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Special Advisory to Broadcasters  
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## Communications Broadcast Advisory

### FCC Enforcement Monitor

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#### **FCC Upholds Fines Assessed Against Broadcasters for Violating Radio Frequency Radiation Maximum Permissible Exposure Limits**

The FCC recently upheld \$10,000 fines assessed against four broadcast stations, in two separate stations, for violations of the Commission's radio frequency radiation ("RFR") maximum permissible exposure ("MPE") limits. The FCC's rules place two types of limits on the electric and magnetic field strength and power density that may be emitted by broadcast facilities: (i) occupational exposure limits, which apply with respect to employees and contractors who knowingly expose themselves to RFR for short periods of time; and (ii) public exposure limits, which are more stringent, and which apply with respect to employees and contractors who may unknowingly expose themselves to RFR, as well as members of the general public.

The first case involved an antenna farm located in California and used by three broadcast stations. In July 2002, Enforcement Bureau agents found that the antenna farm lacked proper fencing, gates, and warning signs. In addition, field measurements revealed that RFR levels in the area exceeded MPE limits by over 50%. A subsequent inspection found that while additional fencing and warning signs had been installed, the antenna farm's gate was standing open, allowing public entry. In light of these violations, the Bureau fined each station \$10,000.

Before the full Commission, the stations argued that the fines should be reduced or rescinded because (i) the federal government owned the land on which the antenna farm was located, and as such should have engaged in a collaborative effort with the stations to reduce RFR emissions; and (ii) the tests and equipment used by the Bureau to measure RFR are uncertain and unreliable. The Commission rejected the stations' first argument, noting that "responsibilities pertaining to RF electromagnetic fields properly belong with ... licensees and applicants, rather than with site owners." The Commission also reiterated "that it is the responsibility of the licensees on the site to engage in a collaborative approach to ensure that the public is not able to access areas which could exceed the public MPE limits." The Commission then rejected the stations' second argument, noting that "agents utilized FCC-owned, calibrated RF meters" and that "manufacturer-specified deviations, i.e., uncertainty factors, were applied to the measurements." Accordingly, the Commission upheld the \$10,000 fines.

The second case involved Nevada radio station. In November 2001, Enforcement Bureau agents inspected the station's antenna site and determined that RFR emissions exceeded the Commission's MPE limits. The agents determined that the MPE limits for the general public – rather than the less-restrictive occupational exposure limits – were applicable because the site was easily accessible to 4-wheel drive vehicles from a public gravel road, because all terrain vehicles were seen on the property, and because there was trash indicating public use of the site. Accordingly, the Bureau fined the station \$10,000.

Before the full Commission, the station sought cancellation of the fine, alleging that there was “only circumstantial evidence” of public use of the site. The Commission rejected this argument, finding that the licensee had “not presented any evidence which contradicts the FCC agents' observations.” Further, the Commission noted that even if it assumed that the site was so remote that no fencing was required, the station would still be required “to ensure that the RFR warning signs are plainly visible to the public from every possible direction that the public may access the area of concern.” However, the station posted signs only on the front of the site, “where they would not be seen by persons approaching the area affected by excessive RFR from a different direction.” Accordingly, the Commission upheld the \$10,000 fine.

### **FCC Fines Kentucky Radio Station for Violating the Commission's Antenna Structure, Public Inspection File, and Emergency Alert System Rules**

The FCC recently fined a Kentucky radio station \$5,000 for violating the Commission's rules regarding antenna structure registration and public inspection file maintenance. In September and December 2003, an Enforcement Bureau agent inspected the station and found that the station: (i) monitored only one Emergency Alert System source; (ii) failed to include a recent ownership report in the public inspection file; (iii) failed to include a copy of “The Public and Broadcasting” in the public inspection file; and (iv) failed to include complete copies of all of its quarterly issues/programs list in the public inspection file. In July 2004, a follow-up investigation found that the station's tower had not been properly registered with the Federal Aviation Administration, and that no Antenna Structure Registration number was posted on the station's tower. The investigation also found that the station's public inspection file did not contain a service contour map or issues/programs lists.

In light of these violations, the Bureau proposed a fine of \$5,000. In response, the station did not dispute that the violations had occurred, but requested a cancellation or reduction of the forfeiture based on the station's purported inability to pay. The Bureau rejected this argument after reviewing the station's financial records and upheld the fine. In doing so, the Bureau noted that “an entity's gross revenues are the best indicator of its ability to pay a forfeiture” and found that the station's gross revenues were sufficient to sustain the fine.

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