
FCC Enforcement Monitor

By Scott R. Flick and Christine A. Reilly

Headlines:

- *FCC Increases Fine to \$25,000 for Broadcaster's Violations Related to Time Brokerage Agreement*
 - *Upward Adjustment in EAS Portion of Multiple Violation Fine Results in Total Forfeiture of \$25,000*
 - *Noncommercial Broadcaster Fined \$7000 for Late-Filed License Renewal Application*
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FCC Fines Florida Broadcaster \$25,000 for Repeated Failure to Maintain Full-Time Personnel and Make Available a Complete Public Inspection File at Brokered Station

In September 2009, following a complaint, agents from the Enforcement Bureau's Tampa Field Office conducted an inspection of a Florida AM station. According to the Notice of Apparent Liability ("NAL") issued by the FCC, the AM broadcaster failed, for the second time within three years, to maintain the required number of full-time employees at its main studio in violation of Section 73.1125(a) of the FCC's Rules, and to maintain a complete public inspection file, which violates Section 73.3526 of the FCC's Rules.

Section 73.1125, also known as the "Main Studio rule", establishes, among other things, the requirements for a station's main studio location. The FCC requires that licensees maintain a "meaningful management and staff presence" at a station's main studio. Based on a 1991 FCC decision, the FCC defines "meaningful" as at least one management level employee and one staff level employee generally being present "during normal business hours." According to the NAL, inspectors were unable to locate any personnel employed by the licensee. At the time of the inspection, the station, which is operated under a time brokerage agreement ("TBA"), was staffed solely by individuals employed by the broker. While at the station, the FCC field agents reviewed the station's public inspection file. The NAL states that, among other things, the public inspection file did not contain a copy of the current TBA.

The base fines associated with violating the Main Studio rule and the Public Inspection File rule are \$7000 and \$10,000, respectively. 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." Based on the prior violations by the broadcaster, the

FCC adjusted the \$17,000 base forfeiture upward to \$25,000 and included a warning that “future violations of the rules may result in more severe enforcement penalties, including significantly larger forfeitures.”

FCC Fines Kansas Broadcaster \$25,000 for Emergency Alert System, Antenna Structure and Public Inspection File Violations

The FCC issued a fine totaling \$25,000 against a Kansas FM broadcaster for violations of the Commission’s Emergency Alert System (“EAS”), Antenna Structure Registration and Public Inspection File rules. During a main studio inspection by the Enforcement Bureau’s Kansas City Field Office, agents discovered that the station’s EAS equipment was unplugged and therefore inoperable. The licensee confirmed that, despite his efforts to retain an engineer to repair the equipment, it became “inoperable at sometime between 2000 and 2006” and remained inoperable as of the date of the inspection.

The field agents also observed that an antenna structure registered to the licensee lacked adequate paint and lighting. The licensee admitted the structure had not been repainted since it was erected in 1996 and that station personnel had not been conducting the mandated daily visual inspection of the structure, and had therefore failed to note that the paint was peeling or missing in several places, and that the flashing beacon lights and several side-lights were no longer functioning. Prior to concluding the inspection, the field agents reviewed the station’s public inspection file and determined that it was missing all issues/programs lists following the last quarter of 2008. The licensee confirmed that the reports had not been placed in the public inspection file.

Pursuant to Section 11.35(a) of the FCC’s Rules, broadcasters must ensure that the required EAS equipment is installed, maintained and monitored. Section 17.47 of the FCC’s Rules requires antenna structure owners to undertake an inspection of their antenna structure’s lights at least once every 24 hours. Inspections may be conducted visually or utilizing a properly maintained automatic indicator. Section 17.50 of the FCC’s Rules requires antenna structure owners to “clean and repaint structures as often as needed to maintain good visibility.”

Section 73.3526(e)(12) of the FCC’s Rules requires that a list of programs demonstrating a radio station’s most significant programming treatment of community issues during the preceding three month period be placed in the public inspection file on a quarterly basis. The list must include a brief narrative describing the issues addressed, as well as the time, date, duration and title of each program in which a particular issue was addressed.

The base fines for the violations discussed above are \$8000 (EAS), \$2000 (tower monitoring), \$10,000 (tower painting) and \$10,000 (public file). Using its discretionary power, the FCC upwardly adjusted the EAS violation to \$9000 and downwardly adjusted the public inspection violation to \$4000, for a total of \$25,000.

FCC Fines Noncommercial Broadcaster \$7000 for Failure to Timely File License Renewal Application and for Unauthorized Operation

A Massachusetts noncommercial broadcaster was assessed a \$7000 forfeiture in connection with its late-filed license renewal application. Pursuant to Section 73.3539 of the FCC’s Rules, broadcasters must file their license renewal applications four months prior to the expiration of their operating authority. The station’s license was slated to expire on April 1, 2006. The broadcaster’s license renewal application, due December 1, 2005, was submitted fourteen months late, in February 2007. In the absence of a timely filed

license renewal application, all operations after April 1, 2006 are considered unauthorized and in violation of the FCC's Rules.

The FCC issued an NAL for a \$7000 fine in November 2007. The noncommercial broadcaster sought cancellation or reduction of the fine based on its ignorance of the law. Specifically, the noncommercial broadcaster indicated that the station was run by a student organization and that the administrators were "completely unaware" of the license renewal deadline. The licensee's response also indicated that it did not receive any notice of the application deadline or of the subsequent lapse of its license.

The FCC's Order stated that violations of its rules caused by inadvertent error or lack of familiarity with the FCC's requirements still constitute willful violations of its rules. The Order also stated that a licensee is obligated to seek renewal of its license regardless of whether it is notified that its current license is expiring. Accordingly, the FCC declined to reduce or cancel the \$7,000 fine.

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

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