

TOPIC:

FCC'S \$10,000 FINES AGAINST COLLEGE RADIO STATIONS: PLAYING BAD RECORDS MAY BE LEGAL; KEEPING BAD RECORDS IS NOT

INTRODUCTION:

Many colleges and universities have student-run noncommercial educational radio broadcast stations. These stations are subject to licensing and regulation by the Federal Communications Commission ("FCC"). [\[1\]](#) Recent FCC enforcement actions make clear that a broadcaster's status as a college or "student" station does not excuse (or mitigate) the station's failure to comply with FCC rules and regulations. In particular, the FCC has been rigorously enforcing its public inspection file rules (discussed in section II below), imposing base forfeitures of \$10,000 on college and university radio station license-holders for failing to maintain required documentation in the stations' public files.

The FCC's "get tough" enforcement policies underscore the need for appropriate institutional oversight of college radio stations. For colleges and universities whose stations are not in compliance with FCC regulations, the most likely sanctions are monetary fines or forfeitures, but other possible, more severe sanctions include special reporting conditions, short-term license renewal, and in the very extreme (and very rare) case, possible loss of the station's valuable FCC license.

DISCUSSION:

I. Bygone Days

Broadcasting is a heavily regulated industry with the FCC exercising broad powers pursuant to the Communications Act of 1934, as amended. In bygone times, perhaps in recognition of the training function of college radio, the FCC accorded college stations some leeway with regulatory compliance, particularly for regulatory omissions that were relatively minor and inadvertent. Over the past decade, however, FCC enforcement has become much stricter. The most recent FCC enforcement cases demonstrate that student radio stations are held to the same standards as all other broadcast stations, commercial or noncommercial, large or small, professionally-run or staffed by students or volunteers.

As the FCC stated earlier this year in a forfeiture case involving a station licensed to Toccoa Falls College:

[W]e find no support for the claim that student-run noncommercial educational (“NCE”) stations should be assessed reduced forfeitures relative to other licensees. We reject the Licensee’s argument that its forfeiture should be cancelled or reduced because of its NCE status. The Bureau likewise has no precedent for exempting a station from liability by virtue of being student run. Rather, licensees are liable for the omissions of those they choose to operate the station. Where student-run stations have had forfeitures reduced, we have done so for reasons other than their NCE status or operation by students. [\[2\]](#)

II. Public Inspection Files

While broadcast stations are subject to a host of FCC regulations, the most recent FCC fines levied against college stations stem from so-called “public file” violations. [\[3\]](#) These involve the failure of the station to maintain a publicly available file of certain FCC documentation (applications, reports, etc.), including quarterly issues/programs lists. These are lists and brief descriptions of programs that have provided the station’s most significant treatment of community issues during that quarter. The description of the programs must include the time, date, duration and title of each program that treated the community issue.

The stated purpose of the public inspection file requirement (including the quarterly lists) is to provide the public with timely information about the station at regular intervals throughout the station’s eight-year license term. The FCC considers a broadcast station’s public inspection file (and quarterly lists) to be an integral part of the station’s service in the public interest. As some of the specific fines scenarios below make clear, a failure to maintain adequate documentation and records is often self-disclosed when a station seeks its standard-term license renewal every eight years.

Several recent examples of college or student station public file violations include:

- Trustees of Columbia University in New York were fined \$10,000 in May 2012 for failing to retain all required documentation in their station’s public inspection file. The FCC became aware of the violation during the FCC license renewal process when the University self-disclosed that its station’s public file was missing twenty-nine quarterly issues/programs lists. The University self-disclosed the omission in order to accurately certify, under penalty of perjury, its response to a license renewal question – whether required documentation had been placed in the station’s public inspection file at the appropriate times.
- University of Maryland, Eastern Shore, was fined \$10,000 and granted a short-term four-year license renewal (instead of the standard eight-year renewal term) in May 2012 for failing to retain all required documentation in the station’s public inspection file. The FCC again became aware of the violation by University self-disclosure during the license renewal process. The public file was missing thirty-two quarterly issues programs lists (i.e., all quarterly lists for the entire prior eight-year license term).
- Rollins College, Winter Park, Florida, was fined \$10,000 in July 2012 for failing to maintain and make available a complete public inspection file for its radio station. The FCC became aware of the violation because of a complaint that resulted in an on-site station inspection by FCC agents. The public file was missing all quarterly issues/program lists for 2008-2011.
- Toccoa Falls College, Toccoa, Georgia, was fined \$10,000 in July 2012 for failing to properly maintain a public file for its student-run radio station. As with the Columbia University and

University of Maryland, Eastern Shore cases, the FCC became aware of the violation during the license renewal process when the College self-disclosed that its station's public file was missing four years of issues/programs lists.

- Ball State University, Muncie, Indiana, was fined \$1,000 in August 2012 for failing to retain all required documentation in the station's public inspection file. As with the above examples, the FCC became aware of the violation by University self-disclosure during the license renewal process. The public file was missing eight quarterly issues program lists; however, the FCC reduced the forfeiture from the base amount of \$10,000 to \$1,000 because it credited the station's representation that the lists had been prepared timely and placed in the file, but later misplaced or discarded. [\[4\]](#)

The consequences of failing to self-disclose a public file problem when certifying at license renewal time are even more dire. Such a failure could be deemed a "lack of candor" or "misrepresentation" to the FCC – a very serious matter.

In 2004, San Francisco Unified School District, the license holder of a professionally-run noncommercial educational radio station, was designated for an FCC evidentiary hearing, facing possible loss of its station license for false certification and misrepresentations in its renewal application that the station's public inspection file contained all required materials. Separate and apart from the hearing, the FCC also proposed a \$300,000 forfeiture. While the Administrative Law Judge later reduced the forfeiture to \$10,000 and granted the station license renewal for a short (two-year) term, the Judge's decision was rendered only after a five-day full evidentiary hearing with witness testimony, cross-examination, and documentary exhibits, as well as post-hearing findings of fact and conclusions of law.

It is clearly important for a college radio station to maintain its public inspection file and quarterly issues programs lists and to be well-versed about the FCC license renewal process. It is therefore critical that the higher education institution holding the broadcast license conduct appropriate and continuing oversight of the station because, as the licensee, the institution will ultimately be responsible for any FCC rule violations at the student station.

III. Institutional Oversight

While recent FCC fines against college radio stations are for public file (or "documentation") violations, the FCC's enforcement practices are being applied to other sorts of FCC regulatory non-compliance. For example, in June 2012, the FCC fined Bethany College \$6,500 for unauthorized periods of silence when the station failed to broadcast, [\[5\]](#) as well as an untimely-filed license renewal application.

For all of these reasons, campus counsel or other administrators should take the following steps to ensure appropriate institutional oversight of college stations:

1. Ensure that the college radio station has a reporting structure that includes administrators and that periodic reports are made;
2. Ensure that institutional administrative oversight of the station occurs;
3. Ensure that station management and institutional supervisors thoroughly understand the FCC's regulatory requirements;

4. Ensure that station personnel have access to FCC regulatory updates and reminders;
5. Ensure that station management uses the FCC Self-Inspection Checklist (a link to which can be found in the Resources section below) for periodic (preferably, at least annual) self-inspection of its operations;
6. Ensure that station management is aware of the station's FCC license renewal obligations, the FCC license renewal process, and the deadlines for FCC license renewal;
7. Ensure that station management conducts regular inventories of its FCC-mandated documentation, including the public inspection file, and that all FCC reports or FCC filings are made timely.

These steps will help reduce the risk of FCC regulatory violations (including violations that are inadvertent or due to frequent turnover at student-run stations).

CONCLUSION:

College and student radio stations can be important assets to educational institutions for a variety of reasons, including community outreach, training, student activity, and a source of local or independent radio programming. Some college radio stations also have significant value in the broadcast marketplace, as recent news reports about college radio station sales demonstrate. [\[6\]](#) Holding a college radio station license, however, puts an educational institution on the same FCC regulatory compliance footing as major broadcasting entities. Campus counsel and other administrators should therefore exercise appropriate administrative oversight over their student radio stations and ensure regulatory compliance (including periodic checks of the station's public inspection file).

FOOTNOTES:

FN1. Some colleges and universities have internet-only student radio stations, also known as "webcasting." Internet-only student radio stations are not subject to the FCC's regulatory regime and the issues discussed in this NACUANOTE; instead, their legal issues tend to be intellectual property issues, predominantly music licensing issues, which are beyond the scope of this NACUANOTE.

FN2. *Toccoa Falls College*, Forfeiture Order, (rel. July 27, 2012) (internal citations omitted).

FN3. See 47 CFR Section 73.3527 (2011) ("Local public inspection file of noncommercial educational stations").

FN4. Links to the relevant FCC orders are listed below under "Resources."

FN5. See 47 CFR Section 73.561 (2011)

FN6. FN6. *Waning Support for College Radio Sets Off a Debate*, THE NEW YORK TIMES (Dec. 5, 2010); *What's Eating College Radio*, THE CHRONICLE OF HIGHER EDUCATION (June 19, 2011).

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RESOURCES:

Cases and Administrative Actions

- [Trustees of Columbia University in New York Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture](#)
- [University of Maryland, Eastern Shore, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture](#)
- [Rollins College Notice of Apparent Liability for Forfeiture and Order](#)
- [Toccoa Falls College Forfeiture Order](#)
- [Ball State University Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture](#)
- [San Francisco Unified School District, Hearing Designation Order and Notice of Apparent Liability for Forfeiture](#)
- [San Francisco Unified School District, Initial Decision by Administrative Law Judge](#)
- [Bethany College Forfeiture Order](#)

FCC Resources

- [Link to FCC rules and regulations page for purposes of accessing applicable rules](#)
- [FCC FM Broadcast Station Self-Inspection Checklist](#)
- Don Troop, [What's Eating College Radio](#), CHRONICLE OF HIGHER EDUCATION, June 19, 2011.

- John Vorwald, [Waning Support for College Radio Sets Off a Debate](#), NEW YORK TIMES, December 5, 2010.

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