

### **New Mexico Tower Owner Fined \$13,000 for Tower Rule Violations**

The Commission recently fined the owner of a New Mexico tower \$13,000 for violation of FCC rules regarding painting and lighting of communications towers, as well as for failing to notify the Commission of a change in tower height. The FCC also noted that the tower owner had failed to post the tower ASR number at the base of the tower.

While it did not dispute the FCC's factual findings, in its response the tower owner informed the Commission that lighting and painting of the tower in question was no longer required as the tower owner had removed a top-mounted antenna from the tower, bringing the tower height down from 200 feet to 195 feet. The tower owner further argued that because it had sold all of its towers that the fine should be rescinded because "the forfeiture will not serve the purpose of ensuring that such violations do not reoccur in the future." The tower owner also argued that the Commission should take into account "its past record of compliance with respect to the 197 towers it owned," and claimed that "the Commission has never assessed a forfeiture against [the tower owner] in connection with its operation of these towers."

Rejecting the arguments, the Chief of the Enforcement Bureau noted that the tower owner had not kept its address current with the Commission, and that it had never notified the Commission of the reduction in height of the tower. As to rescinding the fine, the Chief said that "[w]e disagree with [the tower owner's] assertion that the forfeiture should be rescinded because [the tower owner] has sold all of its towers and the forfeiture will therefore will not serve the purpose of ensuring that such violations do not reoccur in the future. In [the Commission's Policy Statement on forfeitures], we noted that the legislative history of Section 503 of the [Communications] Act demonstrates that Congress intended that forfeitures serve as both a meaningful sanction to wrongdoers and a deterrent to other potential violators. We believe that imposition of the

forfeiture in this case serves both of these important purposes."

As for the tower owner's claim of a history of rule compliance, the Chief noted that "[a] search of our records indicates that the Enforcement Bureau issued a least six other NOV's to [the tower owner] and its subsidiary companies for tower-related violations between June 21, 2000 and March 21, 2001. These violations by [the tower owner] and its subsidiaries are part of [the tower owner's] violation record. . . . [The tower owner's] past violation record precludes a determination that it has a history of overall compliance with the Commission's Rules."

### **FCC Admonishes Licensee of North Carolina Noncommercial FM Station for Broadcasting Commercial Advertisements and Failing to Properly Maintain Its Public Inspection File**

The Chief of the Enforcement Bureau has issued an admonishment to the licensee of a North Carolina noncommercial FM station for airing commercial advertisements and for failing to properly maintain its public inspection file in connection with the airing of the commercial matter. Specifically, the FCC charged that the station received tickets to an event it sponsored in exchange for airing promotional announcements about the event.

In its defense, the licensee asserted that it had sponsored a music festival produced by a for-profit company by lending the station's name to the festival, and that the station received tickets to the music festival and publicity in exchange for airing the promotional announcements regarding the festival.

Rejecting the licensee's defense, the Chief noted that the licensee "seems also to imply that the tickets were not 'consideration received' by the station because they were thereafter used as donor premiums or listener giveaway prizes and not retained. However, it ignores that 'remuneration' and 'consideration' have been construed to include

various forms. . . . Thus, to the extent that [the licensee] argues that it received no remuneration for broadcasting the music festival announcements, its acceptance of event tickets that were later used as promotional giveaways and donor premiums belies that claim.” The Chief said that even absent acceptance of the tickets, “the station clearly anticipated increased membership, and enhanced economic benefit, as a result of its broadcast promotion of the music festival directly benefiting a for-profit entity . . . we do not believe that the ‘transitory event’ exception was intended to apply to announcements of this type, made out of a station’s self-interest rather than its ‘public-spirited determination.’” Although it was not fined, an admonishment remains on the station’s records with the FCC.

### **Louisiana AM Station Licensee Fined \$2,500 for EAS and Tower Rule Violations**

The licensee of a Louisiana AM station has been fined \$2,500 for violating sections 11.35(a) (failure to install operational Emergency Alert System equipment) and 73.49 (failure to enclose AM antenna tower within an effective locked fence or other enclosure) of the FCC Rules. The original fine amount of \$15,000 was reduced by the Chief of the Enforcement Bureau after the licensee made a financial hardship showing.

In defense of the EAS violation, the licensee claimed that its use of a “modified EBS unit with an AM tuner” had been observed by an FCC inspector in 1998, and that since it never received any communication regarding any deficiencies found during that inspection, that it had assumed that its operations were satisfactory. The licensee further admitted that it was in a “state of some confusion” regarding the EAS rules. In defense of the tower rule violation, the licensee claimed that the locked gate in the tower fence had been temporarily left open by its yard maintenance person.

Rejecting the defenses, the Chief noted that “Commission licensees are responsible for knowing and adhering to the statutes and rules that apply to them. Lack of knowledge of those statutes and rules is not sufficient justification for reducing a forfeiture imposed for violating them.” The *Forfeiture Order* also notes that FCC Rules require “that broadcast stations install EAS encoders, EAS decoders and attention signal generating and receiving equipment so that the monitoring and transmitting functions are available during the times the stations are in operation.”

### **Hawaii Noncommercial TV Station Liable for \$10,000 Fine Even Though Violation Occurred Before Transfer of Control**

The licensee of a Hawaii noncommercial TV station remains liable for a \$10,000 fine imposed for violation of

the Commission’s public inspection file rule even though the violation occurred prior to a transfer of control of the licensee. The *Memorandum Opinion and Order* of the Chief of the Enforcement Bureau rejected arguments advanced by the licensee’s current board of directors that the former board of directors should be responsible for the payment of the fine since the rule violation occurred during the former directors’ tenure. “[The licensee] was the licensee of [the station] at the time of the violation and remains the licensee today. It is well established that the transfer of control of the stock of a licensee corporation subsequent to a violation does not excuse the licensee for the violation.”

### **Texas FM Licensee Fined \$3,000 for Failing to Register Antenna Structure**

The licensee of a Texas FM station has been fined \$3,000 for failing to register its antenna structure with the Commission in violation of section 17.4(a) of the FCC Rules. The licensee failed to register the structure for over a year after it first received a *Notice of Violation*, and had begun, but failed to complete, the registration even as the Chief of the Enforcement Bureau issued the *Forfeiture Order*. The licensee offered no defenses, but did seek reduction of the fine based on financial hardship. Denying the fine reduction, the Chief noted that “the best indication of a company’s ability to pay a forfeiture is its gross receipts,” and found that the licensee’s gross receipts indicated an ability to pay.

## **ShawPittman LLP**

**Editors:** Scott R. Flick, Esq.  
Lauren Lynch Flick, Esq.

**Assistant Editor:** Brendan Holland, Esq.

**Managing Editor  
and Principal Writer:** Ricky A. Pursley

**FCC Enforcement Monitor** is published by the Communications Practice Group of the law firm of Shaw Pittman LLP, 2300 N Street, NW, Washington, DC 20037-1128, telephone 202.663.8000, facsimile 202.663.8007, website [www.shawpittman.com](http://www.shawpittman.com). **FCC Enforcement Monitor** is a service to the Communications Practice Group’s clients and friends, and is intended to provide general information only. The contents should not be construed as legal or business advice. Legal and business advice should always be obtained for specific facts and circumstances as the need arises. For more information on any of the subjects discussed in **FCC Enforcement Monitor**, please contact the Editors or any of the other lawyers in the Communications Practice Group. Copyright © 2002, Shaw Pittman LLP. All rights reserved.

rap06242002 1252028