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Focus on FCC Fines

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A.M. Anarchy? – Two AM stations are facing fines for operating outside of their technical parameters. One station failed to power down at night and the other was broadcasting a signal that interfered with neighbors all over the AM dial. In both cases, the FCC investigation into the improper technical operations triggered more extensive review of the stations and the G-Men uncovered problems with fines, public files and EAS compliance.

In Florida, the FCC investigated complaints about an AM station that was causing interference in the AM band. FCC agents used a calibrated spectrum analyzer and loop antenna to measure spurious emissions around the station's transmitter. In so doing, they determined that, at frequencies removed by 60 to 75 kHz from the station's carrier, emissions were reduced by only 33 dB in one instance. FCC rules require that such emissions be attenuated at least 65 dB below the unmodulated carrier level.

Presented with that determination, the station explained that it did not have the necessary equipment to monitor the emissions. Rather, it said, it relied upon annual measurements and inspections by consulting engineers to ensure compliance. Alas, the FCC reminded the station that it could and, indeed, should monitor the emissions. All that the station personnel had to do was go out into the parking lot, turn on their car radio and the spurious emissions were inescapable – given the level of the problem, the station could be heard up and down the AM dial. In fact, prior to using the monitoring equipment, the FCC agents simply turned on their car radio and could hear the signal stepping all over the AM band.

During the investigation of the AM interference, the FCC agents took the opportunity to read through the station's public file, inspect its EAS equipment and survey the tower and protective fences. All of these problems added up to an \$18,400 fine for the station. The station promptly paid the fines for the EAS and public file deficiencies but contested the emissions and fence findings. The FCC stuck to its guns on all four fines, but did reduce the overall amount because the station was a first time offender.

A New York state AM station that was authorized for daytime-only operations chose to

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ignore the daytime-only restriction. After receiving a complaint about the station, an FCC agent stayed up late and woke up early to monitor the station's operations. As a daytime-only licensee, the station was required to shut down at sunset and not begin broadcasting until sunrise. The FCC agent monitored the station at both sunset and sunrise and found no change in the signal at any time.

The agent confronted the station manager with his observations and the manager readily admitted that the station had not been powered down at sunset for quite some time. Apparently in defense of this decision, the manager advised the agent that the station was operating at only one-third of its authorized power. Both of these admissions landed the station a \$4,000 fine.

The fines did not end with the power problems. Since the FCC agent was already at the station, he looked into the station's EAS and public files. The agent discovered that the EAS equipment was not functioning and, upon interviewing an employee, determined that for the three years that the employee had been there, no EAS tests had been run and no logs had been kept. The review of the public files also revealed problems. The agent tacked on an \$8,000 fine for the EAS problems and another \$4,000 for public file deficiencies.

Many technical problems with a station's signal are easy to observe and are likely to invite an FCC inspection. Stations should also bear in mind that – as in these cases – an inspection of transmitter problems is often just the start of a licensee's problems, a lifting of the corner of the tent enough to let the camel's nose stick in. Once that happens, there's no telling what other problems – wholly unrelated to the reason the Feds show up in the first place – may be discovered when FCC agents are roaming around your main studio.

“Anything You Say, Can and Will be Used Against You” – The trio of cases reported below should be a stern warning to all readers to be careful about what you say to FCC agents. One case involves a tower owner sending off an e-mail to the FCC admitting his failures. The other two cases involve local police and the FCC working together to capture pirates using mobile radios to interfere with communications.

In the first case, the FCC received a complaint from a local official that a tower was not properly lighted. The FCC looked up the tower and contacted the owner. The owner sent someone out to the tower, observed the problem and took the proper precautions. The tower owner then engaged in a series of e-mail exchanges with the FCC that provided the foundations for the FCC's fine.

The tower owner wrote to the FCC agent that the tower's automated light monitoring

equipment had been damaged for at least a year. The owner further advised the FCC agent that on three separate dates in the month preceding the outage an employee visually inspected the towers. The problem is that FCC rules require a tower owner to inspect a tower's lights at least once every 24 hours. The inspection can be either visual or by observing automated monitoring equipment. With only a few keystrokes, the tower owner's e-mail admitted that he had violated the lighting rule. The FCC fined him \$1,600.

In two cases involving mobile radios, FCC agents and local police worked to find men who were intentionally interfering with two-way communications. The Boston Police Department raided the home of a 17-year-old boy who had reprogrammed a radio to work on police department channels. The teenager was arrested at home with the radios in his hands and admitted that he had been disrupting communications. Although the FCC initially attempted to fine the boy \$10,000, they eliminated the fine upon determining that the boy had no income.

A more interesting case popped up in Georgia. FCC agents and local police tracked down a man who was interfering with communications between school busses. When the FCC (accompanied by local police) interviewed the man, he admitted that he was causing the problems and explained that he was doing so because he was upset that he had lost the contract to provide the communications network for the school busses. The man went on to explain that he had reprogrammed a radio to cause the interference and even showed it to the FCC agents and to the police. Two months later, the FCC sent the man a fine for \$17,000 and – here's a surprise – his story quickly changed. Go figure! The man no longer admitted that he had caused interference on purpose. His new story: the transmit button was accidentally pressed on his radio. (In his own eloquent explanation, the guy told the FCC that he had incorrectly mounted his transmitter, which caused "PTT of the VHF to mash against the base of the UHF and go into the TX by itself.") In order to get around the pesky fact that he had admitted to everything two months earlier, the man now claimed that the presence of the police officer made him nervous. The FCC went with the first story and discounted the tale that was spun when the man realized there would be a \$17,000 fine.

Papers, please, let us see your papers – The FCC fined the buyer and seller of a radio station \$3,000 each for failing to submit with their assignment application all of the agreements underlying their transaction, even though they had made a passing reference to a third-party agreement. The FCC insisted, in retrospect, that that third-party agreement should have been included with the application. This appears to set new precedent in this area.

In the FCC application to sell the station, both of the parties advised the FCC that they

were not including every document regarding the sale of the station. Two of the documents not included were a shared services agreement and a separate purchase agreement between the buyer and a third party. The buyer withheld these particular items because, as it understood the relevant rules and policies, there was nothing requiring applicants to include agreements with third parties as part of another deal.

The FCC agreed that its decisions and orders “do not explicitly require” buyers and sellers to submit such third party agreements. However, the FCC claimed that applicants must furnish all information necessary to enable the Commission to effectively evaluate a transaction. Since the applicants knew about these particular side deals, it was incumbent on the applicants (at least according to the FCC) to recognize that the Commission might want to take a look at the terms of the side deals when evaluating the application. What is established by the latest FCC decision is the curious holding that the FCC will decide, after-the-fact, whether or not a document should have been included with an application. As we now know, failure to include a document can result in a fine. So the take-home message here appears to be that it may be prudent to err on the side of disclosure when it comes to side deals. And even if you elect not to submit one ancillary agreement or another, it is probably advisable to alert the Commission, in clear and unmistakable terms, to the existence of the withheld materials (along with an explanation for why you’re withholding them).