FCC Enforcement Monitor

by Scott R. Flick and Christine A. Reilly

Headlines:

- *FCC Increases Fine to $25,000 for Main Studio and Public File Violations*
- *FCC Reaffirms $10,000 Public File Violation Against Student-Run Noncommercial FM Station*

FCC Fines Texas Broadcaster $25,000 for Repeated Failure to Maintain Full-Time Personnel and to Make Available a Complete Public Inspection File

According to a recent Notice of Apparent Liability ("NAL"), the FCC proposed two fines totaling $25,000 against a Texas broadcaster for violations of Section 73.1125 (the "Main Studio Rule") and Section 73.3526 (the "Public Inspection File Rule") of the Commission's Rules. The violations were discovered during three separate site visits over a two week period by an agent from the Enforcement Bureau's Houston Field Office.

The Main Studio Rule establishes the requirements for a station's main studio, including minimum staffing levels. The FCC requires that licensees maintain a "meaningful management and staff presence" at a station's main studio. Based on a 1991 decision, the FCC defines "meaningful" as having at least one management level employee and one staff level employee generally present "during normal business hours." The base forfeiture for violations of Section 73.1125 is $7,000. The Public Inspection File Rule requires broadcasters to maintain, and make available, certain material in their public inspection file, including a station's current authorization, a current copy of the Public and Broadcasting manual, and a list of programs ("issues-programs list") broadcast during each quarter of the license term that evidences the station's most significant treatment of community issues. The base forfeiture for violations of Section 73.3526 is $10,000.

In December 2010, following a complaint, the field agent attempted to conduct an inspection of a Port Neches AM station. The NAL stated that the agent visited the main studio location on numerous occasions during the course of one day, including during regular business hours, but was unable to access the unmanned and locked main studio. A week later, during a second site visit, the agent was able to access the main studio and review the station's public inspection file which "did not contain a current copy of the station authorization, service contour map, the most recent ownership report, Public and Broadcasting manual, or any issues-programs lists." During that inspection, the agent observed that the on-air announcer was the station's sole employee, who "acknowledged that there was no manager at the station" and that the licensee's president, who was out of the country until the following week, would be able to provide the missing materials. The following week, the agent, expecting that the president had returned to the station, undertook his third site visit. During that final visit, the agent was informed that the president would not return to the U.S. until "sometime in January 2011" and was denied an opportunity to review the station's public inspection file. According to the NAL, there were three individuals (identified as an "employee and two other disc jockeys") present at the last inspection. The NAL concluded that "upward adjustments of the base forfeiture amounts are warranted" since "[the] circumstances persisted for a period of time without any apparent Station management oversight or efforts to comply." Consequently, the Main Studio Rule base fine of $7,000 was upwardly adjusted to $10,000 and the Public inspection File Rule base fine of $10,000 was upwardly adjusted to $15,000, resulting in a total fine of $25,000.

FCC Upholds $10,000 Fine Against Student-Run Noncommercial Station

In 2007, a New Hampshire student-run FM station was assessed a $10,000 forfeiture in connection with a public inspection file disclosure made in its 2005 license renewal application. The disclosure indicated that the station's public inspection file was missing 12 quarterly issues-programming lists for 2000, 2001 and 2002 and that the licensee had "reconstructed from station logs" the quarterly reports for the first two quarters in 2005. The 2007 NAL stated that the violations of Section 73.3527 of the Commission's Rules, admitted in the context of a required disclosure, were "extensive, occurring over a three-year period and involved at least 14 missing issues-programs lists."

The recently released Forfeiture Order states that the noncommercial licensee submitted a response to the 2007 NAL seeking a reduction or cancellation of the $10,000 fine based on the fact that "(1) the Station serves an educational and community-related purpose; (2) the student-run nature of the Station warrants a measure of leniency when assessing the penalty; and (3) it will take steps to prevent future violations by designating a non-student supervisor to oversee its public file."

The FCC's Order summarily dismissed the request, stating that it is "established Commission policy that there is no proposed forfeiture exemption or reduction based on the noncommercial status of a station." "Where lapses occur, neither the negligent acts or omissions of a station's personnel or agents, nor the subsequent remedial actions undertaken by the licensee, excuse a Rule violation." The Order also noted that FCC enforcement actions consistently state that violations of FCC rules caused by inadvertent error or lack of familiarity with the FCC's requirements still constitute willful violations of its rules. The FCC therefore declined to cancel or reduce the original $10,000 forfeiture. This case provides a stern reminder that disclosure of a rule violation in the context of completing a mandatory form or report is not considered "voluntary" for purposes of mitigating any resulting fines.

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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