FCC Enforcement Monitor

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Headlines:

- *Sponsorship Identification Violation Yields $115,000 Civil Penalty*
- *$13,000 Increase in Fine Upheld for Deliberate and Continued Operation at Unauthorized Location*
- *FCC Reduces $14,000 Fine for EAS and Power Violations Due to Inability to Pay*

FCC Adopts Consent Decree Requiring Licensee to Pay $115,000 Civil Penalty

Earlier this month, the FCC's Enforcement Bureau entered into a Consent Decree with a Nevada TV station terminating an investigation into violations of the FCC's sponsorship identification rule.

The FCC's sponsorship identification rule requires broadcast stations to identify the sponsor of content aired whenever any "money, service, or other valuable consideration" is paid or promised to the station for the broadcast. The FCC has explained that the rule is rooted in the idea that the broadcast audience is "entitled to know who seeks to persuade them."

In 2009, the FCC received a complaint alleging that an advertising agency in Las Vegas offered to buy air time for commercials if broadcast stations aired news-like programming about automobile liquidation sales events at dealerships. The FCC investigated the complaint and found that the licensee's TV station accepted payment to air "Special Reports" about the liquidation sales. The "Special Reports" resembled news reports, and featured a station employee playing the role of a television reporter questioning representatives of the dealership about their ongoing sales event.

The licensee acknowledged the applicability of the sponsorship identification rule to the "Special Reports," but asserted that the context made clear their nature as paid advertisements despite the absence of an explicit announcement. The FCC disagreed, contending that the licensee failed to air required sponsorship announcements for twenty-seven "Special Reports" broadcast by the station from May through August of 2009.

As part of the Consent Decree, the licensee admitted to violating the FCC's sponsorship identification rule and agreed to (i) pay a civil penalty of $115,000; (ii) develop and implement a Compliance Plan to prevent future violations; and (iii) file Compliance Reports with the FCC annually for the next three years.

FCC Finds That Corrective Actions and Staffing Problems Do Not Merit Reduction of Fine

The FCC imposed a $25,000 fine against a Colorado radio licensee for operating three studio-transmitter links ("STL") from a location not authorized by their respective FCC licenses.

Section 301 of the Communications Act prohibits the use or operation of any apparatus for the transmission of communications signals by radio, except in accordance with the Act and with a license from the FCC. In addition, Section 1.903(a) of the FCC's Rules requires that stations in the Wireless Radio Services be operated in accordance with the rules applicable to their particular service, and only with a valid FCC authorization.

In August 2012, an agent from the Enforcement Bureau's Denver Office inspected the STL facilities and found they were operating from a location approximately 0.6 miles from their authorized location. The agent concluded—and the licensee did not dispute— that the STL facilities had been operating at the unauthorized location for five years. A July 2013 follow-up inspection found that the STL facilities continued to operate from the unauthorized location.

In an October 2013 Notice of Apparent Liability ("NAL"), the FCC proposed a fine of $4,000 for each of the three STL operations and applied an upward adjustment of $13,000 based on the licensee's deliberate and continued violation of the Communications Act and the FCC's Rules, resulting in a total fine of $25,000. In response, the licensee requested cancellation or reduction of the fine, claiming that it took action to correct the violations after receiving notices from the FCC. The licensee further asserted that it was unable to correct the violations due to staffing issues beyond its control, including the unanticipated illness and unavailability of one of its key employees. The licensee also questioned the upward adjustment of the proposed fine.

The FCC rejected the licensee's defenses and affirmed the NAL's findings. The FCC explained that corrective action taken to come into compliance is expected after notice from the Commission and therefore does not nullify or mitigate a violation. Additionally, the FCC noted that "neither the negligent acts nor omissions of station employees excuse a licensee's rule violation." The FCC also found that its precedent supported upward adjustment of the proposed fine given the long duration of the violations.

FCC Reduces Fine Based on Inability to Pay

The FCC granted in part and denied in part a Petition for Reconsideration filed by a Louisiana radio licensee. The petition sought reconsideration of a July 2014 Order imposing a $14,000 fine for the licensee's willful and deliberate failure to operate within authorized power limits and to maintain operational Emergency Alert System ("EAS") equipment and logs. The FCC granted the petition in part, reducing the fine to $6,000 based on updated financial documents demonstrating the licensee's inability to pay.

Section 73.1745(a) of the FCC's Rules provides that "[n]o broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license . . . ." Section 11.35(a) of the FCC's Rules states that EAS participants are responsible for ensuring that EAS equipment is installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation. Further, EAS participants are required to record in station logs the reasons why any EAS tests were not received.

In April and May of 2012, an agent from the Enforcement Bureau's New Orleans Office measured the field strength of the station's signal and observed that the station was operating at more than double its authorized nighttime power. Additionally, on April 27, 2012, an agent from the New Orleans Office observed that the station did not have operational EAS equipment when the station was on-air, and did not have any logs documenting when the EAS equipment was last operational. The station's General Manager, Production Director, and contract engineer admitted that the station had not had operational EAS equipment since the summer of 2011. Accordingly, the FCC issued an NAL in May 2013 proposing a $14,000 fine.

In its response, the licensee requested reduction of the proposed fine, asserting that it operated at a net loss in 2009 and 2010, had minimal net income in 2011, and was unable to pay the fine. However, based on the FCC's longstanding practice of looking to gross revenues as the best indicator of a licensee's ability to pay, the FCC found the financial documents insufficient to justify reducing the fine.

The licensee then requested that the FCC reconsider the $14,000 fine, providing new financial information for 2012-2014 in support of its inability to pay claim. The licensee asserted that, in addition to its net revenue loss, during the past three years it "has had very limited gross revenue." Noting that "if gross revenues are sufficiently great . . . the mere fact that a business is operating at a loss does not itself mean that it cannot afford to pay a forfeiture," the FCC declined to cancel the fine. However, it did find that the new financial documents warranted reduction of the fine to $6,000.

If you have any questions about the content of this Advisory, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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