



May 2008

Focus on FCC Fines

R.J. Quianzon
703-812-0424
quianzon@fhhlaw.com

FCC to broadcasters: Let's make a deal – In the autumn of 2005, the FCC issued a \$15,000 fine to a Puerto Rico station for failing to maintain an issues/programs list and for tower violations. The station protested the fine and the FCC reduced it to \$14,000 in 2007. The station protested the fine again, but with this protest, the station offered to make a deal with the FCC. The FCC took the deal and in 2008, two and a half years after the first fine was issued, the FCC cut the fine down to \$8,000. In exchange for the lower fine, the station agreed that it would follow the FCC's rules and would send in three letters over the next two years reporting to the FCC that it is following the rules.

In a similar wheeling-and-dealing opportunity, the FCC let an Alabama radio operator cut its \$12,000 fine down to \$6,500. The Alabama case involved an operator that was missing issues/programs lists from the public files for three of its stations (an AM and two FMs). The FCC proposed a \$12,000 fine in February, 2007. The stations protested the fine, but six months later the FCC ignored the protest and upheld the \$12,000 fine. The station protested a second time and with its second protest was a bit more conciliatory to the FCC. Seeing the broadcaster's hat in hand, the FCC agreed to cut the fine to \$6,500. As with the Puerto Rico case, in order to reduce its fine, the owner had to promise (a) not to violate again and (b) to three letters over the next two years reporting that it has been following the rules.

Send change of address notices to the FCC – Unfortunately, broadcasters cannot simply send a postcard to the FCC to let the government know "We're Moving." Instead, because broadcaster moves often involve relocating radio frequencies and broadcast equipment, one must use the appropriate FCC forms and processes to assure that the Commission's records accurately reflect the change. Perhaps more importantly, broadcasters must recognize that, when a main studio move will also involve a relocation of auxiliary gear (like an STL), affirmative FCC approval will be required as well.

A New Mexico station faces an \$800 fine for moving its studio, and its studio-transmitter link, without telling the FCC. The station used a 900 MHz wireless link to deliver its programming from its studio to its transmitter site. In February, 2007, the station moved

its studio and moved the link with it. However, the station neglected to tell the FCC that it was now beaming the 900 MHz link from the new location. Instead, another user of the frequency reported to the FCC that the station had moved into its neighborhood and was making too much noise (in the spectrum).

The FCC showed up at the station and explained that when the station moved, it should have filed paperwork telling the FCC that the auxiliary gear moved, too. The FCC checked back a month later and the station had not filed the paperwork, although the station advised that it would be getting on it soon. Six months after the FCC first showed up at the station, the paperwork *still* was not on file, and the FCC fined the station \$4,000. The station protested the \$4,000 fine. However, the FCC noted that even at the time that the station filed its protest it *still* had not filed the paperwork. Indeed, the paperwork didn't get submitted until April, 2008, 14 months after the station moved. However, the station did prove that a \$4,000 fine was a financial hardship, and the FCC reduced it to \$800.

In a similar case, a Mississippi AM apparently forgot to tell the FCC of the correct address for its transmitter. Responding to a complaint that the AM station was not powering-down after sunset, an FCC field agent camped out at the tower for several hours over two nights to monitor power levels. While the agent was sitting at the tower watching the power meter, he happened to notice that the tower location was not at the location specified in the station's license. Oops.

The FCC agent met with the station owner and asked about the power and location problems. The owner admitted that he had planned to move the tower, had had it licensed for the new location many years ago, but that the real estate deal fell through. The station owner also confessed that the station had to be powered down manually at night and that this was done around 9:00 in the evening. In response, the FCC agent sent the tower owner an \$8,000 fine. The station owner then provided the Commission evidence of his financial status. The FCC responded by reducing the fine to \$1,500. The FCC will likely also collect its fee for the modification application to correct the tower's location in the FCC records.

Another AM that does not shut off – The previous tale of the AM station that had to be shut off manually is outdone by the Florida daytime-only AM station that could not be shut off at all. The FCC received a complaint about an AM station that was not shutting down at night. An FCC agent appeared at the station and verified that the station was still broadcasting well after sunset, contrary to its license. The FCC agent returned later to review the problem with the station's Chief Operator and the President of the licensee. In what must have been quite a sight, the Chief Operator and President gave the FCC agent a tour of the station – but when the time came to shut down the transmitter, neither was

able to do it. The two were able to reduce the power of the station but they could not turn off the transmitter. Three days after the tour, the station contacted the FCC and admitted that they were still unable to shut off the transmitter. Not pleased that a daytime-only AM station could not turn off at night, the FCC sent the station a \$3,200 fine.