

### Enforcement Bureau Chief Addresses Shaw Pittman Luncheon

David H. Solomon, Esquire, Chief of the FCC's Enforcement Bureau, was the guest speaker at the regular monthly luncheon of the Communications Practice Group on May 2 at the firm's Washington, DC headquarters office. Speaking to an audience of 30 lawyers and legal assistants, Solomon said that his goal at the Enforcement Bureau since its creation in the fall of 1999 has been "to develop a reputation as a credible enforcement agency . . . a group of serious lawyers who enforce the Commission's rules and policies." He has been Chief since the FCC created the Bureau.

Solomon said that the Enforcement Bureau, under his direction, has four guiding principles: Firm, Fast, Flexible and Fair. Firm, in that serious penalties will be imposed in serious cases. Fast, in that the Bureau will seek to be an efficient operation. Flexible, in that the Bureau will always try to go beyond the traditional paper adjudication, and will encourage pre- and post-complaint mediation, as well as the use of consent decrees. Fair, in that the Bureau will seek to be objective in each case.

The Chief said that the Bureau concentrates substantively on three primary areas: competition enforcement, consumer protection enforcement, and public safety enforcement. He noted that recent emphasis by his staff in the broadcast area had included towers, the Emergency Alert System, and AM tower fencing. He predicted that heightened scrutiny of radiofrequency radiation exposure compliance will occur in the near future.

Solomon also said that the Bureau uses a wide range of databases, both within and outside of the FCC in an effort to spot trends in violations and better target resources. "Getting a Notice of Apparent Liability for Forfeiture is now much more likely than it used to be," Solomon said, noting that his staff is also looking at large enterprises with facilities around the country to see if the same violations are occurring nationwide. He said that larger companies have taken seriously the emphasis on enforcement that he has directed, and many

have created rule compliance programs and hired personnel specifically for that purpose.

Solomon, who prior to his appointment as Chief served in the FCC's Office of the General Counsel, engaged in an informal question and answer session at the conclusion of his remarks.

### Ohio FM Station Fined \$7,000 for Broadcast of Indecent Material

The licensee of an Ohio FM station was fined \$7,000 recently for violating Section 73.3999 of the FCC Rules by broadcasting indecent material. The violation occurred during the station's morning program at 8:30 a.m. on a Thursday morning.

According to the *Notice of Apparent Liability for Forfeiture* issued by the Chief of the Enforcement Bureau, the indecent material consisted of the following brief exchange between the station's host and a guest from the MTV television program "Jackass": Guest: "I've got a joke - what do you get when you stick a butcher knife up a baby's ass? Host: I don't know - what do you get? Guest: A mean hard on." In its defense, the licensee argued that the exchange "was merely a 'fleeting reference,' i.e., a spontaneous utterance in the context of a live program."

Rejecting the licensee's defense, the Chief found that "the language of the dialogue is a graphic and explicit depiction of sexual activity with an infant. The dialogue graphically depicts a sadistic act of simulated anal sodomy with an infant and explicitly discusses a person's sexual arousal in response to that act. . . . Under these circumstances, we need not find that the sexual references were repeated at length . . . in order to find that the material is patently offensive."

### Texas AM Station Fined \$3,000 for Operating Above Licensed Power

The licensee of a Texas AM station has been fined \$3,000 for operating with an antenna input power of more than 105% of authorized power, in

violation of Section 73.1560(a)(1) of the FCC Rules. The violation came to the FCC's attention as the result of complaints. Because of the licensee's overall history of compliance with Commission rules, the Chief of the Enforcement Bureau reduced the fine from \$4,000 to \$3,000.

While the licensee did not offer any defense, it did argue that the amount of the fine should be reduced since "its sole principals had never owned or worked at a radio station and only assumed ownership" a few months prior to discovery of the violation by FCC field agents. Rejecting most of the licensee's arguments for reduction of the fine, the Chief expressed his disagreement "that the forfeiture amount should be reduced because the licensee had been in control of the station for a short period of time at the time of the inspection. [The licensee's] period of ownership does not provide a basis for reduction of the forfeiture amount as the licensee is responsible for ensuring compliance with our rules. . . . [The licensee] had an obligation to ensure that it was in compliance with the Commission's rules."

### **Licensee of Missouri FM Station Fined \$5,000 for Failing to Maintain a Main Studio**

The licensee of a Missouri FM station has been fined \$5,000 for violation of Section 73.1125 of the FCC Rules, by operating without a main studio. The rule violation was discovered when an FCC field agent attempted to conduct an inspection of the station. The agent's investigation did not reveal a listing for the station in the local telephone directories, and a visit to the station's transmitter site revealed a sign on the tower with a telephone number. When the agent called the telephone number, he reached two employees of the licensee in another city and state over 300 miles away. The employees told the agent that there was no main studio for the station, but that its public inspection file was located in the local library of the station's community.

In its defense, the licensee argued that it had originally requested a waiver of the main studio rule in order to operate the station as a satellite of another station it owned. The licensee subsequently sold the other station, and did not amend its waiver request, completed construction of the station, filed for a covering license, and began operation under the expectation that the waiver request would be granted by the FCC during the licensing process.

Rejecting the licensee's arguments, the Chief of the Enforcement Bureau said that "we are not persuaded that [the licensee] made diligent efforts to comply with the rules prior to putting [the station] on the air in November 2001. We reject [the licensee's] suggestion that it was justified in putting [the station] on the air without a waiver of the main studio rule because it was counting on the

waiver being granted. In this regard, consistent with general principles regarding all FCC requirements, we note that the main studio rule explicitly warns licensees and permittees that the filing of a request for a waiver of the main studio rule does not imply approval of the request, because each request is addressed on a case-by-case basis. . . . [The licensee's] assertion that it forgot to amend its waiver request does not mitigate its violation." The original fine of \$7,000 was reduced to \$5,000 by the Chief after finding that the licensee had informed an FCC employee several months after it began operating the station that it was operating without a waiver of the main studio rule.

### **Licensees of Two New Mexico FM Stations Fined \$12,800 for EAS Violation**

The related licensees of two New Mexico FM stations have been fined \$12,800 for failing to have operational EAS equipment at the stations, in violation of Section 11.35(a) of the FCC Rules. The rule violations were discovered during a routine FCC inspection of the stations.

The licensees offered no defense to the violations other than to argue that the EAS equipment was not promptly installed by their contract engineer, but they did seek reduction of the fine amount. The original fine of \$16,000 was reduced based on the licensees' overall history of compliance with Commission rules, as well as a financial hardship showing by the licensees.

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