
FCC Enforcement Monitor

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Headlines:

- *FCC Establishes New Enforcement Policy for Student-Run Noncommercial Radio Stations*
 - *CB Radio Owner Receives Fine for Harmful Interference and Lack of Responsiveness*
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Student-Run Noncommercial Radio Stations Will Face Lighter Sanctions on Some FCC Enforcement Actions

In a recent Policy Statement and Order, the FCC established a new policy for certain first-time violations of FCC documentation requirements committed by student-run noncommercial radio stations. The new policy allows such stations the option of entering into a Consent Decree with the FCC that includes a compliance plan and a “voluntary” contribution to the government that is smaller than the typical base fines for these violations.

In justifying its more lenient policy toward student-run stations, the FCC noted that such stations are staffed by a continually changing roster of young students lacking experience in regulatory compliance. In addition, such stations function without any professional oversight other than that provided by over-worked faculty advisors, and often operate with budgets so small that they are exceeded by even the base fine for a public inspection file violation. In the past, the FCC has issued numerous fines of \$8,000-\$10,000 to licensees of student-run stations, and with this new policy, the FCC recognizes that continuing to impose such fines could result in schools selling their stations altogether, as has indeed happened.

In the past, the FCC rejected arguments that fines on student-run stations should be reduced solely because the stations are run by students. The FCC has also typically rejected “inability to pay” arguments for these types of stations, and instead looked at the financial resources of the entire university or college, rather than the financial resources of the station, when assessing a fine. However, the FCC now concludes that allowing the cost of a first-time documentation violation to be reduced in exchange for a consent decree with a compliance plan will actually improve compliance with the FCC’s rules. Specifically, the FCC believes that such compliance plans will assist in the training of students while contributing to the educational function of these stations.

In its Policy Statement, the FCC emphasized that the policy will apply only to student-run noncommercial radio stations where the station is staffed completely by students. Stations that employ any professional

staff, other than faculty advisors, do not qualify. The policy is also limited to violations where a student-run station has failed to (a) file required materials with the FCC (e.g., an Ownership Report), (b) place required materials in the public inspection file, or (c) publish a notice in a local newspaper or broadcast an announcement on the air. This new policy will not change the FCC's forfeiture policies for any other type of violation or licensee.

Under this new policy, if the FCC finds that a likely student-run station has a first-time violation that qualifies, it will notify the station and provide the station with the opportunity to pursue a Consent Decree. The station then has 30 days to respond. To take advantage of the new policy, the response should indicate that the licensee wishes to pursue a Consent Decree, and must demonstrate that the station is, in fact, a student-run station. The FCC indicates that stations should also include with their response a copy of the operating budget for the period in which the violation occurred to assist the FCC in determining the appropriate "voluntary" contribution amount. The FCC will determine the amount of the "voluntary" contribution by taking into account the "totality of the circumstances," including "those resources budgeted to the station, rather than those of the licensee." The station and the FCC will then proceed to negotiate a consent decree compliance plan.

The announcement of the new policy was prompted by a student-run Iowa station's license renewal application. In the application, the station disclosed violations of the FCC's ownership report and public file rules, indicating that ownership reports had been filed late and that the station was missing a number of Quarterly Issues/Programs lists. The station agreed to negotiate a Consent Decree with the FCC and established a compliance plan for the remainder of the station's license term, through 2021.

Among other things, the compliance plan requires that a faculty advisor review and sign off on any late-filed Quarterly Issues/Programs lists, the school provide annual training on compliance with the FCC's rules, the school conduct semi-annual audits of the station's public inspection file for a period of three years, and submit to the FCC annual sworn certifications for the next three years indicating that the station is in compliance with the FCC's rules. In addition, the school must make a "voluntary" contribution of \$2,500 to the government, which represents a significant reduction of the FCC's standard \$10,000 fine for violations of its public inspection file rule.

The FCC emphasized that this option would only be available for first-time violations, and that subsequent violations would be subject to its normal forfeiture policies.

Harmful Interference and Lack of Responsiveness Lead to \$18,000 Fine for CB Radio Operator

The owner of a Citizens Band ("CB") station was recently issued a Notice of Apparent Liability for Forfeiture ("NAL") for \$18,000 as a result of interference caused to his neighbors' electronic devices. The owner was fined for failing to make his CB station available for inspection by the FCC and for failing to comply with the restricted hours imposed on the operation of his CB station following official notification from the FCC.

In response to a complaint that the CB station was causing interference with a neighbor's telephone and TV reception, the FCC attempted to conduct an investigation of the station in January 2012. At that time, no one answered the door. In March 2012, the FCC issued a Warning Letter to the owner and directed the owner to contact the FCC to schedule an inspection. The letter also warned the owner that if interference continued, the FCC would impose restricted operating hours on the station. The owner never responded to the Warning Letter.

In May 2012, the FCC again sent a letter to the owner, this time directing him and anyone else at his residence not to operate the CB station from 8:00 a.m. to 11:30 p.m. until the owner contacted the FCC to schedule an inspection. The owner again failed to contact the FCC. The FCC continued to receive complaints of interference in the neighborhood and sent yet another Warning Letter to the station's owner in June 2012, reminding him of the restricted operating hours put into place and directing him to schedule an inspection.

In October 2012, agents from the FCC again attempted to conduct an investigation of the station. They monitored multiple radio transmissions in the Citizens Band and used direction finding techniques to confirm that the transmissions were emanating from the owner's residence. When the agents knocked on the door, no one answered, but the transmissions immediately ceased, indicating that the owner turned off the CB station while the FCC agents were at his doorstep.

As of the date of the NAL, the FCC had received no responses from the owner of the CB station.

Sections 95.423(a) and (b) of the FCC's Rules provide that if the FCC informs a CB operator that a station is causing interference, the CB operator must comply with all instructions issued in an official FCC notice and must comply with any restricted hours of operation issued in such notice. In addition, Section 303 of the Communications Act and Section 95.426(a) of the FCC's Rules require that CB station owners make their stations and records available for inspection by the FCC.

The base fine for failing to allow inspection of radio equipment is \$7,000, and the FCC found that an additional \$7,000 upward adjustment of this fine was warranted because the owner had continually ignored the FCC letters and notices directing him to schedule an inspection. Though there is no base fine designated for failing to comply with FCC notices imposing operational restrictions on CB stations, the FCC found that the nature of this violation was similar to that of failing to respond to an official FCC communication, for which there is a base fine of \$4,000, which the FCC included in the forfeiture amount. In addition to the \$18,000 fine, the FCC is requiring the owner to submit a sworn written statement within 30 days of the NAL confirming compliance with the restricted hours of operation and specifying a date and time when the FCC can inspect the CB station.

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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