



The

Broadcasters' Desktop Resource

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... edited by Barry Mishkind – the Eclectic Engineer

Focus on FCC Regulation **Self Defense From the FCC Fine Machine**



By James W. Pollock

[January 2013] As we start a new year – and are still in the middle of the License Renewal cycle – this is an apropos time to review how your facilities are doing in terms of complying with the FCC Authorizations.

As a consulting engineer, I have become very interested in a very non-technical aspect of the broadcast business – the fines that the FCC assesses against stations for various infractions.

PAYING THE ENGINEER – OR THE FCC

The matter drew my attention when a “pro-se” client was so bogged down in FCC fines, that he could not pay his consulting invoices. Like it or not, we became adversely affected by the fines through collateral osmosis.

With due respect, the fine victims seem to fall into two categories:

- those who are unaware of their potential danger.
- those who do not care.

The former suffer from not having anyone watching their back regarding compliance with the Rules and Regulations. The latter take the

view that it is all a matter of probability, and they look at it simply as a risk which can be amortized over the years (Oh! you riverboat gambler, you).

With respect to those who are unaware, the consultants and/or the local engineer often are viewed as the bad guys – especially when the licensee feels they should have seen the problems and did not make the licensee clearly aware of them.

On the other hand, the risky path works as long as the FCC does not pay a visit to the station. However, I have noticed that attitude abruptly changes when station management is faced with a stiff five-figure fine.

Here is one of the best reasons why avoiding the NOV's and NAL's (explain abbreviations) is so important: In order to recoup each dollar lost to forfeitures takes as much as ten dollars in sales.

HOW TO AVOID FINES

The first thing to do is identify the areas of vulnerability and make sure that everything is in order. In some states, an Alternative Broadcast

Inspection Program (ABIP) is in place to help stations by arranging an inspection that is not reported to the FCC, unless the station passes – in which case the station is normally not inspected by the FCC over the next three years.

The main areas where stations often find themselves facing nasty monetary assessments are:

1. The Public File
2. EAS logs
3. Tower lighting issues
4. Tower fence integrity
5. On-Air Profanity

This is not an exhaustive list. However, the notices of fines assessed by the FCC each year indicate there is a lot of emphasis on these key points. For a more comprehensive checklist in conducting station inspections, it is useful to download and use the booklet available at:

<http://transition.fcc.gov/eb/bc-chklsts/>

Following this checklist and correcting any problems will go a long way to preventing problems with the FCC. Nevertheless, even with the checklist, many questions may remain. So, let us look at a few of the areas inspectors upon which inspectors will focus.

THE PUBLIC INSPECTION FILE

Public File citations seem to be the most common. Violations begin at \$10,000, and these fines can get really nasty if the FCC Inspector deems the violation as due to gross negligence. Ignorance of the Rules offers no protection or mitigation.

You can invest a small amount of time and printing by reading the Public Inspection File series [here on the BDR](#). The articles were written to help understand the Public Inspection File and its parts. Some of the articles come directly from inspectors who have been part of the ABIP. Others come from interviews with a number of inspectors and FCC personnel.

One more thing: make sure your Public File contains the brochure entitled *The Public and*

Broadcasting. The current edition was most recently updated in July 2008. This brochure has to be made available to anyone who wants to see it – or who requests a copy. (You can charge duplication costs if they want a “hard copy.”) If you do not have the July 2008 revision in your files, get it now at (the link to the pdf is bad):

http://transition.fcc.gov/mb/audio/newsite/docs/public_and_broadcasting.html

OTHER HOT SPOTS

Potential liabilities do not stop just at the Public Inspection File. The scope of FCC compliance for broadcasters is not confined to Part 73. FCC Parts 1, 2, 11, 17, and 74 (among others) have to be considered to assure compliance and keeping your checkbook balance intact.

Indeed, after Public File violations, EAS and tower lighting violations are among the most prevalent assessed against stations. And in recent years, political forces have made profanity a real hot-button issue, and the source of fines. Of course, whether or not the fines stick, the legal costs may be as much or more than the fine itself.

The FCC Fine Schedule is located in FCC Part 1.80. Just looking at the list of “gotchas” and penalties is a wake-up call in itself. A table of infractions and relevant reference to FCC Regulations appears at the end of this article. If you find yourself with questions – or have been cited - please retain an FCC Attorney for legal advice.

RELIABLE SOURCES

The FCC has been working on its web site to improve its delivery of information.

While there are some glitches, a lot of the material that used take a lot of searching is sometimes now found a bit more easily.

However, the link you need takes you away from the FCC to the GPO, the Government

Printing Office site. There is where the CFR titles will be found, labeled “e-CFR.”

As this is written, the site says the files are updated to January 3, 2013.

Nevertheless, it is always advisable to take a little extra time to make sure any critical rule you are seeking is the most recent version. There is a delay between when the FCC makes changes and when the GPO published it.

For your information, the index of CFR47 titles at the GPO are found [here – a click on this link](#) will save you a lot of typing time.

At this writing, the current version on the GPO site is dated January 2, 2013. Any time you use the site to download the Rules, be sure to check the date shown.

THE REWARD

The ultimate reward for FCC compliance is the absence of penalty. There is nothing that you can do about an FCC inspection. If it is destined to happen, it will occur whether you take a proactive interest or not.

Of course, it is station management’s responsibility to maintain compliance and foster it by getting the staff involved. Paying attention, routine internal inspections, and taking advantage of the ABIP all add up to a well-run operation and less money paid out in fines.

Finally, please let me repeat this important point: This article is intended to raise awareness and it is not meant to be legal advice. An FCC Attorney can dispense the appropriate legal advice.

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See the following four pages for a list of FCC fines.

FCC Forfeiture Schedule as per FCC part 1.80	FCC Part #	Fine	Remarks
Construction/operation without Authorization	73.1745 73.3533 73.3535 73.3536 73.3538	\$10,000	If you build it; they will come. If you are authorized, do not forget to post your license in a conspicuous place See 73.1230
Tower Lighting and Marking	FCC Part 17, 73.1217	\$10,000	Is your tower landlord compliant?
Public File violations	73.3526 73.3528	\$10,000	Read the Public File Series!
Political Rules (reasonable access, lowest unit charge)	73.1940 73.1941 73.1945	\$9,000	
Political File, required contents violations	73.1943	\$9,000	
Unauthorized substantial transfer of control	73.5009, 73.3540 73.3541	\$8,000	
Childrens' TV programming, commercialization	73.670(TV) 73.674(TV)	\$8,000	
EAS Equipment not installed or operational. EAS Handbook not present at duty positions	11.11 11.16	\$8,000	
Violations of rules relating to distress and safety frequencies	73.1217 1.9048 2.405	\$8,000	Also, see FCC Part 90.
Alien ownership violation	1.2110, 1.2112, 1.919 73.3615,	\$7,000	
Failure to permit inspection	73.878 73.1225 73.1226	\$7,000	

FCC Forfeiture Schedule as per FCC part 1.80	FCC Part #	Fine	Remarks
Transmission of indecent-obscene materials	73.3999 73.4165 73.4171	\$7,000	
Importation or marketing of unauthorized equipment	FCC Part2	\$7,000	Are you using compliant equipment; or did you buy it from a roadside stand from "some guy"?
Interference	73.809(LPFM) 73.317(FM) 73.1030 73.6022 73.6028 74.1203 73.809(LPFM)	\$7,000	Is your transmitter clean? (spurious emissions?) Are you using the correct power, antenna pattern? Are you taking corrective actions?
Exceeding of authorized antenna height	73.211(FM) 73.827(LPFM) 74.1235	\$5,000	FM Stations, FM or TV Translators take notice.
Fraud by wire, radio or television	1.80	\$5,000	Chart in section "I"
Unauthorized discontinuance of service	73.1740 73.1750	\$5,000	Minimum schedule also applies.
Use of unauthorized equipment	2.925, 2.811	\$5,000	
Exceeding power limits	73.1745	\$4,000	
Failure to respond to Commission communications	1.951	\$4,000	A letter from the FCC is not junk mail.
Violation of sponsorship ID requirements	73.1212	\$4,000	

FCC Forfeiture Schedule as per FCC part 1.80	FCC Part #	Fine	Remarks
Unauthorized emissions	73.44(AM) 73.317(FM)	\$4,000	Is your transmitter clean?
Using unauthorized frequency	73.44(AM) 73.1540 (AM, FM, TV)	\$4,000	Be vigilant with frequency agile transmitters and transmitters sharing a common antenna via diplexing. Is your AM, FM, TV transmitter clean? Can it be heard at more than one place on the dial? Is it also transmitting on a harmonic? Is your FM sending a spur on the Aircraft COM-NAV Band? Is your microwave studio-transmitter link on the correct frequency?
Failure to engage in required frequency coordination	74.803, 74.832	\$4,000	This applies to STL's, aux stations, translators
Construction or operation at unauthorized location	74.1237 73.315(FM)	\$4,000	Is your transmitter site really at the geographical coordinates specified in the C.P. or License?
Violation of requirements pertaining to broadcasting of lotteries or contests	73.1211, 73.1216	\$4,000	
Violation of transmitter control and metering requirements	73.53, 73.57 73.68, 73.69 73.158 73.688(TV) 73.691(TV) 73.1400	\$3,000	Are you able to read and control your transmitter?
Failure to file required forms or information	1.17, 73.3613 73.3615 73.3612	\$3,000	Filing of Contracts, Ownership reports, Annual Employment reports, Applications, etc.

FCC Forfeiture Schedule as per FCC part 1.80	FCC Part #	Fine	
Failure to make required measurements or conduct required monitoring	73.69(AM) 73.1400 73.691(TV) 73.877(TV)	\$2,000	Transmitter log?
Failure to provide station ID	73.1201 74.1283 74.882	\$1,000	FM, LPFM, and TV translators and boosters.
Unauthorized pro forma transfer of control	73.3540	\$1,000	
Failure to maintain required records	73.877	\$1,000	FM, LPFM, and TV translators and boosters too!
Failure to maintain directional pattern within prescribed parameters.	73.62(AM) 73.316(FM)	\$7,000	
Violation of main studio rule.	73.1125	\$7,000	
Violation of broadcast hoax rule.	73.1217	\$7,000	
Tower fencing	73.49(AM)	\$7,000	FM and TV Towers should be fenced as a matter of security and safety
Broadcasting telephone conversations without authorization.	73.1206	\$4,000	
Violation of enhanced underwriting requirements.	73.3500	\$2,000	Financial requirements in error or falsified?

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