Repeat Offenders Pay Higher Fines

We have learned informally that when the Commission’s regional enforcement officials seek to determine an appropriate forfeiture amount for a given violation, they check the FCC’s database to see if the licensee or the group owner has committed the same type of rule violation before. If so, the office will view the new violation as a type of repeat offense for which the particular licensee should pay more than if the violation were a first time offense.

This creates an added incentive for group owners to redouble their efforts to ensure full compliance among their stations nationwide, as well as to participate in the alternative broadcast inspection programs operated by the state broadcaster associations. Those inspection programs substantially reduce the risk of random inspections by Commission staff and the associated forfeitures.

Chairman Powell Asks Congress To Increase Penalties for Rule Violations

In testimony before the Subcommittee on Telecommunications of the House Commerce Committee on March 29, FCC Chairman Michael Powell asked for an increase in the penalties that the Commission could impose for violations of its rules. In his prepared testimony, Powell said that "we need tougher penalties and longer statute of limitation periods if enforcement is to be more effective." Powell was quoted in news reports as saying that fining "a company $75,000 that has net revenues in the millions and billions, that's just the cost of doing business. Our fines are trivial."

The Chairman’s prepared statement noted that under his leadership, the FCC "will shift from constantly expanding the bevy of permissive regulations to strong and effective enforcement of truly necessary ones. We will need Congress’ help to put real teeth into our enforcement efforts."

It is impossible to predict at this time whether Congress will respond to Chairman Powell’s call for higher fine amounts, but the matter certainly bears close attention from broadcasters. We will, of course, report on developments in this area.

California FM Station Fined $7,000 for Broadcasting Indecent Material

A California FM station has been fined $7,000 for broadcasting indecent material. The material at issue, a guest on a program describing in detail how to perform fellatio, was broadcast on a Wednesday morning at 8:15 a.m.

In its defense, the licensee, while admitting that the guest described the technique for performing fellatio, claimed that the guest did so in "clinical terms." The Chief of the Enforcement Bureau rejected that defense, saying that while the guest “may have been qualified to lead a clinical discussion of sexual techniques, the disc jockeys’ comments on her material show that the material was offered in a pandering and titillating manner. Specifically, the disc jockeys’ invitation to have [the guest] use a prop on a radio program, and their laughter and statements (such as 'oh yeah, baby') while she conducted that demonstration, show that the material was intended to be pandering and titillating, as opposed to a clinical discussion of sex.”

Licensee of Alaska AM Station Fined $4,000 for Failing to Respond to Written FCC Inquiries

The licensee of an Alaska AM station has been fined $4,000 for failing to respond to written inquires from the FCC, thereby violating
Section 1.89(b) of the FCC’s Rules. Over a two-month period, FCC staff attempted twice to contact the licensee via first-class mail and certified mail, return receipt requested. One of the certified mail attempts came back to the FCC Anchorage office marked “REFUSED.” Section 1.89(b) requires that recipients respond to the FCC office that originated the inquiry within 10 days.

Two Puerto Rico AM Stations Fined $6,000 for Improper Broadcast of Telephone Conversations

The licensee of two Puerto Rico AM stations has been fined $6,000 for violating Section 73.1206 of the FCC’s Rules, which governs the broadcast of telephone conversations. An on-air personality of one of the two stations placed a telephone call to an official in the Puerto Rican government, recorded it without informing the called party, and broadcast the conversation on two occasions that same day over the two commonly-owned stations as well as two other stations.

While admitting that the broadcasts occurred as claimed in the complaint from the government official, the licensee argued that while he "was not told that the conversation would be recorded or broadcast, he should have presumed that [the station] would record and broadcast the conversation." The licensee argued that the on-air personality was "a recognized on-air personality in Puerto Rico known for reporting on the activities of the Puerto Rican government," and that because the government official was "familiar with" the on-air personality, the station assumed that the government official "would know that the conversation would likely be recorded and broadcast."

The Enforcement Bureau rejected the licensee’s arguments, and declined to create an exception to Section 73.1206 "that a licensee may fail to inform a party to a telephone conversation of the licensee’s intention to record and broadcast the conversation where the on-air personality is well-known and the other party is a government official." The Bureau noted that the rule allows such a failure only where the party is "aware or may be presumed to be aware from the circumstances of the conversation" that it likely will be broadcast. That presumption may be made only when the party is "associated with the station" or when the party places the call and it is obvious that the call is "in connection with a program in which the station customarily broadcasts telephone conversations."

Puerto Rico Tower Owner Fined $10,000 for Failing to Properly Light Tower

The owner of a tower in Puerto Rico has been fined $10,000 for failing to provide medium intensity obstruction lighting on the tower. The Antenna Structure Registration for that particular tower required such lighting, as well as a red flashing beacon at the top of the tower.

In its defense, the tower owner cited problems that it had experienced with the lighting control and monitoring systems for the tower, and the incorrect assumption by the technician working on the problems that the only required lighting was the flashing red beacon at the top of the tower. The Enforcement Bureau rejected the tower owner’s arguments, noting that Section 17.47(a)(1) of the Commission’s rules requires tower owners to "make an observation of the antenna structure’s lights at least once every 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights." In the 28 days that the lights were apparently not functioning, the Bureau found that no such observations had been performed.