

---

## FCC Enforcement Monitor

By Scott R. Flick and Carly A. Deckelboim

---

### *Headlines:*

- *Unenclosed and Unpainted Tower Leads to \$30,000 in Fines*
  - *\$20,000 Fine for Missing Issues/Programs Lists at Two Stations*
  - *Increased Fine for Intentional Interference and Unlicensed Transmitter Use*
- 

### **Multiple Tower Violations Result in Increased Fine**

Earlier this month, a Regional Director of the FCC's Enforcement Bureau (the "Bureau") issued a Forfeiture Order against the licensee of a New Jersey AM radio station for failing to properly paint its tower and enclose the tower within an effective locked fence or other enclosure.

Section 303(q) of the Communications Act requires that tower owners maintain painting and lighting of their towers as specified by the FCC. Section 17.50(a) of the Commission's Rules says that towers must be cleaned or repainted as often as necessary to maintain good visibility. Section 73.49 of the FCC's Rules requires "antenna towers having radio frequency potential at the base [to] be enclosed with effective locked fences or other enclosures." The base fine for failing to comply with the lighting and marking requirements is \$10,000, and the base fine for failing to maintain an effective AM tower fence is \$7,000.

In March of 2010, agents from the Bureau's Philadelphia Office inspected the licensee's tower in New Jersey. The terms of the Antenna Structure Registration required that this particular tower be painted and lit. During their inspection, the agents noticed that the paint on the tower was faded and chipped, resulting in significantly reduced visibility. During their inspection, the agents also found that an unlocked gate allowed unrestricted access to the tower, which had radio frequency potential at its base. The agents contacted the owner of the tower and locked the gate before leaving the site.

In April of 2010, the Philadelphia Office issued a Notice of Violation ("NOV") to the licensee for violating Sections 17.50(a) and 73.49 of the FCC's Rules. The next month, in its response to the NOV, the licensee asserted that it inspects the tower several times each year and had been planning for some time to repair the faded and chipped paint and promised to bring the tower into compliance by August 15, 2010 by repainting the structure or installing white strobe lighting. The licensee also indicated that it had never

observed the gate surrounding the tower be unlocked during its own site visits and noted that several tenants, each of whom leased space on the tower, also had keys for the site.

In November of 2010, agents inspected the tower again to ensure that the violations had been corrected. The agents discovered that the licensee had neither repainted the tower nor installed strobe lights and that now a different gate to the tower was unlocked. The agents immediately informed the licensee's President and General Manager about the open gate, which they were unable to lock before leaving the site. The following day, the agents returned to the tower and noted that the gate was still unlocked. The agents again contacted the President, who promised that a new lock would be installed later that day, which did occur. At the beginning of December 2010, agents visited the tower with the President and the station's Chief Engineer. The tower still had not been repainted, nor had strobe lights been installed. On January 7, 2011, the Chief Engineer reported to the FCC that white strobe lighting had been installed.

The Philadelphia Office issued a Notice of Apparent Liability for Forfeiture ("NAL") on October 31, 2011 for failure to repaint the tower and failure to enclose the tower with an effective locked fence or enclosure. In the NAL, the Philadelphia Office adjusted the base fines upward from the combined base fine of \$17,000 because the "repeated warnings regarding the antenna structure's faded paint and the unlocked gates . . . demonstrate[d] a deliberate disregard for the Rules." The Philadelphia Office proposed a fine of \$20,000. In its response to the NAL, the licensee requested that the fine be reduced based on its immediate efforts to bring the tower into compliance with the rules and its overall history of compliance.

In response, the FCC declined to reduce the proposed fine because corrective action taken to come into compliance with the Rules is expected and does not mitigate violations. In addition, the FCC rejected the licensee's argument that it had taken "immediate action" to correct the violations because the licensee was first notified about the chipped paint in March 2010 and did not install the strobe lights until January 2011. Finally, the FCC declined to reduce the fine based on a history of compliance because the licensee had violated the FCC's Rules twice before. Therefore, the FCC affirmed the imposition of a \$20,000 fine.

### **Fine Reduced to Base Amount for Good Faith Effort to Have Issues/Programs Lists Nearby**

The Western Region of the Enforcement Bureau issued a Forfeiture Order against the licensee of two Colorado stations for failing to maintain complete public inspection files.

Section 73.3526 of the FCC's Rules requires broadcast stations to maintain files for public inspection that contain the items enumerated in the Rule. Specifically, Section 73.3526(e)(12) requires that licensees place in the file, on a quarterly basis, a list of programs that describe the station's most significant treatment of community issues during the preceding quarter. Copies of these issues/programs lists must be retained in the public inspection file until final action has been taken on the station's next license renewal application. The base fine for failing to maintain a complete public inspection file is \$10,000.

In August of 2012, an agent from the Enforcement Bureau's Denver Office inspected two of the licensee's stations and determined that each station was missing issues/programs lists for 20 quarters. The stations' license renewals had been granted on December 21, 2005 and expired April 1, 2013, so the missing issues/programs lists were required to be in the public inspection files on the date of the inspection.

On November 1, 2012, the Denver Office issued a Notice of Violation to the licensee regarding the missing lists. In its response, the licensee acknowledged that the lists were missing and said that it had quickly located the lists at a co-owned studio in another town. The licensee explained that the third station was part of the same employment unit as the stations missing the lists, so an employee had inadvertently

placed the lists in the wrong file. The District Director, in an NAL issued in July 2013, proposed a fine of \$12,500 against each of the two stations because of the large number of missing lists. This total proposed fine of \$25,000 was \$5,000 higher than the sum of the individual base fine amounts.

In its response to the NAL, the licensee argued that the fine should be reduced because of the inadvertent employee mistake and the licensee's good faith effort to comply with the public inspection file rules. The Regional Director rejected the argument about an inadvertent mistake excusing violations of the FCC's Rules, but reduced the fine to the base amount of \$10,000 per station because the FCC's precedent has allowed for a reduction in a public inspection file fine based on a good faith effort to comply when a licensee maintains the file at a different location in the vicinity. As a result, the Forfeiture Order imposed a total fine of \$20,000 against the licensee for the violations.

### **\$22,000 Fine for Causing Intentional Interference After Receiving Written Warnings**

Late last month, the District Director of the Philadelphia Office of the Enforcement Bureau issued an NAL against a New York man for operating a transmitter without required Commission authorization and intentionally causing interference to other users of the Citizens Band ("CB") radio service.

Agents from the Philadelphia Office received a complaint from a CB operator of intentional interference on frequency 27.324 MHz in October of 2013. The agents used mobile direction finding techniques to identify a residence as the source of the transmissions, and over the course of their monitoring heard the man repeatedly interrupt ongoing transmissions of another CB operator while saying "oops slam." The following day, the agents inspected the identified station and found two radio frequency ("RF") linear amplifiers. The man admitted that he had used one of the amplifiers the previous night. The agents tested the amplifier during the inspection and measured 148 Watts output power. Prior to this inspection, the man had received two written warnings from the Enforcement Bureau advising him that operating a linear amplifier with his CB transmitter voided his authority to operate his station and that causing intentional interference to other CB communications violated the Communications Act and the FCC's Rules.

Section 301 of the Communications Act prohibits any person from using or operating any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license. Section 95.404 of the FCC's Rules states that CB operators are not required to have individual licenses if they operate their stations in accordance with the CB Rules. In other words, operation of CB stations in a manner inconsistent with the CB rules requires a license under Section 301 of the Communications Act. Section 95.411(a) of the Rules forbids CB operators from attaching external RF power amplifiers to certificated CB transmitters in any way, and Section 95.411(b) indicates there are no exceptions to the rule and that use of an RF power amplifier voids authority to operate the station. The FCC presumes an individual has used a linear or other external RF power amplifier if the amplifier is (1) located on the individual's premises and (2) if there is other evidence showing that a CB station was operated with more power than allowed by the Rules. The base fine for operating without an instrument of authorization for the service is \$10,000.

Section 333 of the Communications Act prohibits any person from willfully or maliciously interfering with or causing interference to radio communications. Section 95.413(a) of the FCC's Rules prohibits CB radio operators from intentionally interfering with the communications of another CB radio. The base fine for interfering with radio communications is \$7,000.

The District Director concluded that the individual voided his authority to operate in the CB band and willfully violated Section 301 of the Act and Section 95.411(a) of the FCC's Rules because the agents

found two linear amplifiers in his residence during the inspection, and he admitted to using one amplifier while operating his CB radio. The District Director also determined that the man had violated Section 333 of the Act and Section 95.413(a) of the Rules because the agents heard him repeatedly interrupt CB communications. Finally, the District Director determined that an upward adjustment of \$5,000 was warranted because the use of a linear amplifier to cause intentional interference to other CB operators despite two prior warnings demonstrated a deliberate disregard for the FCC's rules and authority. The total proposed fine was therefore set at \$22,000.

---

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.

Scott R. Flick (bio)  
Washington DC  
+1.202.663.8167  
scott.flick@pillsburylaw.com

Carly A. Deckelboim (bio)  
Washington, DC  
+1.202.663.8006  
carly.deckelboim@pillsburylaw.com

### **About Pillsbury Winthrop Shaw Pittman LLP**

Pillsbury is a full-service law firm with an industry focus on energy & natural resources, financial services including financial institutions, real estate & construction, and technology. Based in the world's major financial, technology and energy centers, Pillsbury counsels clients on global business, regulatory and litigation matters. We work in multidisciplinary teams that allow us to understand our clients' objectives, anticipate trends, and bring a 360-degree perspective to complex business and legal issues—helping clients to take greater advantage of new opportunities, meet and exceed their objectives, and better mitigate risk. This collaborative work style helps produce the results our clients seek.

This publication is issued periodically to keep Pillsbury Winthrop Shaw Pittman LLP clients and other interested parties informed of current legal developments that may affect or otherwise be of interest to them. The comments contained herein do not constitute legal opinion and should not be regarded as a substitute for legal advice.

© 2014 Pillsbury Winthrop Shaw Pittman LLP. All Rights Reserved.