
FCC Enforcement Monitor

by Scott R. Flick and Christine A. Reilly

Headlines:

- *Antenna Structure Owner's Failure to Act Results in \$25,000 Fine*
 - *FCC Fines Microwave Licensee \$15,000 for Late-Filed Renewal*
 - *AM Broadcaster Receives Reduced Fine for EAS Violation*
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FCC Fines Texas Antenna Structure Owner for Multiple Ongoing Antenna Structure Violations

In January 2010, a Houston Field Office agent responding to a complaint inspected a 253 foot antenna structure located in Yorktown, Texas. According to the Notice of Apparent Liability ("NAL") issued by the Federal Communications Commission ("FCC"), the antenna structure was unlit and unidentifiable at the time of inspection, in violation of Section 17.51 and Section 17.4 of the FCC's Rules. The field agent later determined that the antenna structure owner had failed to notify (1) the Federal Aviation Administration ("FAA") of the lack of tower lighting, thereby violating Section 17.48 of the FCC's Rules, and (2) the FCC of a change in ownership of the antenna structure, which violated Section 17.57 of the FCC's Rules.

Following the initial inspection, in an effort to maintain public safety and avoid hazards to aircraft, the field agent requested that the FAA issue a Notice to Airman ("NOTAM") about the tower's lack of lighting. The field agent also contacted the antenna structure owner to discuss the violations discovered during the inspection. In a subsequent inspection, some eight months later, the field agent determined that none of the violations had been cured by the antenna structure owner. Again, the field agent contacted the FAA with a request to reissue another NOTAM regarding the unlit antenna structure.

Section 17.51 establishes that obstruction lighting must be functioning between sunset and sunrise. Section 17.4 requires antenna structure owners to display the ASR number in a "conspicuous place so that it is *readily visible* near the base of the antenna structure." Section 17.48 requires antenna structure owners to notify the FAA in the event that a structure's lights are malfunctioning or inoperable for more than 30 minutes. Section 17.57 establishes, among other things, that an antenna owner must immediately notify the FCC of any change in the ownership of the structure.

The base fines for the violations discussed above are \$10,000 (lighting and FAA notification), \$2,000 (displaying ASR) and \$3,000 (failure to notify of ownership change). Based on the antenna owner's lack of responsiveness, the FCC upwardly adjusted the fines to \$15,000, \$4,000 and \$6,000, for a total forfeiture of \$25,000.

Failure to File Industrial/Business Radio License Renewal Application Results in \$15,000 Fine

An Industrial/Business Radio licensee located in Kentucky received a \$15,000 forfeiture from the FCC in connection with its late-filed license renewal application. Pursuant to Section 1.949 of the FCC's Rules, the licensee should have filed its license renewal application no later than the expiration date and no sooner than 90 days prior to the expiration of the license. The license was slated to expire on April 16, 2007. The renewal application was therefore required to be filed between January 16 and April 16, 2007. Pursuant to Section 1.955 of the Rules, a license will expire (as a matter of law) on its expiration date unless an application for renewal is timely filed with the FCC. Consequently, all operations after April 16, 2007 were considered unauthorized and in violation of Section 1.903 of the FCC's Rules, which requires stations to have a valid authorization to continue operations.

The FCC's NAL indicates that the licensee's failure to timely file a renewal application was due to confusion about the license's expiration date. The Licensee's response to the NAL stated that it had "mistakenly disregarded the renewal reminder". According to the licensee, this confusion stemmed from an earlier attempt to consolidate various licenses under one call sign and the impact this consolidation had on the expiration date of the surviving license.

The NAL reiterated the FCC's position that "administrative oversight or inadvertence is not a mitigating factor warranting a downward adjustment of a forfeiture." The FCC also stated that reduced forfeitures for similar violations in the past had failed to create "sufficient incentives" for compliance. Accordingly, instead of reducing the base forfeiture of \$10,000, the FCC levied an upwardly adjusted fine totaling \$15,000.

FCC Fines California Broadcaster \$6,000 for Emergency Alert System Violations

The FCC issued a fine totaling \$6,000 against a California AM broadcaster for violating the Commission's Emergency Alert System ("EAS") rules. During a March 2010 main studio inspection of two co-owned, collocated AM stations, the Enforcement Bureau's San Diego Field Office agents discovered that one of the stations' EAS equipment was malfunctioning. Station personnel indicated, and the EAS logs confirmed, that the EAS equipment had begun malfunctioning in December 2009. The Field Office issued a letter of inquiry to the licensee. The licensee's April 2010 response indicated that the stations' chief engineer had been attempting to resolve the malfunction since February 2010. After several attempts between February and April 2010, the EAS equipment was successfully repaired.

Pursuant to Section 11.35(a) of the FCC's Rules, broadcasters must ensure that the required EAS equipment is installed, maintained and monitored. The base fine for the EAS violation discussed above is \$8000. However, the FCC downwardly adjusted the fine to \$6,000 since the licensee had undertaken a good faith effort to resolve the equipment failures prior to the March 2010 inspection.

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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