
FCC Enforcement Monitor

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Headlines:

- *Delay in Providing Access to Public Inspection File Leads to Fine*
 - *FCC Fines Broadcaster for Antenna Tower Fencing, EAS and Public Inspection File Violations*
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Radio Station Fined \$10,000 for Not Providing Immediate Access to Public File

This month, the Enforcement Bureau of the FCC issued a Notice of Apparent Liability for Forfeiture and Order (“NAL”) in the amount of \$10,000 against a Texas noncommercial broadcaster for failing to promptly make its public inspection file available. For the delay of a few hours, the Commission proposed a fine of \$10,000 and reminded the licensee that stations must make their public inspection file available for inspection at any time during regular business hours and that a simple request to review the public file is all it takes to mandate access.

According to the NAL, an individual from a competitor arrived at the station at approximately 10:45 a.m. and asked to review the station public inspection file. Station personnel informed the individual that the General Manager could give him access to the public files, but that the General Manager would not arrive at the station until “after noon.” The individual returned to the studio at 12:30 p.m.; however, the General Manager had still not arrived at the studio. According to the visiting individual, the receptionist repeatedly asked him if he “was with the FCC.” Ultimately, the receptionist was able to reach the General Manager by phone, and the parties do not dispute that at that time, the individual asked to see the public file. During that call, the General Manager told the receptionist to give the visitor access to the file. According to the visitor, when the General Manager finally arrived, he too asked if the individual was from the FCC, and then proceeded to monitor the individual’s review of the public file.

After the station visit, the competitor filed a Complaint with the FCC alleging that the station’s public file was incomplete and that the station improperly denied access to the public inspection file. The FCC then issued a Letter of Inquiry to the station, requesting that the station respond to the allegations and to provide additional information. The station denied that any items were missing from the public file and also denied that it failed to provide access to the file.

Section 73.3527 of the FCC’s Rules requires that noncommercial stations make their public inspection file available at any time during normal business hours. In issuing the NAL, the Enforcement Bureau found

that the station violated FCC rules and precedent, which prohibit a station from requiring visitors to make an appointment or return at a later time to inspect a station's public inspection file. In this case, delaying the inspection for a few hours was sufficient to trigger the violation. The Enforcement Bureau noted that even though the station provided the visiting individual access to the public inspection file later in the day, that was insufficient to overcome the station's failure to provide access to the file when the individual arrived in the morning.

The Enforcement Bureau also noted that while stations may ask visitors seeking access to the station public inspection file for personal identification for security reasons, they cannot ask the visiting individual why they want to see the file and may not inquire as to the identity of the organization the visitor represents. According to the NAL, the station must provide immediate access to the public inspection file during regular business hours, with no questions asked about why the individual is requesting access to the file.

In reaching its decision to assess a fine of \$10,000, the Enforcement Bureau did not make a decision as to whether the station public file was complete. Instead, it assessed the base forfeiture amount for a public inspection file violation (\$10,000) solely based upon the station's failure to provide immediate access to the public file. The NAL illustrates once again the importance the FCC places on stations providing immediate and unfettered access to their public inspection file when a visitor arrives at the front door.

Licensee of AM Station Cannot Evade \$25,000 Fine

This month, the Director of the FCC Enforcement Bureau's Atlanta Office issued an NAL in the amount of \$25,000 to the licensee of an AM station in South Carolina for failing to maintain a locked fence around the base of its antenna tower, failing to install operational Emergency Alert System ("EAS") equipment, and for failing to maintain and make available a complete public inspection file.

The licensee's troubles began during a July 2011 inspection by agents from the Enforcement Bureau. First, the agents inspected the tower at the transmitter site and discovered that a portion of the fence surrounding it had collapsed and was overgrown with weeds, indicating the fence had been broken for some time. Section 73.49 of the FCC's Rules require that towers be enclosed within "effective locked fences or other enclosures" and such fences may not be in a state of disrepair for more than one day. The agents did not find a perimeter fence around the property either, allowing anyone to walk right up to the base of the tower.

Next, the agents inspected the station's main studio. At the time, the only personnel present were staff of the entity operating the station pursuant to a local marketing agreement ("LMA"). The agents found that there were no EAS logs or equipment located at the main studio. Section 11.35 of the FCC's Rules requires that broadcast stations ensure that all EAS equipment, encoders, and decoders are properly installed and fully operational, are capable of transmitting the required weekly and monthly EAS tests, and that stations maintain a log of such tests. The agents also inspected the transmitter site and discovered that the station's EAS encoder/decoder was not connected to any receivers or to the transmitter. The agents returned to the site the next day with an engineer, who confirmed that the encoder/decoder was not connected to the transmitter or the receiver. Thus, although the encoder/decoder was itself operational, it could not broadcast a test over the air. When asked about the EAS equipment, the LMA operator indicated that she was unaware of the FCC's requirements to maintain operational EAS equipment and a log of the weekly and monthly tests performed, and she had never observed any EAS activity during her five years at the station.

Additionally, the agents found that the station's public inspection file was incomplete—it lacked all of the required quarterly issues/programs lists, ownership reports, manuals, and a copy of the LMA under which the station is operated. Again, the LMA operator indicated that she was unfamiliar with the public inspection file and did not know if the requisite documents had ever been placed in the file. The agents then contacted the licensee of the station, who also denied knowledge of the public inspection file requirements and who stated that the LMA operator was in fact responsible for the file.

Following the inspection, the Enforcement Bureau issued a Letter of Inquiry to the licensee. The licensee submitted a response, again asserting ignorance of many of the FCC's requirements. He believed that some of the documents in the public inspection file were located at the transmitter site and that the LMA operator was responsible for the file. He also claimed that "an act of vandalism" had occurred at the transmitter site one week prior to the FCC's inspection and that was when the EAS equipment became disconnected, the EAS logs disappeared, and the fence was broken.

The Enforcement Bureau did not accept the licensee's defenses, however. In the NAL, it noted that, given that the fence was overgrown, it was unlikely it had been destroyed during the recent "act of vandalism." The Bureau also found that the station had violated the FCC's EAS rules because the EAS equipment was unable to receive or send EAS tests over the air. Finally, it determined that the public inspection file produced by the station was missing all issues/programs lists, ownership reports, a copy of the LMA contract, and a current version of the Public and Broadcasting -- all violations of the public inspection file rule.

Despite the Enforcement Bureau's skepticism towards the licensee, it decided not to increase the base fine amounts, and issued a forfeiture of \$7,000 for the tower fencing violations, \$8,000 for not having properly installed and operational EAS equipment, and \$10,000 for the incomplete public inspection file.

If you have any questions about the content of this Advisory, please contact the Pillsbury attorney with whom you regularly work, or the authors of this Advisory.

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