
FCC Enforcement Monitor

by Scott R. Flick and Lauren Birzon

Headlines:

- *The FCC's \$10,000 fines for items missing from the public inspection file continue*
 - *License cancellation no obstacle to FCC proposing \$18,000 fine against former broadcaster*
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FCC Again Issues \$10,000 Fines for Public Inspection File Violations

As we have reported on numerous occasions, \$10,000 has become the standard fine for even minor public inspection file violations. That proved true again this month, with the FCC issuing a number of \$10,000 fines for failure to include all Quarterly Issues/Programs Lists in a station's public inspection file.

The FCC's public inspection file requirements are found at Sections 73.3526 (commercial stations) and 73.3527 (noncommercial stations) of the FCC's Rules. They require broadcast licensees to maintain particular information in their files, including the Quarterly Issues/Programs Lists, and to update the material in the file regularly throughout the license term.

In one decision, the FCC assessed a \$10,000 fine against a noncommercial radio station in Louisiana for excluding twenty-four Quarterly Issues/Programs Lists (six years' worth) from its file over a seven-year period. The licensee had disclosed the problem in its license renewal application. In a second decision, the FCC fined a South Carolina commercial radio station \$10,000 for ten absent Quarterly Issues/Programs Lists over a four-year period. Like the first case, the fact that the documents were missing from the file was disclosed in the station's license renewal application. The station belatedly placed the missing documents in the file when it filed its license renewal application.

In both cases, the FCC rejected requests to reduce the \$10,000 fine despite the licensees' history of rule compliance and the second licensee's corrective action to provide the missing documents. The FCC stated that "where lapses occur in maintaining the public file, neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation." Despite the penalties, however, the FCC did not find the violations to constitute a "serious violation" of the FCC's Rules requiring a hearing, and granted the related license renewal applications.

In a third decision, the FCC assessed a \$10,000 fine against a California licensee for failing to include six Quarterly Issues/Programs Lists in its file over a three-year period. The absence of the documents was discovered during a February 2010 FCC inspection of the station's main studio. At that time, the station manager explained that the missing lists coincided with the departure of the employee who had maintained them. In response to the FCC's subsequent Notice of Apparent Liability, the licensee argued that the fine should be cancelled or reduced because the current licensee did not obtain control of the station until after the missing lists should have been placed in the file, and asserted that current owners cannot be held responsible for the violations of prior owners. The FCC disagreed, stating that "[t]he fact that the ownership of the company changed hands does not affect the company's liability."

FCC Fines Former Licensee Even Though the Licensee's Station License Had Earlier Been Cancelled

On April 20, 2012, the FCC issued an \$18,000 fine against the former licensee of a station in American Samoa for violations that occurred from 2000-2006, notwithstanding the fact that the station license had already been canceled over a year earlier. The Forfeiture Order released this month found that the licensee willfully and repeatedly violated the FCC's Rules by: (1) operating the station at an unauthorized location, (2) going silent without FCC authorization, and (3) failing to respond to communications from the FCC.

The violations were brought to the attention of the FCC by a Petition to Deny filed against the station's license renewal application during the last renewal cycle. The Petition alleged the licensee no longer had access to the tower site identified in its license, the station had been silent for a period of more than a year, and the station had previously operated at reduced power without FCC authorization.

In 2008, the FCC issued a Notice of Apparent Liability concluding that the station had not been silent for more than a year, but that the licensee had indeed failed to obtain FCC authorization for two shorter periods of silence. The FCC further concluded that the licensee operated at variance from the facilities authorized by its license, and that the licensee had failed to respond to FCC inquiries on multiple occasions. The FCC proposed a fine of \$18,000--\$5,000 for each period of silence, \$4,000 for operating with unauthorized facilities, and \$4,000 for failing to respond to FCC inquiries. Nevertheless, the FCC renewed the station's license for a period of two years ending in April 2010. The licensee did not file a license renewal application before April 16, 2010, the license expiration date specified by the FCC, and on April 11, 2011, the FCC notified the licensee that the station's license had been cancelled.

In response, the licensee asked that the forfeiture be set aside due to mitigating circumstances, including a history of compliance, financial hardship, and a claim of "selective enforcement" by the FCC. The licensee claimed it was unaware of the need to request FCC authority to go silent during the first period of silence, and that it forgot to request FCC authorization to remain silent the second time. It also asserted that it kept the FCC constantly notified of its operating status. As to operating at variance from the site specified in its license, the licensee asserted there was insufficient time to request a Special Temporary Authorization to operate from an alternate site, and that the FCC should excuse its failure to seek prior authority because the station operated at reduced power in order to avoid interference with other broadcast stations.

The licensee further argued that it consistently responded to all FCC inquiries, and that if the FCC did not receive its correspondence, the communication was likely "lost in the vastness of the Pacific Ocean." In response, the FCC noted that it sent all mail to the licensee's listed address in the continental United States, which the licensee "had listed as its mailing address and the mailing address for its contact representatives". Finally, the licensee accused the FCC of selectively enforcing its rules against the licensee's station, but not against other Samoan station licensees. The FCC responded that since the

licensee had provided "no specific evidence to support its allegations", there was no reason to consider them.

The FCC therefore rejected all of the licensee's arguments in its Order, and reaffirmed that even unknowing or inadvertent violations of its rules may still be considered willful violations subject to enforcement action. The FCC also stated that pointing a finger at third parties such as the U.S. Postal Service or other allegedly noncompliant stations will not excuse licensees from compliance with the Commission's Rules.

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