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## FCC Enforcement Monitor

by Scott R. Flick and Christine A. Reilly

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### *Headlines:*

- *Malfunctioning Monitor Costs Broadcaster \$10,000*
  - *FCC Fines Tower Owner \$13,000 For Lighting and Ownership Issues*
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### **Faulty Remote Light Monitoring System results in \$10,000 Fine**

According to a recent Notice of Apparent Liability ("NAL"), agents at the FCC's Norfolk Field Office received a complaint of an unlit tower from the Federal Aviation Administration ("FAA"). Two weeks later, agents from the Norfolk Field Office contacted the local Sheriff's Office for a visual confirmation of the tower's lighting status. A deputy indicated that all but one of the lights on the 700 foot tower were not functioning and that the only functioning light was located 100 feet from the ground.

Section 17.51 of the FCC's Rules requires certain structures to install and maintain red obstruction lighting. These lights must be functional between sunset and sunrise. The base fine for failure to comply with lighting and painting regulations is \$10,000. Sections 17.47, 17.48 and 17.49 require structure owners to 1) inspect all automatic or mechanical lighting control devices at least every three months, 2) notify the FAA immediately of tower lighting malfunctions or extinguishments and 3) maintain logs detailing any malfunctions or extinguishments.

The Norfolk field agents conducted an onsite inspection of the tower almost one month after receiving notification of the complaint from the FAA. The tower owner's contract engineer was present at the time of the onsite inspection. During that inspection, the agents confirmed that only one tower light was functioning and that the tower's remote light monitoring system was also malfunctioning. The NAL indicated that the consulting engineer admitted that the monitoring system had notified the tower owner that the top beacon was not functioning only six days prior to the onsite inspection. The tower owner notified the FAA at that time. The engineer also stated that the tower owner did not maintain tower logs detailing regular tower and control device inspections or instances of malfunctions.

In light of these failures, and the period of time over which they occurred, the FCC assessed a fine of \$10,000 to the tower owner.

## Reporting Failures Result in Fines Totaling \$13,000

The registrant of an antenna structure in California was recently found liable for \$13,000 for violations related to the antenna structure's red obstruction lighting and for failing to notify the FCC of the structure's change in ownership.

In response to complaints that the structure's obstruction lighting had failed, agents from the Los Angeles field office contacted the registrant of the structure. Section 303(q) of the Communications Act of 1934 and Section 17.51(a) of the FCC's Rules require that antenna structures be painted with aviation orange and white and have red obstruction lighting indicating the top and midpoints of the structure. Upon inspection, however, the agent found that none of the structure's lights were functioning between sunset and sunrise. The Enforcement Bureau subsequently issued a Letter of Inquiry. In response, the registrant admitted that the lights were not operational for a period of two months, and he was unsure if he had notified the Federal Aviation Administration at the time of the outage, as required by Section 17.48 of the FCC's Rules. As noted above, the base forfeiture for failing to comply with the required lighting and painting standards is \$10,000. Though the violation was "repeated" because the outage lasted two months, the FCC did not issue an upward adjustment of the penalty.

The FCC further found that the registrant had violated Section 17.57 of the FCC's Rules, which requires that tower owners immediately notify the FCC of any changes in ownership. The registrant assumed ownership of the structure in April 2008, but did not update the ownership information filed with the FCC until January 2011, after being contacted by agents from the Enforcement Bureau. The base forfeiture for violating the rules pertaining to tower ownership notifications is \$3,000. As a result, the FCC tacked on an additional \$3,000 fine, resulting in a total proposed fine of \$13,000 for the tower owner.

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

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