

Legislation Raising Indecency Fines Moves Forward in Congress

Legislation authored by Rep. Fred Upton (R-MI) that would multiply the fine amount for broadcasting indecent by ten times (to \$275,000 per violation) has passed review at the subcommittee level without any amendments, and now goes before the full House Committee on Energy and Commerce. The bill, H.R. 3717, would also increase the maximum fine amount for any continuing violation to \$3 million. Energy and Commerce Committee Chairman Joe Barton has scheduled action on the legislation for March 3, 2004. Many observers believe that in the current political climate, the bill will be moved through the House and Senate rather quickly. The Bush Administration previously indicated that the measure will receive Presidential approval if passed. Meanwhile, in the Senate, Senator Zell Miller (D-GA) has introduced S. 2147, which would assess a fine of 25 cents per viewer or listener on those broadcasters found to have aired indecent material. We will, of course, continue to monitor the movement of the legislation, and report as necessary.

Georgia AM Station License Revoked for Unauthorized Transfers of Control

The Chief of the Enforcement Bureau has revoked the license of a Georgia AM station after an Administrative Law Judge (ALJ) found that the licensee had engaged in several unauthorized transfers of control of the station. The *Order of Revocation* concludes that, based on the evidence produced at the hearing, the licensee “lacks the basic requisite character qualifications to be and remain a Commission licensee.”

The unauthorized transfers of control came to the Commission’s attention as the result of an investigation by an FCC field agent. The field agent also determined that the station had “violated Section 73.1745 (unauthorized power) by failing to change to its critical hours directional array as required by its license; Section 17.50 (antenna

cleaning and repainting) by failing to repaint its tower structures after seventy-five percent of their orange and white paint had flaked off; Section 17.51 (time when lights should be exhibited) by leaving its towers completely unlit during nighttime hours; Section 17.48 (notification of extinguishment or improper functioning of lights) by failing to report the station’s tower light extinguishment to the FAA Flight Service Station nearest [the station’s community of license]; Section 17.4 (antenna structure registration) by failing to register its station towers with this agency; Section 11.35 (equipment operational readiness) by failing to maintain EAS equipment readiness; Section 11.15 (EAS operating handbook) by failing to maintain a copy of the EAS Operating Handbook at normal duty stations; Section 73.1820 (station log) by failing to keep a station log; Section 73.1125 (station main studio location and staffing) by leaving the station’s main studio unattended; and Section 73.1870 (chief operators) by failing to designate a chief operator at the station.”

In addition, the licensee failed to respond to Commission letters of inquiry on two occasions. Finally, the licensee failed to file a notice of appearance with the ALJ, thereby causing the ALJ to rule that the licensee had waived its right to a hearing.

North Carolina AM Station Fined \$8,800 for Failing to Properly Fence Towers and Operating at Unauthorized Power

The licensee of a North Carolina AM station has been fined \$8,800 for violating Section 73.49 of the FCC Rules by failing to maintain effective locked fencing at the base of three of its six towers and for violating Section 73.1350(a) of the FCC Rules by operating the station at night at a higher power than authorized in its license. The violations came to the Commission’s attention as the result of a complaint that the station was operating with excessive power at night. An FCC field agent took measurements at two of nine specified monitoring points, and found the field strength of the station’s signal exceeded

the limits in the station license by at least 15 percent.

During the same investigation, the field agent observed that “numerous wooden fence boards were either broken or missing on three of the towers, allowing access to the tower bases.” The field office reduced the fine amount for the two violations from \$11,000 to \$8,800 based on the licensee’s history of compliance with the FCC Rules.

The licensee offered no defense for the violation of Section 73.1350(a), but did argue against the fine for the violation of Section 73.49: “[The licensee] states that its tower fences were in place and locked and that the *NAL* only found that fence boards were broken or missing, creating gaps in what are otherwise adequate locked fences. [The licensee] also provides a sworn statement from its contract engineer, who states that he fully inspects the [station] transmitter site on a periodic basis and that he saw no broken or missing boards on the fences in his inspection of the site . . . about two months prior to the FCC’s inspection. The engineer further states that vandals have caused damage to the site in the past and that he believes that trespassing vandals caused the damage observed by the FCC agent. [The licensee] submits that the \$7,000 base forfeiture amount for AM fencing violations would apply in situations where the tower owner installs inherently inadequate fences or negligently leaves fences unlocked, not in situations such as this where the damage is caused by vandals.”

Rejecting the licensee’s defense, the Chief of the Enforcement Bureau said that “[w]e are not persuaded by [the licensee’s] suggestion that a reduction of the proposed forfeiture is warranted because the *NAL* only found that fence boards were broken or missing. The condition of the fences constituted a safety hazard because the fences were inadequate to protect the public from possible contact with the radiating antenna structures. Moreover, while [the licensee] speculates that trespassing vandals caused the damage to the fences, it provides no evidence that the missing and broken fence boards were in fact the result of vandalism, rather than neglect or some other cause. Further, we do not think that [the licensee’s] inspection of the transmitter site approximately two months prior to the FCC’s inspection warrants mitigation of the forfeiture amount. Particularly where, as here, a licensee claims that it has a history of vandalism to its transmitter site and the site is in a residential area, we think that more frequent inspections are required.”

Licensee of New York Radio Combo Fined \$12,000 for Failing to Respond to FCC Communications and EAS Rule Violations

The licensee of a New York AM and two FM station combo has been fined \$12,000 for failing to respond to official communications from the FCC and for failing to maintain operational EAS equipment and an EAS log.

The violations came to the Commission’s attention as the result of an FCC inspection of the collocated stations to verify EAS rule compliance.

The inspection revealed that the three stations shared a common control point and a single set of EAS equipment, but the equipment was out of paper, and no one present during the inspection was able to locate or install a new roll of paper. The field agent also determined that there were no EAS logs, and that there was no record of receiving or transmitting weekly or monthly EAS tests for at least two years. No one present during the inspection was able to tell the field agent the last time an EAS test was received or transmitted. The licensee offered no defense for the EAS violations.

The licensee did not respond to the field office’s *Notices of Violation (NOVs)* issued to each of the three stations until after the Buffalo field office issued a *Notice of Apparent Liability for Forfeiture*. In its defense, the licensee argued that the failure to file responses to the NOVs was the result of a miscommunication between its contract engineer, who prepared responses to the NOVs and emailed those responses to the licensee’s president, and the president, maintaining that each of them thought that the other would file the responses with the FCC.

The Chief of the Enforcement Bureau rejected the licensee’s defense, noting that in any event, the responses were not prepared until “more than a month after they were due and ten days after [the licensee’s] president told the Buffalo Office that the responses would be in the mail within two days.”

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