
FCC Enforcement Monitor

by Scott R. Flick and Christine A. Reilly

Headlines:

- *FCC Fines FM Broadcaster for Excessive Power and RF Radiation Levels*
 - *Forfeiture More Than Triples After Consent Decree Default*
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Missing Fence Yields \$10,000 Fine for Utah FM Broadcaster

During a routine inspection in April 2010, Denver field agents cited a Utah FM broadcaster for excess radio frequency radiation (“RFR”) exposure and failure to operate the station as authorized by the FCC. The citations resulted in a combined \$14,000 fine.

According to the Notice of Apparent Liability (“NAL”), the station and its antenna tower were located at the top of a hill easily accessible by foot and all terrain vehicles. The station and tower were enclosed by a chain link fence, but access from the base of the hill to the station’s fence was unobstructed. The field agents visited the station on two separate occasions and determined that the station was exceeding permitted RFR exposure levels, with actual RFR ranging from 165 to 315% of the legally acceptable levels at distances between 12 and 28 feet outside the chain link fence. At the time of the inspection, Denver field agents did not observe any posted RFR warning signs on or near the site. Failure to maintain acceptable levels of public RFR exposure is a direct violation of Section 1.1310 of the FCC’s Rules, which mandates that broadcasters comply with the RFR exposure limits established by the National Council on Radiation Protection and Measurements as outlined in the tables provided in the FCC’s Rules.

In addition, the Denver field agents confirmed on one occasion that the station was operating at 156% of its authorized power in direct violation of Section 73.1560(b) of the FCC’s Rules. Section 73.1560(b) requires FM broadcasters to maintain a power level between 90% and 105% of their authorized power level.

According to the NAL, the broadcaster had disclosed that it was aware of the station’s excess RFR in its 2005 license renewal application. That application indicated that, at the time the renewal application was filed, an outer perimeter fence had been installed and RFR warning signs posted to protect the public from excess RFR. The NAL did not provide any details regarding the subsequent removal of the fence described in the broadcaster’s license renewal application.

The base fines for violations of Sections 1.1310 (RFR exposure limits) and 73.1560 (operation at excessive power levels) are \$10,000 and \$4,000 respectively, leading to the combined \$14,000 fine.

AM Broadcaster's Broken Promise Warrants \$17,000 Upward Adjustment in Fine

An AM broadcaster located in Puerto Rico received an upwardly adjusted \$25,000 penalty after defaulting on a 2008 Consent Decree with the FCC. According to the Consent Decree, in 2005.

a resident agent of the San Juan Office issued a NAL in the amount of \$15,000 to [the licensee]. The [licensee] filed a response to the NAL, but the Bureau found no basis upon which to reduce the proposed forfeiture and issued the Forfeiture Order. The [licensee] filed a petition for reconsideration of the Forfeiture Order, regarding the fencing violation. On February 1, 2007, the Bureau released the MO&O granting in part and denying in part the [licensee's] petition for reconsideration and reducing the forfeiture to \$14,000 based on the [licensee's] good faith efforts to comply with Section 73.49 of the Rules. The [licensee] filed an application for review of the MO&O, requesting that the fencing violation be cancelled.

In 2008, the licensee entered into a Consent Decree with the FCC. The May 2011 NAL states that the Consent Decree terminated the FCC's 2005 enforcement investigation of alleged violations of Sections 73.49, 73.1350(a) and 73.3526 of the FCC's Rules.

Section 73.49 of the FCC's Rules requires broadcasters to enclose certain RFR emitting antennas within a locked fence or other enclosure, Section 73.1350(a) requires that a licensee operate its station in accordance with the terms of the station's license, and Section 73.3526 requires that stations maintain and provide public access to their public inspection file.

The Consent Decree required the broadcaster to, among other things, make an \$8,000 voluntary contribution to the U.S. Treasury, correct the underlying fencing, operating and public inspection file violations, and provide status reports to the FCC at three months, 12 months, and 24 months following the effective date of the Consent Decree.

The 2011 NAL stated that as of May 10, 2011, the AM broadcaster had not made the voluntary contribution or submitted any compliance reports.

The FCC indicated that the "absence of a specific rule violation from the list of established forfeiture base amounts should not signal that the FCC considers any unlisted violation as nonexistent or unimportant ...and that it retains discretion to issue forfeitures on a case-by-case basis, irrespective of whether it has established a corresponding base forfeiture amount." The FCC further stated that, "a consent decree violation, like misrepresentation, is particularly serious." As a result, the NAL assessed an "upgraded" \$25,000 forfeiture against the licensee.

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

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