
FCC Enforcement Monitor

by Scott R. Flick and Emily J.H. Daniels

Texas AM Radio Station Assessed \$8,800 Fine for Failure to Maintain a Main Studio and Operation Above Authorized Power Level

The FCC fined a Texas AM radio licensee \$8,800 for failing to maintain a main studio and operating its station at a power level exceeding that specified in its license. In August 2007, in response to a complaint, an Enforcement Bureau agent monitored the station's operations. The agent observed that the station remained at the same power level throughout the day, including after sunset. The agent was unable to locate a main studio for the station in or near the station's community of license. The agent returned later in the month, and again monitored the station's transmissions, finding that the station's power level was still not being reduced after sunset. At that time, the agent contacted the station manager, who indicated that the station had been without a permanent main studio for approximately 60 days and that much of the station's equipment was in the closet of a hair salon. After agents determined that the equipment was not functional, the station manager indicated that a computer in the transmitter building was providing programming for the station. The station's engineer was subsequently contacted about ensuring that the station operated at its proper nighttime power after sunset.

Section 73.1475(a) of the FCC's Rules requires broadcast stations to operate within the modes and power levels specified in their license. Section 73.1350(a) requires that each licensee operate in accordance with the terms of its station authorization. Because the station operated in excess of its licensed nighttime power and failed to maintain a main studio, a fine of \$11,000 was proposed. The licensee requested a reduction in the proposed fine, arguing that a serious illness prevented the owner from properly overseeing station operations. The FCC held that illness should not have been an impediment to applying in advance for a waiver of the FCC's Rules, but then reduced the fine to \$8,800 without explanation.

FCC Fines Arizona Radio Station \$6,400 for Emergency Alert System Violation

The licensee of an Arizona radio station was fined \$6,400 for failing to maintain operational Emergency Alert System ("EAS") equipment. In August 2006, local Enforcement Bureau agents conducted an inspection of the station's main studio. The agents found that the station's EAS equipment was not operating properly. A review of the station's EAS logs indicated that from November 2005 through August 2006, the station did not receive or retransmit the required monthly EAS tests. No entries were made by station staff in the EAS log to identify the causes of these failures or the steps taken to remedy them. The station engineer acknowledged that the equipment may have been experiencing technical problems. Later that month, the station engineer advised the agent that the licensee would be replacing the EAS equipment. In

December 2006, a fine of \$8,000 was proposed for the EAS violations. The licensee requested a reduction in the fine based upon the substantial rebuilding costs and lost revenue faced by the station after the destruction of two of the station's four towers in 2003 due to high winds. Because the proposed fine would not have exceeded two percent of the licensee's average gross revenues for the past three years, it was not reduced based upon financial hardship. Likewise, the FCC was unmoved by the subsequent purchase of new EAS equipment, as there was no evidence that the purchase of new EAS equipment was initiated prior to the August 2006 inspection. Based on the licensee's history of compliance with FCC rules, however, the fine was reduced from \$8,000 to \$6,400.

FCC Proposes Fine of \$10,000 to Hawaii Radio Station for Violating Radio Frequency Radiation Limits

The FCC recently proposed a \$10,000 fine for the failure of a radio station in Hawaii to comply with radio frequency radiation ("RFR") maximum permissible exposure ("MPE") limits. Section 1.1310 of the FCC's Rules defines the MPE limits for transmitters operating on towers at frequencies from 300 kHz to 100 GHz. These MPE limits include limits for "occupational/controlled" exposure, and limits for "general populations/uncontrolled" exposure. The occupational exposure limits apply in situations where workers are exposed as a consequence of their employment, so long as they are made fully aware of the potential for exposure and can exercise control over their exposure. The occupational exposure limits also apply in situations where individuals pass through a high RFR location if they are made aware of the potential exposure. The general population or public exposure limits are more stringent, applying when the general public may be exposed or where persons exposed as a consequence of their employment are not fully aware of the potential for exposure. Licensees can comply with these rules by restricting public access in areas where RFR exceeds the public MPE limits.

In the station's most recent application for renewal of its license, the licensee stated that "[p]recautions and procedures have been formulated to deal with workers involved in tower and antenna maintenance.... The site is isolated and remote, and not generally accessible by the general public.... A secure fence further restricts access to areas above the public and occup[at]ional limits." In April 2008, local Enforcement Bureau agents conducted an inspection of the station's transmitter site, finding that both public and occupational RFR MPE levels were exceeded throughout the area and far beyond the fence surrounding the site. In May 2008, a follow-up inspection confirmed that RFR MPE levels were still being exceeded. In addition, while the fence surrounding the transmitter site restricted vehicular access, the agents noted that pedestrian access was unrestricted and that there were private residences located beyond the locked gate. Because the transmitter site was located on a ranch and near an arboretum, the FCC was concerned that numerous visitors may have been exposed without their knowledge. As a result, and given the continuing nature of the violation, a fine of \$10,000 was proposed.

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