* it initiates recordings for simultaneous or later broadcasts." (Emphasis in original.)

Licensee of Arizona Class A TV Station Fined \$12,000 for Main Studio and EAS Rule Violations

The licensee of an Arizona Class A TV station has been fined \$12,000 for violating Section 11.35(a) of

the FCC Rules by failing to have EAS equipment installed and operational and for violating Section 73.1125(c) by failing to have a main studio located within the station's predicted Grade B contour. The original fine of \$15,000 was reduced by the Chief of the Enforcement Bureau after he found that the facts demonstrated the licensee's good faith intention to comply with the Commission's rules. The rule violations came to the FCC's attention as a result of a routine inspection by an agent from the Commission's San Diego office.

In its defense, the licensee argued that it had made good faith efforts to comply with the FCC Rules governing the operation of the station, which it inherited upon the death of the previous licensee. Rejecting the licensee's arguments, the Chief noted that "[the licensee] is now the licensee of [the station] as a result of her husband's death. However, we also note that [the licensee] had two years between the dates of [her husband's] death . . . and the issuance of the *NAL* . . . to become knowledgeable about her responsibilities as a broadcaster. Licensees are expected to know and comply with the Commission's rules."

Licensee of Tennessee AM Station Fined \$7,000 for Violation of Main Studio Rule

The licensee of a Tennessee AM station has been fined \$7,000 for violating Section 73.1125(a) by failing to maintain a staff presence at its main studio during normal business hours. The violation came to the Commission's attention as the result of a routine inspection by an agent from the FCC's Atlanta office.

The FCC agent attempted to gain access to the station's studio to conduct an inspection, but was unable to do so. Several days later, the agent telephoned the station and reached an answering service that confirmed that calls were referred to the service when the station's studio was unmanned. The agent contacted the station's general manager, who confirmed that the station had been unstaffed, and who indicated that he was not familiar with the FCC's studio staffing requirements.

The licensee, which did not file a response to the *Notice of Apparent Liability for Forfeiture* issued by the FCC's Atlanta office, did file a petition for reconsideration of the Enforcement Bureau's subsequent *Forfeiture Order*. In its petition, the licensee did not challenge the finding that it violated the main studio rule, but urged the Commission to cancel the forfeiture since it had instituted full-time main studio staffing during normal business hours and that it was pursuing participation in the Tennessee Association of Broadcasters' Alternative Inspection Program.

Rejecting the licensee's arguments, the Chief of the Enforcement Bureau noted that while the licensee's "corrective actions are commendable, they do not mitigate

its violation. As the Commission stated in *Seavest Yacht Brokers* [citation omitted], 'corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations.'"

Licensee of Tennessee AM Station Fined \$4,000 for Failing to Maintain Authorized Power

The licensee of a Tennessee AM station has been fined \$4,000 for violating Section 73.1745(a) of the FCC Rules by failing to operate at its authorized power level. The violation came to the FCC's attention as the result of routine monitoring of the station's signal by an agent from the Commission's Atlanta office.

On two successive evenings, the agent monitored the station's signal and made field strength measurements that indicated that the station did not reduce power after sunset as it was required to do. The agent later contacted the station's general manager, who told the agent that he was aware of the overpower operation, that the station's transmitter control system was inoperative and that the operator on duty had failed to lower the station's power after sunset.

In its defense, the licensee argued that it was taking steps to correct its noncompliance, including replacing the station's general manager. Rejecting the licensee's arguments, the Chief of the Enforcement Bureau reiterated that corrective action by a licensee does not mitigate prior rule violations.

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