
FCC Enforcement Monitor

by Scott R. Flick and Emily J.H. Daniels

Virginia Radio Licensee Assessed \$8,000 Fine for Enforcing Format Restriction Provision in Non-Compete Agreement

The FCC recently fined a Virginia radio licensee \$8,000 for exercising unauthorized control over a station by obtaining an injunction restricting the programming formats available to the station. In February 2005, as part of the sale of the station, the seller entered into a non-compete agreement prohibiting the seller from operating a local radio station with a “format substantially similar” to that of the station being sold for five years. In February 2006, after the seller acquired a different station in the market and changed its format, the buyer sought and obtained an injunction enforcing the non-compete agreement by prohibiting the seller from programming its station with certain formats for a period of five years.

In June 2006, the seller filed a complaint with the FCC’s Enforcement Bureau alleging that the buyer’s judicial enforcement of the non-compete agreement was a prohibited assumption of control over its station. The buyer responded that the Commission’s previous grant of the assignment application constituted approval of the non-compete provision contained in the purchase agreement. The Enforcement Bureau rejected this claim, asserting that grant of an assignment application does not constitute acceptance of particular contract terms absent a clear indication that the FCC specifically considered the contract term at issue. As a result, the FCC found that the non-compete clause was a prohibited assumption of control, and issued a Notice of Liability for \$8,000.

FCC Proposes to Fine Texas TV Licensee \$20,000 for Children’s Television Violations

The FCC recently proposed a \$20,000 fine for a Texas television station for failing to prepare Children’s Television Programming Reports and for violating the limits on commercial matter in children’s programming. In its March 2006 license renewal application, the licensee admitted that, from 2002-2005, the station had failed to prepare, file with the Commission, or place in its public inspection file, the quarterly Children’s Television Programming Reports. The licensee explained that station employees mistakenly believed that the reports filed for one of five co-owned Class A television stations eliminated the need to file reports for the remaining stations. The licensee also acknowledged that the quarterly issues/programs lists in its public inspection file did not include required information relating to the time, date, program content, issues covered, and duration of responsive programming. Finally, the licensee conceded that it had failed to comply with the FCC’s limits on commercial matter in children’s programming on five occasions during the previous license term.

Section 73.3526(e)(11)(iii) of the FCC’s Rules requires each commercial television licensee to prepare, file with the Commission, place in its public inspection file, and publicize the existence and location of its Chil-

dren's Television Programming Reports. Section 73.670 limits the amount of commercial matter that may be aired during children's programming. The Commission noted that it has "repeatedly rejected human error and inadvertence as a basis for excusing violations." Accordingly, a Notice of Apparent Liability proposing a fine of \$20,000 was issued.

FCC Fines Ohio Non-Commercial Radio Station \$9,000 for Airing Prohibited Advertising

The FCC recently assessed a \$9,000 fine for the broadcast of impermissible advertising on a noncommercial educational FM station. Section 73.503(d) of the FCC's Rules prohibits noncommercial educational FM radio stations from airing promotional advertisements on behalf of for-profit entities. Following investigation of a complaint, the FCC issued a Notice of Apparent Liability to the licensee in December 2004 in the amount of \$20,000 for airing ten prohibited underwriting announcements. The licensee disputed the FCC's findings as to three of the ten announcements, arguing that those announcements were acceptable because they did not contain price information, qualitative comparisons, or calls to action. The FCC rejected the licensee's challenges as to two of the announcements, holding that the characterization of Tastee Freeze as "tasty fresh" and the description of Prindle GMAC Real Estate as "we're all about family" and "we love selling real estate" were impermissible uses of qualitative terms and attempts to induce business patronage. However, because the FCC agreed with the licensee that one announcement fell within the licensee's discretion to air, and in recognition of the licensee's prior compliance with the FCC rules, the fine was ultimately reduced to \$9,000.

FCC Fines Mississippi AM Radio Station \$1,500 for Operating from Unauthorized Location at Excessive Power Level

The FCC recently fined an AM station licensee \$1,500 for failing to broadcast from the station's authorized location and for operating at a power level exceeding that specified in the station's license. In response to a complaint, an Enforcement Bureau agent monitored the station's operations on two consecutive days in January 2008. The agent observed that the station continued transmitting at its full daytime power after sunset despite being required by the station's authorization to reduce power at sunset. Agents subsequently determined that the station was transmitting from an unauthorized location. During an inspection of the station, the licensee indicated that the station operated at full power until it signed off the air at 9:00 PM. The licensee also acknowledged that the station had transmitted from the unauthorized location "for years" because initial arrangements to place the transmitter at the licensed location had fallen through. Section 73.1475(a) of the FCC's Rules requires broadcast stations to operate within the modes and power levels specified in their license. Section 73.1350(a) requires that each licensee operate in accordance with the terms of its station authorization. In February 2008, the FCC issued a Notice of Apparent Liability to the licensee in the amount of \$8,000 for violating the FCC's Rules. In response, the station argued that payment of the fine would pose an undue financial hardship. The FCC agreed, and reduced the fine to \$1,500.

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