

### Quarterly FCC Report on Consumer Complaints Shows Third Consecutive Increase in Complaints Regarding Broadcasters and 5,500 Percent Increase in Indecency and Obscenity Complaints

The FCC's recently issued report on inquiries and complaints for the third quarter of 2003 shows a substantial increase in the number of complaints against broadcasters for the third consecutive quarter. Complaints against broadcasters rose from 439 in the first quarter of 2003 to 724 during the second quarter, to an incredible 20,103 in the third quarter. The complaints were spread fairly evenly through the three-month period, with 5,617 received in July, 8,932 in August, and 5,554 in September. In addition, when compared with the fourth quarter 2002 total of 253, the increase looms even larger. "Programming-General Criticism" complaints were down for the second consecutive quarter, however, from 111 in the first quarter to 75 for the second quarter to 67 for the months of July, August and September.

The number of consumer complaints to the FCC regarding "Programming-Indecency/Obscenity" rose dramatically from the first quarter total of 144, to the second quarter total of 351, to a staggering 19,920 for the third quarter, an increase of over 5,500 percent. Along with that increase, the Commission last month levied two of the largest fines for the broadcast of indecent material in recent years.

As we reported in the September **FCC Enforcement Monitor**, a number of advocacy groups, including the Parents Television Council, the Christian Coalition, Morality in Media, the Family Research Council and the Salvation Army are pressing for tougher enforcement action from the FCC, as well as for new laws from Congress to punish violators. Commissioner Michael Copps has continued in recent months to decry the FCC's enforcement record with regard to indecency, and has given those advocacy groups a sympathetic ear.

As we have noted previously, this increased scrutiny, coming as the license renewal cycle is well

underway for radio and is about to begin for television, should motivate broadcasters to be particularly cautious regarding programming decisions. Station management and on-air talent should confer to ensure that broadcasts do not cross the indecency line and result in a petition to deny the station's license renewal application. Clear, consistent application of the Commission's indecency standard by station staff is critical to avoiding fines.

### Licensee of Pennsylvania AM Station Fined \$15,000 for Tower Rule Violations

The licensee of a Pennsylvania AM station has been fined \$15,000 for violating Sections 17.4(g), 17.48(a) and 17.50 of the FCC Rules, for failing to post the Antenna Structure Registration (ASRs) numbers at the base of the antenna structures, failing to notify the Federal Aviation Administration that obstruction lighting was not working properly, and failing to properly repaint the antenna structures. The violations were discovered during a routine FCC inspection of the tower site.

In its response to the *Notice of Violation* issued by the FCC's Philadelphia office, the licensee admitted the violations, and stated that it had posted the ASR numbers and that it would repaint the antenna structures within 60 days. Six months later, an FCC agent inspected the site again, and found that the ASR numbers were not posted and that no repainting had occurred. The agent also noticed that one of the tower obstruction lights was out.

The field office issued a second *Notice of Violation*, to which the licensee responded quite similarly to its first response. The field office later issued the *Notice of Apparent Liability for Forfeiture (NAL)*. Responding to the *NAL*, the licensee argued that it had acquired the station licenses only a month prior to the first inspection, that the ASR numbers were posted but faded, that it had terminated the station general manager, and that it was attempting to comply with all FCC rules. The station requested reconsideration of the fine amount, and stated that it was "financially struggling."

Dismissing the licensee's defenses, the Chief of the Enforcement Bureau noted that even though the licensee had acquired the stations only shortly before the first inspection, "it was responsible for ensuring compliance with our rules once it acquired the licenses." The Chief also dismissed the request for reconsideration of the fine amount since the licensee did not submit any financial documentation supporting its claim of inability to pay. The Chief also noted that "remedial efforts to correct the violation, while commendable, are not a mitigating factor."

### **FCC Issues What It Says Is the First Fine for Violating the Radiofrequency Radiation Exposure Limits**

The FCC recently issued what it says is the first fine for violating the radiofrequency radiation (RFR) exposure limits found in Section 1.1310 of the FCC Rules. The \$28,000 fine, assessed against a New Mexico FM station, was also issued for violation of three other FCC Rules: Section 11.35, failing to have EAS equipment installed and operating; Section 73.1125, failing to maintain a main studio; and Section 73.1400, failing to have adequate transmission system control.

The portion of the fine that the Commission attributed to the RFR violation was \$10,000. The rule violations came to the Commission's attention through a complaint filed with its Denver field office.

The station's license contained specific conditions regarding the RFR limits since the antenna was to be side-mounted on a U.S. Forest Service fire lookout tower. Upon inspecting the site and taking measurements of the RFR while the station was operating at 40% power, the FCC agents determined that the RFR exposure generated exceeded the limits by as much as 1500 percent. The licensee offered no defense.

### **Former Licensee of Massachusetts AM Station Fined \$22,400 for Broadcast of Indecent Material**

The former licensee of a Massachusetts AM station has been fined \$22,400 for the broadcast of indecent material in violation of Section 73.3999 of the FCC Rules. The violations came to the attention of the FCC through a complaint accompanied by audiotapes of broadcasts by the station.

Responding to the FCC's Letter of Inquiry, the former licensee questioned whether the material was broadcast on the station, indicating that the employees who were responsible for programming at that time are no longer with the station, and tapes of the broadcasts do not exist. The former licensee also questioned whether the translations of the Spanish-language material were accurate.

After receiving copies of the audiotapes from the FCC, the former licensee conceded that the translations were accurate, but still maintained that it could not be determined for certain that the material had been broadcast by the station. The former licensee asserted that even if the material was broadcast, it is not patently offensive, and thus not actionably indecent. The former licensee also argued that: (a) "four of the six passages are jokes told by callers to the on air show," (b) "that the employees at the time of the alleged broadcasts have been dismissed," (c) "that the replacement employees were instructed regarding the Commission's rules concerning broadcast of indecent programming," and (d) "that he has a good record of compliance with the indecency rule throughout 20 years of operation of [an FM station still owned by the former licensee]."

Dismissing all of the former licensee's arguments, the Chief of the Enforcement Bureau noted that "the jokes were broadcast as a regular feature of the morning show on [the station]. We find that the station was promoting the airing of jokes of this type. Indeed, some of the jokes originated from the radio station staff. . . . As a Commission licensee, [the former licensee] is responsible for assuring that the programming broadcast on his stations does not violate the Commission's rules. In this case, the indecent programming was more than an isolated incident." The Chief did reduce the normal forfeiture amount for the four violations, \$28,000, in light of the former licensee's history of overall compliance with the FCC Rules.

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