Broadcast LAW BLOG

PUBLISHED BY
Davis Wright Tremaine LLP

A Host of FCC Fines of Over $20,000 for Technical and Tower Issues - And a Presentation on How to Avoid FCC Problems to the Kansas Broadcasters

By David Oxenford

November 4, 2011

Last week, I did a presentation on the issues facing broadcasters at the **Kansas Association of Broadcasters** annual convention (a copy of the slides from my presentation is available here). I spoke about some of the day-to-day issues that can get broadcasters into trouble, as well as some of the big policy issues that broadcasters need to consider. My presentation was preceded by a session conducted by the agent in charge of the Kansas City field office of the FCC, who emphasized the many issues that the field agents discover at broadcast stations that can lead to fines. In the week since I returned from Kansas, it seems like the FCC has wanted to demonstrate the examples given by their agent, as there have been a large number of fines demonstrating the breadth of technical issues that broadcasters can face. Fines (or "forfeitures", as the FCC calls them) were issued or proposed for issues ranging from faded tower paint, tower light outages, EAS problems, operations with excess power, and the ubiquitous (and very costly) public file violations. Fines of up to $25,000 were issued for these violations - demonstrating how important it is not to overlook the day-to-day compliance matters highlighted in my presentation.

The largest of these fines was for $25,000. This fine was imposed on a station for failing to have operational **EAS equipment**, not having an **enclosed fence around the antenna site**, and a **missing public file**. The fine was originally proposed in a **Notice of Apparent Liability** (the first step in imposing an FCC fine, when the FCC spells out the apparent violation and the fine proposed, and the licensee is given time to respond to the allegations), released in July (see our post here). The licensee failed to respond to the Notice of Apparent Liability, thus the fine is now being officially imposed.

In another case, a tower owner was fined $3750 for failing to have operating lights on a tower, and failing to notify the FAA that the lights were not working. The fine was imposed even though the tower no longer had any communications antennas mounted on it, the tower was scheduled for demolition, and the owners were elderly and in poor health. The FCC reminded tower owners that they must observe all lighting requirements even if no licensees were using the tower for as long as the tower is standing. A $10,000 fine was proposed in another case for a North Carolina station that did not have operating tower lights, and did not have a system in place to monitor the lights. In both cases, the FAA was apparently not notified immediately upon the tower lights failing.

These tower owners were not the only tower owners to get into trouble. The Commission issued a Notice of Apparent Liability for $20,000 to another tower owner in Atlantic City NJ who had a tower that had faded paint, lights that were not operational, and an open gate in the fence surrounding the base of the tower. The FCC inspected the tower several times, notified the owner of the issues, and was promised that the lights would be fixed by a given date. But, upon revisiting the site well after the promised date, the lights were still out and the paint was still faded. Thus, the fine was upped from the $17,000 that would be suggested by the FCC's schedule of routine amounts for fines, to the announced amount of $20,000. Obviously, if you make a promise to the FCC that you are going to fix a problem, keep it.

But keeping track of who owns a tower is also important, as a $3000 fine was proposed for a tower owner in California. The FCC visited the tower, and contacted the owner listed in the FCC tower registration records (when registering, tower owners are given an **Antenna Structure Registration** of ASR number).

That owner told the Commission that the tower had been sold years before - with the Buyer apparently never bothering to update the tower registration at the FCC. As we have warned before, the **FCC tower registration is not automatically updated when the sale of a broadcast station is approved by the FCC**. A buyer must proactively go to the FCC and file a separate form to change the owner in the FCC tower registration database. If you don't update the tower registration, and a problem arises at your site where the FCC needs to find the tower owner, you may be looking at a fine.

While operating your tower in compliance with the rules is important, so is **operating at the right power**. Fines for overpower operations, especially on AM stations that have to switch power levels or directional patterns at sundown, seem common, including fines of $4000 in cases reported here and here. Especially at this time of year, on Friday nights with high school football games going on after dark, and sundown coming earlier and earlier, stations may be inclined to cheat. But if you get caught, you are looking at fines - and you have built in enforcers in competing stations who don't want you to get the competitive advantage of an overpower operation.

Moving a station without approval can also be costly - as shown by the case here. The Commission is proposing a $22,000 fine for a station operating from a site not authorized in its license (even small moves require FCC approval), and not having an operating EAS system or a complete public file.

This host of fines demonstrates that the FCC is very serious about the technical operations of broadcast stations. Seemingly little issues can result in big fines - so pay attention to details and save yourself a few dollars.