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## **Focus on FCC Fines**

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***FCC increases maximum fines*** – This month the FCC did what it had to do and raised the maximum guideline fine amounts to keep up with inflation.

This piece of regulatory housekeeping was mandated by Congress in the Debt Collection Improvement Act of 1996, which requires federal agencies to adjust maximum civil monetary penalties at least once every four years.

Accordingly, the FCC duly laid out a detailed formula for how it reached inflationary adjustments dating back to the consumer price index of a dozen years ago. Most of the adjustments in the FCC order dealt with various Common Carrier fines, but the FCC did take time to increase maximum per violation and per day fines for broadcasters.

With certain limited exceptions (broadcast indecency probably being the most noteworthy) broadcasters and cable operators formerly faced a maximum fine of \$32,500 for each violation or day of a continuing violation. That amount has been increased by \$5,000 to \$37,500. Similarly, the maximum fine for a continuing violation has increased from \$325,000 to \$375,000. (Broadcasters should not feel bad; common carriers also face new maximum fines of \$150,000 per day or \$1.5 million total.)

The increases reflect a 15% increase based upon inflation. While inflation certainly was nowhere near 15% in the last year, arcane government rules require the FCC to adjust amounts only when they exceed certain thresholds. Aggregate inflation finally exceeded that threshold in 2007 and the maximum amounts were adjusted by at least \$5,000.

Note that the maximum indecency fine is \$325,000 per incident.

***Broken EAS gear = \$8,000; No EAS gear = \$5,000*** – From Woodward, Oklahoma, comes the story of how a station that completely ignored the FCC rules ended up with a lower fine than a station that tried to comply. An FCC inspector walked into the studios of co-located stations in Oklahoma and had a look at the EAS equipment. The inspector found that the equipment was missing audio inputs and that it had a faulty date and time

mechanism. Weekly and monthly testing records were also nowhere to be found. The FCC inspector was not pleased and marched back to his office to draft up a violation notice.

When the inspector arrived back at his office, he discovered that although the stations were co-located, they each had different owners. Flipping through his rule book, the inspector found Section 11.51(1), which permits stations to share EAS equipment *only* if they are both co-located *and* co-owned. One of the two stations (the one which had not bought the equipment) was in violation of FCC rules for not having EAS gear at all. The other, which *had* bought the gear, was in violation because the gear wasn't working.

The inspector finished his research and sent off two fines. The station with no gear at all was hit with a \$5,000 fine for failing to install EAS equipment. The station that actually had equipment was ordered to pay an extra \$3,000 (for a total of \$8,000) for having faulty equipment. This should serve as a reminder to co-located stations that they can share EAS equipment only if they also share the same owner. Readers can draw their own conclusions regarding the meaning of the FCC's decision to issue a larger fine to the station that went to the effort of actually buying the gear.

***Half a decade for a fine*** – Finally, we report on how the fast pace of New York City does not necessarily make its way 200 miles south to Washington. In March, 2003, an NCE in New York City began airing spots which were more advertisements than underwriting announcements. The matter was brought to the FCC's attention and an investigation began. The FCC wrote a letter to the station and the station wrote back. The FCC and the station attorneys met to discuss a solution and exchanged agreements. Eventually, the FCC and station entered into a consent decree.

While it is widely known that a Wall Street hedge fund manager can spend \$5,000 on dinner in no time at all, it took the FCC and the New York radio station more than five years to agree on the \$5,000 fine. In addition the station also agreed to implement certain self-monitoring plans and to send four letters to the FCC to report that it is complying with the rules. Of note, the station needs to send in those four letters over three years – two years less than the time it took the FCC to decide to require that the letters be sent.