

### Licensee of Detroit FM Station Hit with Maximum Fine of \$27,500 for Broadcast of Indecent Material

The licensee of a Detroit FM station was hit recently with the maximum fine of \$27,500 for a single broadcast of indecent material, confirming the tougher enforcement that the FCC is adopting toward violators generally, and specifically toward those who broadcast indecent material. The broadcast came to the Commission's attention through a complaint filed against the station.

The material was broadcast in one thirty-minute segment at 4:30 p.m., and consisted of nine separate callers to the radio station discussing various sexual practices: "There were separate discussions with nine individuals who called the show to talk about sexual activities. Callers and the show's hosts described in detail how specifically named sexual acts are performed. The broadcast included explicit and graphic sexual references, including references to oral and anal sex, as well as explicit and graphic references to sexual practices that involve excretory activities."

The licensee never disputed that it broadcast the material in question, nor did it disagree that the material met the requisite legal definition of indecency; rather, the licensee argued that the FCC's indecency definition is unconstitutional under the First Amendment, a contention dismissed out-of-hand in the Commission's *Forfeiture Order*.

We believe that this case is significant because it shows an increasingly concerned FCC invoking higher fines with more Commissioners apparently joining the anti-indecency crusade of Commissioner Michael Copps. A striking example is the separate statement in this case of Commissioner Kevin Martin, a Republican who has frequently been on the opposite side of votes from Democrat Michael Copps: "I am disappointed with today's decision. . . . I believe each of these 9 calls could be separate 'utterances' or 'material' for purposes of the statute and our rules. Because of the extremely graphic, lewd and offensive nature of this broadcast, I

would have applied the statutory maximum fine for each call, for a total of \$247,500." FCC Chairman Michael Powell, in his separate statement, said that the "blatant broadcasting of filth of this extreme nature has no place on our nation's airwaves. Broadcasters should take this latest action as yet another sign that the Commission will continue to rigorously enforce our indecency regulations." The vote to impose the forfeiture was 4 to 1, with Commissioner Copps dissenting. Commissioner Copps would have designated the licensee for a license revocation hearing rather than a fine.

### Media Bureau Denies Informal Objection Filed by Advocacy Group Against License Renewal Applications of 63 Commonly Owned Radio Stations

The Chief of the Audio Division of the FCC's Media Bureau recently denied an informal objection filed against the license renewal applications of 63 commonly owned radio stations. The advocacy group had asserted that 36 violations of various federal and state laws over a three-year period rendered the owner unfit to hold Commission licenses. The informal objection was filed only seven days before the stations' licenses were due to expire. We reported on the filing of the informal objection in the September 2003 issue of **FCC Enforcement Monitor**.

In his letter denying the informal objection, the Chief noted that the informal objection "cites and documents 36 instances of what it terms 'unacceptable activities' for which [the parent of the licensee] has been 'penalized.' Only one relates to a station against whose renewal application the Objection is directed." The Chief's letter noted that the informal objection argued that "these occurrences demonstrate that [the parent company] is a 'recidivist violator, proving its poor character and that it remains unfit to hold any broadcast license.' Additionally, [the objector] indicates that this 'pattern of violations over a three-year period show the company cannot be trusted to operate honestly or comply with the [Communications] Act or the Commission's rules or policies.'"

The Chief's letter cited Section 309(k) of the Communications Act, which sets the statutory standards for renewal of FCC licenses, noting that the statute directs the FCC to consider the standards "with respect to that station" that is seeking renewal. "Our evaluation of the 63 license renewal applications here thus is confined by statute to consideration of the operation of each individual station. Accordingly, allegations of [parent company] misconduct at other stations are not relevant for consideration here." The letter goes on to note that only one of the occurrences cited in the informal objection relates to one of the 63 stations, and finds that the informal objection neither established a "serious violation" of the Communications Act, nor evidence of a pattern of abuse. The letter concluded by noting that the license renewal applications will be acted upon in due course.

### **Puerto Rico AM Station Fined \$10,000 for Failing to Light Tower Properly**

The licensee of a Puerto Rico AM station has been fined \$10,000 for failing to light its antenna structure properly, in violation of Section 17.51 of the FCC Rules. The violation came to the Commission's attention through a routine station inspection.

In its defense, the licensee alleged "that the antenna structure light outage resulted from 'unwillful negligence' in that its staff disregarded instructions for monitoring the antenna structure's lighting. Its employees's competence, [the licensee] continues, was a function of its poor financial status."

Rejecting the licensee's argument, the Chief of the Enforcement Bureau noted that the Commission "has long held licensees responsible for their employees's actions. Thus, we reject [the licensee's] attempt to distance itself from its employees's performance of their duties (or lack thereof)."

### **Nevada FM Station Fined \$10,000 for Violating Radiofrequency Radiation Exposure Limits**

The licensee of a Nevada FM station has been fined \$10,000 for violating the radiofrequency radiation (RFR) maximum permissible exposure (MPE) limits found in Section 1.1310 of the FCC Rules. The violation came to the Commission's attention after a routine inspection of an antenna farm.

The inspection of the publicly accessible areas of the antenna farm, and RFR measurements taken by FCC agents, showed that the MPE limits adopted by the FCC in 1996 were exceeded by 42%. Further measurements, taken when some of the other 12 stations located at the

antenna farm were powered down, revealed that the subject licensee was contributing over 94% of the RFR overexposure at the site.

In its defense, the licensee argued that the site was not actually publicly accessible, and that the site should therefore not be held to the MPE standard applicable to publicly accessible areas. Rejecting this claim, the Chief of the Enforcement Bureau said that "we find that ample evidence exists that the site was publicly accessible and was in fact used by the public, including agent observations of the public driving ATVs at the site, a publicly accessible, commercially used road leading to the site, ungated and unfenced dirt paths to the tower locations, off-road ATV trails, ATV tire tracks, campfire rings, beer and wine bottles, and other trash at the site. We find that this evidence supports a conclusion that the areas were and could reasonably be expected to be used by the public."

## **ShawPittman LLP**

### **Editors:**

**Scott R. Flick, Esq.  
Lauren Lynch Flick, Esq.**

### **Assistant Editor:**

**Paul A. Cicelski, Esq.**

### **Managing Editor and Principal Writer:**

**Ricky A. Pursley**

**FCC Enforcement Monitor** is published by the Communications Practice Group of the law firm of Shaw Pittman LLP, 2300 N Street, NW, Washington, DC 20037-1128, telephone 202.663.8000, facsimile 202.663.8007, website [www.shawpittman.com](http://www.shawpittman.com). **FCC Enforcement Monitor** is a service to the Group's clients and friends, and is intended to provide general information only. The contents should not be construed as legal or business advice. Legal and business advice should always be obtained for specific facts and circumstances as the need arises. For more information on any of the subjects discussed in **FCC Enforcement Monitor**, please contact the Editors or any of the other lawyers in the Communications Practice Group. Copyright © 2003, Shaw Pittman LLP. All rights reserved. rap12192003 1368619

We extend our sincere wishes for a happy holiday season and a prosperous new year to all our clients and friends.