
FCC Enforcement Monitor

by Scott R. Flick and Emily J. H. Daniels

FCC Fines Mississippi Radio Station \$13,000 for Failure to Inform Federal Aviation Administration of Antenna Structure Lighting Malfunction and Failure to Maintain a Public Inspection File

In September 2008, following a complaint regarding a Mississippi station's tower lighting, an Enforcement Bureau agent inspected the station's tower and found that the tower's red obstruction lights were not operational. The station's chief engineer indicated that the tower lights had been out since lightning struck the station six weeks earlier. Subsequently, agents conducted an inspection of the station's main studio. The agents requested to inspect the station's public inspection file, but the station was unable to locate or make available a public inspection file. The station's president stated that the public inspection file had not been available for quite a while because a former employee had stolen the file.

Section 17.48(a) of the FCC's Rules states that the owner of any antenna structure which is registered with the FCC must report any tower lighting outage immediately by telephone or telegraph to the nearest Flight Service Station or FAA office. Based on violation of this Rule, a \$3,000 fine was proposed. Section 73.3526 of the FCC's Rules requires broadcast stations to maintain certain materials for public inspection. Based on the station's failure to comply with this Rule, the FCC proposed a fine of \$10,000.

Commission Fines Nevada Radio Licensee \$5,600 for Failing to Enclose Tower With an Effective Locked Fence

A Nevada AM radio licensee was recently fined \$5,600 for violating the FCC's rules regarding the enclosure of antenna structures. In June 2008, an Enforcement Bureau agent observed that large portions of the wooden base fences surrounding each of the station's two antenna towers were laying on the ground. The station manager told the agent that the fences had blown down two or three times in the past and that he had attempted to get the fence repaired. The manager produced a proposal for repairs but indicated that the company proposing to do the work was waiting for the ground to dry before undertaking repairs.

Section 73.49 of the FCC's Rules requires that towers with radio frequency radiation potential at the base be enclosed within an effective locked fence. The base fine for violation of this rule is \$7,000. Based on the licensee's good faith efforts to repair the fences, the proposed fine was reduced to \$5,600.

FCC Fines New Mexico Radio Station \$10,000 for Operating from an Unauthorized Location

The FCC recently fined a New Mexico radio station for operating at variance from its authorization. In June 2006, the FCC granted the station a construction permit for a new Class C FM station serving Des Moines, New Mexico. The construction permit is slated to expire in June 2009, and no license application has been

filed. In May and June 2008, the Enforcement Bureau received a number of complaints regarding the station's operations. The first indicated that the station was operating from a location in Raton, New Mexico rather than Des Moines. The second complaint indicated that the station had signed off, indicating that operations would resume in 60-90 days from the station's mountain top transmitter. The third complaint indicated that the station was back on the air, operating from its prior location in Raton. At this time, an Enforcement Bureau agent inspected the station's operation, finding that the station continued to operate from the Raton site. A station inspection revealed that the station had no special temporary authorization or waiver to operate from its current location. Further, the station had neither a public inspection file nor operational emergency alert system equipment. The station's owner acknowledged that the Raton signal does not reach the station's community of license in Des Moines, but insisted the station stay on the air. In October 2008, the Enforcement Bureau received additional complaints concerning interference to home electronic entertainment equipment resulting from the station's operations.

Section 503(b) of the Communications Act provides that a station's failure to comply with the terms and conditions of its license is grounds for sanctions against the licensee. Section 73.1620 of the FCC's Rules provides that program tests may be conducted by permittees, upon completion of construction, so long as the Commission is notified of the program tests and a license application is filed within 10 days thereafter. A special operating condition was placed on the station's construction permit which stated that "[t]he automatic program test provisions of Section 73.1620 of the Commission's rules do not apply in this case. A formal request for program test authority must be filed in conjunction with the FCC Form 302-FM, application for license, before program tests will be authorized." Based on the violations of both the FCC's Rule and the operating condition specified in the permittee's construction permit, the station was fined \$10,000.

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