
FCC Enforcement Monitor

by Scott R. Flick and Christine A. Reilly

Headlines:

- *Low Power Broadcaster's Defiance Results in \$7,000 Upward Adjustment*
 - *Unauthorized Post-Sunset Operations Lead to \$4,000 Fine for AM Station*
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Belligerence Costs a Florida Broadcaster an Additional \$7,000

Pursuant to a recently issued Notice of Apparent Liability (“NAL”), a Florida low power FM broadcaster was penalized an additional \$7,000 for refusing to power down its transmitter at the request of agents from the FCC’s Tampa Field Office. In June 2010, FCC field agents, following up on a complaint lodged by the Federal Aviation Administration regarding interference to its Air Traffic Control frequency at 133.75 MHz, employed direction-finding techniques to locate the source of the interference. The source turned out to be a low power FM station. When approached by the agents, a “representative of the station” repeatedly refused to power down the station even though the agents explained that the interference was an “ongoing safety hazard” and a “safety of life hazard.” During a subsequent telephone conversation between the station owner and an agent, the owner refused to let his representative at the station power down the transmitter until the station engineer was present. The station owner arrived at the transmitter site 30 minutes later and allowed the agents to inspect the station. At the time of the inspection, agents discovered that the station was using a transmitter that was not certified by the FCC, a direct violation of Section 73.1660 of the FCC’s Rules. The base forfeiture for operating with unauthorized equipment is \$5,000.

Two months after the site inspection, the Tampa Field Office issued a Letter of Inquiry. In its response, the licensee admitted that the noncompliant transmitter had been in use for approximately four months, up to and including the date of the site inspection. The response also indicated that the transmitter was replaced by a certified transmitter on July 9, 2010.

The FCC decided that the “particularly egregious” nature of the violation, and the station owner’s “deliberate disregard” of an air traffic safety issue, warranted an upward adjustment of \$7,000 to the base fine. The NAL therefore assessed a \$12,000 fine against the station.

Violation of Post-Sunset Operating Restriction Leads to Fine

As a follow up to a February 2011 Notice of Apparent Liability (“NAL”), the FCC issued a September 2011 Forfeiture Order (“Order”) fining a Louisiana broadcaster \$14,000 for unauthorized operations and failure to maintain and make available a complete public inspection file as required by FCC Rule Sections

73.1745 and 73.3526 respectively. The base fine associated with a violation of Section 73.1745, which mandates that stations not operate at times or at power levels other than those specified in their licenses, is \$4,000. The base fine for a violation of Section 73.3526, which requires retention of and public access to a station's Public Inspection File documents, is \$10,000.

According to the NAL, agents from the New Orleans Field Office investigating an interference complaint confirmed that a Louisiana AM broadcaster was operating its station beyond its post-sunset authority in violation of Section 73.1745. The agents returned the next day to again confirm that the station continued such unauthorized operations after sunset. The field agents then inspected the station and discovered that, according to the general manager, the station had been "operating at reduced power throughout the night for several years". Upon reviewing the station's public inspection file, the agents found that it was missing several required documents, including a copy of the current authorization, the most recent license application and eight quarterly issues/programs lists.

The AM broadcaster's response to the NAL conceded both violations but sought a reduction in the fines based on the station's erroneous belief that it had authority to operate beyond sunset, its history of compliance, its "limited resources to devote to the public inspection file", its "programming responsive to community needs and interests during the two years prior to the NAL", and its remedial actions to bring the station into compliance after the inspection.

In response, the FCC stated that a "lack of intent to violate the rules" is not a mitigating factor. The FCC also reminded the AM broadcaster that "only a few months" prior to the inspection, a letter was sent from the FCC to the licensee indicating that the station was authorized for "day-time only operation." The FCC rejected the AM broadcaster's claim that it had a history of compliance based on the admission that the station had been operating at night for several years without authorization. The FCC also discounted the "limited resources" claim since the AM broadcaster did not provide any supporting financial documentation. Finally, the FCC noted that where the AM broadcaster provided, but did not accurately document, community programming efforts, that did not mitigate a violation of the FCC's Rules. The FCC therefore reaffirmed, without reduction, the original forfeiture in the amount of \$14,000.

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