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## FCC Enforcement Monitor

by Scott R. Flick and Christine A. Reilly

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### *Headlines:*

- *Failure to Heed Warning by FCC Field Agent Costs Broadcaster \$10,000*
  - *FCC Fines AM Broadcaster \$6,000 for Excessive Nighttime Power Levels*
  - *AM Broadcaster's Limited Disclosure of Contest Rules Nets \$4,000 Fine*
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### **FCC Fines Pennsylvania Broadcaster \$10,000 for Repeated Failure to Employ Adequate Personnel**

In keeping with last month's "meaningful management and staff presence" Notice of Apparent Liability ("NAL"), the FCC again upwardly adjusted a fine, totaling \$10,000, against a Pennsylvania broadcaster for repeated failure to maintain at least one management level and one staff level employee at the main studio during regular business hours as required by Section 73.1125 of the FCC's Rules. At the time of the initial inspection by a local Enforcement Bureau Field Agent, the "main studio", which was located within a church, was unattended and locked.

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."

Church personnel informed the Field Agent that "no one associated with the station works at the main studio location and the room is always locked." Once contacted, the station engineer arrived at the main studio within half an hour so as to participate in the inspection. Before the conclusion of that inspection, the Field Agent informed the station engineer of the licensee's obligation to staff the main studio during regular business hours.

A follow up inspection took place less than a month later and the Field Agent again found the station unattended and locked during regular business hours. The Field Agent contacted the licensee, who acquired the station in early 2008. A representative of the licensee indicated that she was "unaware of the main studio requirement and would thereafter staff the station's main studio..." The base fine for violating the Main Studio Rule is \$7000. 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." In this case, the FCC found that the station's "failure

to correct the violation after receiving a warning during the first inspection was egregious and warranted an upward adjustment," costing the licensee an extra \$3,000 on top of the \$7,000 base fine.

### AM Broadcaster's Failure to Maintain Equipment Results in \$6,000 Fine

An Oregon broadcaster was fined \$6000 in connection with its failure to operate in accordance with its station license. Section 73.1745 of the FCC's Rules requires broadcasters to operate their stations in accordance with the parameters, technical and otherwise, specified in the station license. This particular AM station, authorized for 1000 watts daytime, was required to reduce power to 15 watts at sunset.

Over the course of two days, a Portland Field Agent observed no change in the station's daytime and nighttime power levels. On a subsequent visit to the station, the Field Agent determined that station personnel were unable to reduce the station's operating power. According to the NAL, the station owner later admitted he was aware of his obligation to operate with reduced power at night, but was unable to afford the expense associated with maintaining the equipment necessary to implement nighttime operation at reduced power.

The FCC adjusted the \$4,000 base fine upward to \$6,000 for two reasons. First, the station owner admitted to knowing it was in violation of its obligations and took no steps to fix the problem. Second, the station had received a Notice of Violation for similar issues more than a decade before this violation. Based on these facts, an upward adjustment of \$2,000 was added to the base fine.

### FCC Fines Ohio Broadcaster \$4,000 for Failure to Disclose the Material Terms of a Contest

The FCC levied a \$4,000 fine against an Ohio Broadcaster for failure to *fully and accurately* disclose all material terms associated with a contest in violation of Section 73.1216 of the FCC's Rules. The FCC issued two letters of inquiry following a February 2009 complaint alleging the station failed to disclose certain terms associated with the contest, which aired intermittently for more than two years. The contest required listeners to accurately identify the voice of an "unnamed individual in the sports world" in exchange for prizes, which would accumulate until a listener succeeded in identifying one of the sports voices. According to the NAL, the complainant alleged, among other things, that the station "stopped discussing prizes".

Section 73.1216 requires licensees airing information about an on-air contest to fully and accurately disclose the material terms of the contest. The licensee must conduct the contest substantially as announced or advertised, and contest descriptions cannot be false, misleading or deceptive with respect to any material term. The FCC provides limited guidance in defining "material terms", but states that the material terms will generally include: how to enter or participate, eligibility restrictions, entry deadline dates, whether prizes can be won, when prizes can be won, the extent/nature/value of prizes, the basis for valuation of prizes, the time and means of selection of winners, and any tie-breaking procedures.

In this case, the contest continued for "more than twenty months" without a successful contestant and during that time, prizes continued to accumulate. In response to the FCC's inquiry, the licensee indicated that the station's contest announcements, which included "certain basic" material terms, were broadcast on a weekly basis initially but later became infrequent. The announcements did not include the entire list of prizes, or the fact that due to availability, certain prizes had been substituted for previously announced prizes. The announcements mentioned only the latest prize to be added to the "prize closet".

The licensee asserted that the contest rules had been adequately disclosed on the station's website. However, the FCC noted that disclosing the material terms only on the station's website was patently inadequate, and that the failure to identify and value the contest prizes would tend to mislead the public. As a result, the FCC concluded that the licensee violated Section 73.1216, and levied the base fine of \$4,000 for such a violation.

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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.

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