
FCC Enforcement Monitor

by Scott R. Flick and Christine A. Reilly

Headlines:

- *FCC Fines FM Broadcaster an Extra \$5,000 For Inaction*
 - *Inaccurate Tower Ownership Information Ends in \$3,000 Fine*
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Failure to Heed an FCC Warning Regarding Public Inspection File Violations Results in \$15,000 Fine

Following a routine inspection in April 2010, the Enforcement Bureau's Pennsylvania Field Office issued a Letter of Inquiry ("LOI") regarding the contents of a Pennsylvania FM station's public inspection file. According to a recently released Notice of Apparent Liability ("NAL"), all of the station's issues/programs lists for the current license term, a total of 15 quarters, were unaccounted for in the station's public inspection file at the time of the inspection. Section 73.3526(e)(12) of the FCC's Rules requires broadcasters to place in their public inspection file each quarter a list of programs that have provided the station's most significant treatment of community issues. The base forfeiture for violations of Section 73.3526 is \$10,000.

In its response to the LOI, the FM broadcaster admitted that the quarterly issues/programs lists were unavailable on the day of the inspection. The FM broadcaster indicated that it was evident "a person or persons had gone through the file and that some of the items had been removed" and was "committed" to bringing the station's public inspection file into compliance.

Agents in the Pennsylvania Field Office returned to the station for a follow up inspection in February 2011. According to the NAL, the station's public inspection file had not been updated as promised. The file contained a single issues/programs list covering the third quarter of 2010. Consequently, the public inspection file was missing a total of 17 quarters of issues/programs lists at the time of the second inspection. In response to a second LOI from the FCC, the FM broadcaster stated that the "missing lists had been moved to storage" and that "many of the files in storage were lost or damaged when part of the roof collapsed..." In response, the FCC increased the \$10,000 base fine by an additional \$5,000 (for a \$15,000 total) due to the FM broadcaster's "failure to correct the violation after the first inspection in 2010."

In a similar case involving a Class A television station, a California broadcaster was fined \$14,000 for failing to maintain all required materials in its public inspection file. During a station inspection in 2010, the Enforcement Bureau's San Diego Field Office determined that the station's public inspection file was missing a total of 34 quarters of issues/programs lists. Nine months later, the FCC issued an LOI requesting a list of the then-current contents of the station's public inspection file. The resulting list from

the broadcaster did not indicate that any issues/programs lists were in the file. Accordingly, the FCC issued an NAL seeking a \$14,000 forfeiture, which included the base fine of \$10,000 plus an upward adjustment of \$4,000 for failure to correct the violation after the inspection.

Tower Owner Fined for Failure to Promptly Notify FCC of Ownership Change

The FCC recently fined a California tower owner \$3,000 for failure to “immediately notify the Commission of a change in ownership information....” According to the Forfeiture Order, the owner of a two-tower array violated Section 17.57 of the FCC’s Rules, which requires tower owners to immediately notify the FCC of any change in ownership information. Such changes must be filed electronically, on FCC Form 854, using the FCC’s online Antenna Structure Registration (“ASR”) filing system.

The Forfeiture Order states that in November 2008, agents from the Los Angeles Field Office attempted to contact the owner of record for the tower array. Unable to reach the tower owner directly, the field agent then contacted the Santa Barbara, California AM station that was utilizing the towers. A member of the station’s staff mentioned that the towers had been purchased by the station’s licensee “several years earlier.” At that time, the field agent informed the station staff member that the tower ownership information must be updated with the FCC to reflect the correct ownership information. The station’s staff member indicated that the information would be updated as requested. According to the FCC’s ASR database, the ownership information was updated less than a week later.

In its response to an LOI issued by the FCC in March 2009, the tower owner indicated that it had purchased the towers in 2004 and that the failure to update the ownership information was “inadvertent and timely remedied when brought to [broadcaster’s] attention by the Los Angeles field agent.”

In May 2009, the FCC issued an NAL imposing a \$6,000 fine. The base fine for violating Section 17.57 is \$3,000. The FCC imposed a fine for the failure to timely file updated ownership information for each of the towers in the array. In response to the NAL, the tower owner noted that it was no longer the licensee of the radio station utilizing the tower array, having earlier assigned the station’s license to a limited liability company wholly-owned by the tower owner. It therefore asked that the “fine be canceled since [it] was not a licensee or reduced, because there was no harm caused by the failure to update both antenna structure registrations.”

In the Forfeiture Order, the FCC rejected the tower owner’s request for dismissal based on that fact that it was not a licensee. The FCC cited Section 1.80(d) of its Rules, stating:

a forfeiture penalty may be imposed if such person is engaged in (and the violation related to) activities for which a license, permit, certificate, or other authorization is required or if such person is a cable television operator, or in the case of violations of section 303(q), if the person involved is a nonlicensee who has previously received notice of the obligations imposed by section 303(q) from the Commission or the permittee or licensee who uses that tower. The Commission amended section 1.80(d) of the Rules in 1993 to conform to the recently amended section 503(b)(5) of the Act which provided that nonlicensee tower owners may be subject to forfeitures without a prior citation.

The Forfeiture Order notes that the failure to update ownership information could result in “potential harm” in an instance where the FCC needs to contact the owner of a structure “in the event of a problem,” but lacked the current ownership information to do so. The FCC did, however, agree to reduce the fine to \$3,000, since both towers were owned by the same entity and were part of the same array.

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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