



LEVENTHAL SENTER & LERMAN PLLC

**FCC Proposes First-Ever Forfeiture for Radio Frequency Radiation Violation; Sets \$10,000 as Base Forfeiture Amount**

The FCC recently issued a Notice of Apparent Liability for Forfeiture in the amount of \$28,000 against A-O Broadcasting Corporation (“A-O”), licensee of FM station KTMN, Cloudcroft, New Mexico, for a series of rule violations, including a \$10,000 forfeiture for A-O’s apparent failure to comply with radio frequency radiation (“RFR”) maximum permissible exposure limits applicable to transmitters on towers. This is the first instance in which the FCC has proposed a monetary forfeiture for violation of the RFR exposure limits.

In October 2001, the FCC’s Denver field office received a complaint alleging that KTMN was not operating at its authorized power and was not in compliance with the FCC’s RFR tower guidelines. The following month, FCC agents from the Denver office conducted an inspection of the KTMN transmitting facility mounted on a United States Forest Service (“USFS”) lookout tower. Although the station was off the air due to an electrical surge a week prior, the agents requested that the transmitter be turned on so that RFR measurements could be taken. With the transmitter operating at 40 percent of its authorized power, the agents measured publicly accessible areas outside of the lookout tower in excess of the RFR maximum permissible exposure (“MPE”) limits applicable to the general public.<sup>1</sup> Specifically, at 20 to 60 feet from the tower base, RFR exposure was found to be 315 percent above public MPE limits; on the lookout tower stairway, RFR exposure was found to be 1500 percent above public MPE limits; and on the lookout platform area, RFR exposure was found to be 350 percent above public MPE limits.

The FCC also determined that USFS rangers had unrestricted access to the KTMN tower structure, and no arrangements existed for them to contact the licensee when accessing the tower. Furthermore, USFS rangers with access to the lookout tower stairway and platform had no training with respect to RFR exposure, and no knowledge of the potential for RFR exposure from the radio transmitting antenna. Absent such training and knowledge, the USFS rangers are considered by the FCC to be members of the general public.

KTMN’s license includes special operating conditions requiring A-O to post RFR warning signs at least eight meters from the base of the tower, and to reduce power or cease operation as necessary to protect persons having access to the site from RFR fields in excess of FCC limits. The FCC found

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<sup>1</sup> The FCC’s rules establish two tiers of MPE limits. The “occupational/controlled” exposure limits apply in situations involving workers who are fully aware of the potential for exposure and can exercise control over their exposure. The more stringent “general population/uncontrolled” exposure limits apply in situations typically involving members of the general public who lack awareness of, or the ability to control, their exposure.



that A-O had not complied with these conditions because: warning signs were posted only three meters from the base of the tower; USFS rangers that could access the tower were not informed of the RFR hazard and were never instructed to contact the licensee before accessing the stairway or lookout platform on the tower; and the KTMN transmitter site was easily accessible to the general public.

A-O certified in its construction permit and license applications that its operation of KTMN would comply with the FCC's RFR exposure limits. Because A-O apparently failed to comply with these limits, the Commission found that A-O willfully and repeatedly violated the Commission's RFR rules. Noting that the Commission's rules do not specify a base forfeiture for violation of the RFR MPE limits, the FCC set a base forfeiture of \$10,000 for the RFR exposure violations.