
FCC Enforcement Monitor

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Headlines:

- *Class A TV Licensee Hit With \$89,200 Fine for Dodging FCC Inspectors*
 - *Student-Run FM Station Faces \$12,000 Fine and Shortened License Term for Public Inspection File Violations*
 - *Wireless Synchronized Clock Company Agrees to Pay \$12,000 for Violating License Terms*
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FCC Throws the (\$89,200) Book at Class A Licensee for Evading Main Studio Inspections

The FCC's Enforcement Bureau imposed a fine of \$89,200 against a Philadelphia Class A TV licensee for failing to (1) make its station available for inspection by FCC agents on multiple occasions, (2) maintain a fully staffed main studio, and (3) operate the station's transmitter from its authorized location.

Section 73.1225(a) of the FCC's Rules requires broadcast licensees to make a station "available for inspection by representatives of the FCC during the station's business hours, or at any time it is in operation." In addition, Section 73.1125(a) of the Rules has been interpreted by the FCC to require broadcast licensees to maintain a main studio with a "meaningful management and staff presence" during normal business hours. Finally, Section 73.1350(a) of the Rules requires a broadcast licensee to "maintain[] and operat[e] its broadcast station in a manner which complies with the technical rules . . . and in accordance with the terms of the station authorization."

In August 2011, FCC agents attempted to inspect the station's main studio. After observing that the main studio was inaccessible due to a locked gate, the agents called the station manager and requested access to inspect the main studio. Ten minutes later, the station manager emerged and informed the agents that he could not facilitate the inspection because he was leaving for a medical appointment, and requested that the agents return the next day. When asked about staffing, the station manager said that no one else was available to facilitate the inspection. One of the agents called the sole principal of the station

and advised him that the station manager had failed to make the station available for inspection, and asked the principal to call the agent back. The principal did not return the phone call.

Over one month later, in September 2011, the agents returned to the station to inspect the main studio. The station manager appeared at the locked gate, and asked the agents to wait as he returned to the building. After waiting for ten minutes, the agents left. The agents returned that afternoon and found that the gate was still locked. An agent called the station manager, who said the gate was locked for security purposes and that the public must contact the station to obtain access. However, the agents noted that there was no contact information on the gate. An agent called the sole principal about the second failed attempt to inspect the studio, and again did not receive a return phone call.

In addition to the two failed inspection attempts, FCC agents found in March 2012 that the station's antenna was actually 0.2 miles from the site listed in the station's license. The agents determined that the station had operated from the unauthorized location for approximately eight years.

The FCC subsequently issued a Notice of Apparent Liability ("NAL"), proposing an \$89,200 fine against the station. The base fine for failing to make a station available for inspection is \$7,000. However, due to the "unacceptable" conduct of the station, the FCC used its discretion under Section 503(b)(2)(A) of the Communications Act to adjust the proposed fine upward to the maximum amount allowed under the Act: \$37,500 for each of the two failed inspections. The FCC also proposed an upward adjustment of the base fine for operating the station from an unauthorized location, from \$4,000 to \$7,200. In addition, the FCC proposed a \$7,000 fine (the base fine amount) for the violation of the main studio rule, for a total fine of \$89,200.

In response to the NAL, the licensee stated that the failed inspections were the result of medical problems and miscommunications with the FCC agents. It also said that the unauthorized operation was a "minor mislocation" of the antenna caused by reliance on the tower site's owner, which was promptly remedied following the investigation. In addition, the licensee argued that it did not have sufficient income to pay the fine.

The FCC rejected all of the licensee's arguments, noting that the FCC's inspection authority does not depend on the convenience of the licensee or availability of station personnel. Regarding the unauthorized transmitter site, the FCC stated that licensees are responsible for violations committed by third parties on their behalf, and that corrective efforts must be taken *prior* to notification of the violation to warrant a fine reduction.

Finally, regarding the licensee's inability to pay argument, the FCC noted that it requested, but never received, tax returns and other financial information from the sole principal, and therefore did not have sufficient information to conclude that the licensee was not able to pay. The FCC also noted the licensee's pending \$6.4 million sale of the station—a fact that the licensee had failed to mention in its filings.

Flunked: FCC Proposes \$12,000 Fine and Shortened License Term for Student-Run FM Station's Public Inspection File Violations

A Rhode Island university's student-run FM station is facing a \$12,000 fine and shortened license term from the FCC's Media Bureau for public inspection file violations.

Section 73.3527 of the FCC's Rules requires noncommercial educational licensees to maintain a public inspection file containing specific types of information related to station operations. Among the materials required for inclusion in the file are the station's Quarterly Issues/Programs Lists, which must be retained until final FCC action on the station's next license renewal application. Issues/Program Lists detail programs that have provided the station's most significant treatment of community issues during the preceding quarter. Section 73.3527 also requires licensees to keep a copy of the current contour map and most recent ownership report in the file.

In November 2012, the station filed its license renewal application. Part of the application requests that the licensee certify that the documentation required by Section 73.3527 has been placed in the station's public inspection file at the appropriate times. The station answered "No" to that certification, and attached an exhibit explaining that the station had been student-run until 2011—the first six years of its license term—and that twenty Issues/Programs Lists were missing from the public inspection file for this time period. Upon learning that these Issues/Programs Lists were missing, the station hired two students to prepare the Lists in the summer of 2012, but even these more-recently prepared lists could not be found. A copy of the 2011 ownership report and current contour map were also missing from the file. The ownership report and contour map were eventually placed in the file in November 2013.

The FCC's base fine for violating Section 73.3527 is \$10,000, although it can adjust the amount upwards or downwards in response to factors such as the nature, circumstances, extent, and gravity of the violation. Using this discretion, the FCC proposed to fine the station \$12,000 for its failure to timely place the twenty Issues/Programs Lists in the public file. It also proposed to limit the station's license renewal to a four year term instead of the usual eight year term to provide the FCC an earlier opportunity to review the station's compliance with the Communications Act and the FCC's Rules.

Time-out: Wireless Clock Company Admits to Violating License Terms, Agrees to Pay \$12,000

The FCC's Enforcement Bureau entered into a Consent Decree with a company that sells wireless synchronized clock systems to resolve an investigation into whether the company operated outside the terms of its license. The company's synchronized clock systems are used by schools, hospitals, and other organizations operating in large buildings or campus settings. Each system uses a master clock, usually situated in the customer's headquarters, that has a transmitter and antenna. The master clock transmits signals to associated clocks, which have receivers.

The company's license authorized temporary fixed operations on five 464 MHz frequencies. The company initially believed that the transmitters at its customer locations could be operated indefinitely under this license because the transmitters are moveable and are sometimes relocated over time, making them "temporary fixed". Pursuant to Section 90.137(b) of the FCC's Rules, however, temporary fixed transmitters that remain or are

intended to remain at the same location for more than one year must be licensed as permanent fixed.

In September 2009, the FCC sent a Letter of Inquiry to the company directing it to respond to a series of questions relating to its licensed operations. The company's response indicated that it was allowing its customers to operate temporary fixed transmitters at the same location for more than one year, in violation of Section 90.137(b).

The company subsequently petitioned for, and received, a waiver of the definition of the term "mobile units" under Section 90.7 of the FCC's Rules, which allowed its customers' transmitters to be licensed as mobile units instead of fixed transmitters. However, the company admitted that multiple transmitter sites operated under the license for more than one year at fixed locations prior to the grant of this waiver. As a result, the company agreed to pay a \$12,000 "civil penalty" and to implement a three-year compliance plan to settle the matter. The compliance plan requires the company to designate a compliance officer, establish compliance procedures, create a compliance manual, and institute a compliance program. It also requires the company to report noncompliance within 15 days after discovery of noncompliance, and to file compliance reports four times during the three-year compliance period.

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

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