
FCC Enforcement Monitor

By Scott R. Flick and Lauren A. Birzon

Headlines:

- *FCC Punishes the Operators of an Unlicensed FM Station*
 - *FCC Investigates Antenna Structure Violations*
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Recurrent Unlicensed Operations Lead to Large Forfeitures

Last month, we wrote about a case in which the FCC fined the renter of a property after discovering an unlicensed radio transmitter, even though the renter claimed the equipment was operated by a third party. This month, the FCC again went after the renters of a property on which there was an unlicensed transmitter, issuing two \$20,000 Forfeiture Orders. In this case, however, the renters left little doubt that they were directly responsible for the operation of the unlicensed radio station.

In October 2011, agents from the Miami office of the Enforcement Bureau identified the source of radio frequency transmissions on the 101.1 MHz frequency as an FM antenna mounted to a structure on a property in Florida. The signal strength exceeded that permitted for unlicensed broadcasting, and the agents later determined that no authorization had been issued for the operation of an FM broadcast station at that location. In addition, the agents were able to hear live broadcasts from the station and found that the on-air DJ was promoting the station on several web sites and Facebook pages.

During a subsequent February 2012 visit, the agents inspected the property and found radio transmitting equipment installed in a storage room. The property owner indicated that the space was rented by two men, and provided contact information for the renters to the agents. The agents called one of the renters, who asked the agents what would happen to the radio transmitting equipment. The renter contacted by the agents then called the other renter, who went to the station, told the agents the equipment was his, and removed the equipment from the location.

In July 2012, the FCC issued two \$20,000 Notices of Apparent Liability for Forfeiture (NALs) for operating without FCC authorization – one against the renter identified as the DJ of the station, and one against the renter who admitted it was his equipment. The base forfeiture for operating without authorization is \$10,000. However, the FCC determined an upward adjustment of \$10,000 was warranted for each of the renters because both had previously been involved in operating an unlicensed station on a different frequency in a different part of the state, and the FCC had issued previous Notices of Unlicensed Operation to the renters for that station.

Having not heard back from the renters in response to the July NALs, the FCC followed up the NALs by issuing two \$20,000 Forfeiture Orders against the renters this month.

Faded Antenna Structures Garner Notices of Violations

Six towers in Oklahoma and one in New Mexico were the subject of Notices of Violation (NOV) earlier this month after FCC agents noted that the paint on the towers was faded and chipped. Some of the NOVs also noted that the respective structure owners had failed to post the Antenna Structure Registration Number (ASRN) at the gate of the surrounding fence, and that any signage at the base of the structure was not visible from the gate of the fence.

In accordance with the rules of the FCC, owners of antenna structures must regularly inspect those structures to ensure the structures continue to comply with all FCC requirements. Indeed, the rules require owners to inspect the antenna structure's lights (manually or by automatic indicator) at least once every 24 hours, and to inspect all lighting control devices, indicators and alarms every three months. Owners must also maintain a record of any lighting malfunctions, including the nature of the malfunction, the date and time of the malfunction, the date and time of FAA notification, and the date, time and nature of repairs.

As this month's NOVs explicitly note, the FCC is free to take further steps against the tower owners, including issuing fines, and often does. Tower owners should therefore be careful to ensure that:

- The ASRN is conspicuously displayed so that it is readily visible from the base of the structure;
- Materials used to display ASRN are weather-resistant and large enough to be easily seen from the base of the structure;
- Where the tower is surrounded by a fence, the ASRN is posted where it will be readily visible from the fence gate;
- Antenna structures exceeding 200 feet are painted and lighted according to FAA specifications; and
- Antenna structures are cleaned or repainted as often as is necessary to maintain good visibility.

If you have any questions about the content of this Advisory, please contact the Pillsbury attorney with whom you regularly work, or the authors of this Advisory.

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