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## FCC Enforcement Monitor

by Scott R. Flick and Christine A. Reilly

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### *Headlines:*

- *Florida FM Translator Fined \$13,000 for Unauthorized Operations*
  - *Latest Public Inspection File Violation Nets Upwardly Adjusted Fine*
  - *Failure to Monitor Inactive Tower Results in \$6,000 Penalty*
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### **Failure to Operate as Authorized Costs Florida Broadcaster an *Additional* \$4,000**

A recent FCC Notice of Apparent Liability (“NAL”) for \$13,000 against a Florida broadcaster serves as a costly reminder that stations must operate in accordance with the FCC’s Rules, and more notably, as specifically authorized in their station license. According to the NAL, the Florida broadcaster failed to heed a verbal warning from Tampa field agents that its station was operating beyond the technical parameters of its authorization. The NAL stated that the Tampa field agents, pursuant to an investigation and following two complaints, took field strength measurements on five separate occasions and visited the station’s transmitter site on two separate occasions over approximately 11 months between October 2009 and September 2010. Field measurements undertaken in October 2009 and early February 2010 indicated that the station was operating with a power level well in excess of its authorization in violation of Section 74.1235(e) of the FCC’s Rules, which states, “[i]n no event shall a station authorized under this subpart be operated with a transmitter power output (TPO) in excess of the transmitter certificated rating and the TPO shall not be more than 105 percent of the authorized TPO.”

In late February 2010, the Tampa field agents inspected the transmitter site, took a third set of field measurements and spoke to the licensee’s president. The Tampa field agents stated that, at the time of the inspection, the station was operating with a power level 280% higher than authorized by the FCC. Additionally, the Tampa field agents observed that the transmitter site included a two tower array even though the station was only authorized for operation with a single tower, a violation of Section 73.1350, which states, “[e]ach licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules set forth elsewhere in this part and in accordance with the terms of the station authorization.” Prior to the conclusion of the site inspection, the station’s power level was reduced to the authorized level. Following two subsequent interference complaints in late September 2010, the Tampa field agents again took field strength measurements and conducted the second site inspection. The Tampa field agents discovered that the station was again operating at power level well in excess of 200% of its authorized operation.

In addition, they found that the licensee was continuing to transmit from the unauthorized two tower array. The base fines for both violations are \$4,000 for excessive power and \$5,000 for unauthorized equipment. Section 503 of the United States Code provides the FCC with the authority to adjust the penalties downward or upward based on the "nature, circumstances, extent and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require." The \$13,000 fine included a \$4,000 upward adjustment for what the FCC declared a "deliberate disregard" for the FCC's Rules.

### FCC Fines Two Broadcasters For Failure to Maintain a Complete Public Inspection File

The FCC recently fined two unrelated stations for violations of Section 73.3526 of the Commission's Rules, also known as the Public Inspection File Rule. The rule requires broadcasters to allow public access to a station's public inspection file during normal business hours, outlines the types of documentation that must be retained in the public inspection file, and the length of time they must be retained. The base fine for violating the Public Inspection File Rule is \$10,000.

The first case resulted in an upwardly adjusted fine for a North Carolina AM broadcaster. According to the NAL, Norfolk field agents inspected the station in March 2010. Field agents observed that the most current document in the station's public inspection file was from 2006. The station manager indicated that any subsequent public inspection file documentation was maintained at the licensee's headquarters, approximately 250 miles from the station. Pursuant to Section 503 of the United States Code, the FCC found that since the public inspection file had been out of date for more than three years, the violation warranted a \$2,000 upward adjustment, which resulted in a total fine of \$12,000.

In the second case, the FCC levied a \$10,000 fine against a broadcaster for failure to maintain a complete public inspection file at one of its Pennsylvania stations. While conducting a station inspection, Philadelphia field agents discovered that the station was missing nine quarterly issues/programs lists ("all quarterly issues/programs lists since the station's last renewal grant."), and cited that as the basis for issuing the fine.

### FCC Triples Fine Against Kansas Tower Owner

In March 2010, a Kansas City field agent, responding to a complaint of an unlit tower, contacted the Federal Aviation Administration ("FAA"). The FAA was unaware of the outage and issued a Notice to Airman ("NOTAM"). The NOTAM serves to alert pilots to any hazards in a flight path or at a specific location. The unlit tower, located in Caldwell, Kansas, exceeds 200 feet in height. In accordance with the FCC's Rules (Section 17.7), towers taller than 200 feet must be registered with the FCC and the FAA. Section 17.21 of the FCC's Rules mandates that antenna structures exceeding that height also be lit and painted. The lighting and painting requirements are a necessary safety measure, ensuring that such structures are visible to low flying aviation traffic. In the absence of safety lighting, tower owners are required to contact the FAA and request issuance of a NOTAM. Consequently, Section 17.47 requires tower owners to inspect tower lighting at least once every 24 hours. Inspections may be undertaken visually or employ the use of an automated alarm system, which would notify a select individual in the event that the tower lights malfunction.

During an interview with a station employee, the Kansas City field agent was informed that the technician responsible for the daily visual inspection of the Caldwell tower had been laid off several months before. In June 2010, the Kansas City Field Office issued a Letter of Inquiry to the licensee. In its response, the tower owner indicated that the tower had been visually inspected until late September 2009, when the cable

system utilizing the tower discontinued its cable service. The tower owner admitted that it “did not have any maintenance or contact with the tower after October 1, 2009.”

The base forfeiture for failing to conduct the required daily monitoring is \$2,000. Citing its authority under Section 503 of the United States Code, the FCC tripled the fine to \$6,000 because the tower owner had been fined on two separate occasions for the same violation at two commonly owned tower sites.

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

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

Christine A. Reilly (bio)  
Washington, DC  
+1.202.663.8245  
christine.reilly@pillsburylaw.com

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