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FCC Fines Radio Station \$4,200 for Lack of Effective Tower Fences

The FCC recently fined an Idaho radio station licensee for failing to maintain effective locked barriers around two antenna towers. In August 2006, an Enforcement Bureau agent visited the site and found sections of the fencing surrounding two of the three towers destroyed. While the parcel of land on which all three towers were located was protected by a separate barbed wire perimeter fence, the agent noted that the front gate of that fence was open.

In responding to the resulting Notice of Apparent Liability, the station claimed that since its chief engineer's last inspection of the site, thieves had apparently removed the padlock from the perimeter fence in order to access an adjacent auto wrecking yard to steal car parts. This third party destruction, the station argued, proved that there was no willful intent to violate Commission rules. The FCC rejected the licensee's defense, finding that whether or not the violations were willful, they were repeated, and were therefore sufficient grounds for the proposed fine. The station had argued that the violation could not be deemed "repeated" solely because there were two towers on the same site, and that in order for a violation to be deemed "repeated", there must be a violation that spans multiple days. The FCC rejected this argument, finding that because both the perimeter and individual tower fences were damaged and ineffective, the violation was repeated. Accordingly, the station was fined \$7,000. Due to good faith efforts that had been made to repair the fences and a history of compliance with the Commission's rules, the fine was reduced to \$4,200.

FCC Fines Television Station After Discovering Deserted Main Studio

A television licensee in Hawaii was recently fined \$5,600 for violating the Commission's main studio rule. The main studio rule requires a broadcast station to maintain a local main studio that is open to the public during regular business hours and which is meaningfully staffed on a full-time basis. Agents from the Enforcement Bureau repeatedly attempted to contact and visit the station's main studio in 2006 for a routine inspection. The studio had no telephone or address listing, and phone calls to the licensee reached only an answering machine. Upon locating the studio, the agents encountered two locked gates, an additional six-foot high locked chain-link fence with a sign warning the public not to enter, and a locked door to the transmitter

building. The building itself had no staff, windows, restrooms, telephone lines, or running water. There was a handwritten, undated sign on the door stating, "Be back in one hour."

A fine of \$7,000 was proposed for the violation. The licensee objected, arguing that it would have financial difficulty in paying the fine, that it had made good faith efforts to comply with the Commission's rules, that it had a history of compliance with the Commission's rules, and that it did in fact have a main studio, though it was not accessible to the public. Reducing the fine from \$7,000 to \$5,600 based on the licensee's history of compliance with the Commission's rules, the FCC rejected all of the licensee's remaining arguments.

FCC Fines Radio Station for Airing Prank Phone Call

The FCC recently fined a New York radio station \$3,000 for airing a telephone conversation without first obtaining the other party's consent. In 2002, following Adelphia Communications' bankruptcy filing, a disc jockey called the cable company posing as a customer. The DJ aired her conversation with a customer service representative without first informing the representative of her intention to do so. The DJ asked the representative if the company was truly bankrupt, is she still had to pay her cable bill, and if she could bootleg cable.

The station quickly suspended the DJ without pay, and reiterated to all on-air personnel that broadcasting telephone conversations without permission is forbidden. In spite of these measures, the FCC imposed a \$4,000 fine on the station. The licensee asked for a reduction or elimination of the fine due to its good faith efforts to comply with the rule through both its written policy prohibiting the airing of telephone conversations without consent, and its prompt actions immediately after the incident. The FCC agreed that the licensee's prompt attempt at corrective measures was laudable, but found that they did not cure the customer service representative's invasion of privacy. Accordingly, the fine was reduced from the base fine of \$4,000 to \$3,000.

FCC Officially Increases Maximum Fine for Indecency and Profanity

On May 17, 2007, the FCC implemented the previously announced increase in the maximum fine for airing indecent or profane material at times when children may be in the audience. The Broadcast Decency Enforcement Act of 2005, which was enacted in 2006, increased the maximum permitted fine for stations violating the Commission's restrictions on airing indecency and profanity. Prior to this increase, the maximum penalty was \$32,500 for each violation or each day of a continued violation, not to exceed \$325,000. The new maximum fine is \$325,000 for a single violation, up to a total of \$3,000,000 for a continuing violation.

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