
FCC Enforcement Monitor

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Headlines:

- *FCC Refuses TV Licensee's Request to Defer \$15,000 Fine Until After Incentive Auction*
 - *FCC Proposes \$20,000 Fine for Radio Licensee's Violation of Multiple Ownership Rule*
 - *FCC Imposes \$12,000 Fine and Short-Term License Renewal for Failure to Maintain Public Inspection File and File Ownership Reports*
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Red Light Blues: FCC Refuses TV Licensee's Request to Defer Fine Collection Until After Incentive Auction

The FCC's Media Bureau rejected a Kansas TV licensee's request to defer a \$15,000 fine for failing to timely file fourteen Children's Television Programming Reports, and for failing to disclose the violations in its license renewal application.

Section 73.3256 of the FCC's Rules requires each commercial broadcast licensee to maintain a public inspection file containing specific information related to station operations. Subsection 73.3526(e)(11)(iii) of the rule requires licensees to prepare and place in their public inspection files a Children's Television Programming Report for each calendar quarter showing, among other things, the efforts made during that three-month period to serve the educational and informational needs of children.

In addition, Section 73.3514(a) of the FCC's Rules requires licensees to include all information requested by an application form when filing it with the FCC. The license renewal application form requires licensees to certify that they have complied with Section 73.3526 and have timely filed their Children's Television Programming Reports with the FCC.

In April 2016, the FCC issued a Notice of Apparent Liability ("NAL") to the licensee, asserting that since 2011 the licensee had filed fourteen Children's Television Programming

Reports late, and had subsequently failed to report those violations in its license renewal application. After determining that these actions constituted violations of Sections 73.3526(e)(11)(iii) and 73.3514(a), the FCC proposed a fine of \$12,000 for the fourteen late reports and another \$3,000 for failing to disclose the violations in the license renewal application—for a total proposed fine of \$15,000.

The licensee did not dispute the violations. Instead, it requested a waiver of the FCC's red light rule, which bars stations from receiving certain benefits if they have an outstanding balance owed to the FCC. In October 2015, the FCC waived the red light rule to allow broadcasters that owed debts to the FCC to participate in the Spectrum Auction.

In requesting a waiver of the red light rule and deferral of the fine until after the Auction concludes, the licensee argued that while it did not owe money to the FCC when it filed its reverse auction application, the current \$15,000 fine could make it subject to the red light rule in the near future because it is unable to pay that fine. The licensee explained that if it were a winning bidder in the Auction, it would then be able to pay the fine. Alternatively, the licensee requested a 30 day extension to pay the proposed fine in the event that it was unsuccessful in the Auction.

The FCC rejected the licensee's requests. In doing so, it first noted that the FCC waived the red light rule for only a very limited purpose at the start of the Auction. Second, it stated that since the licensee admitted that it was not subject to a red light restriction when it filed its reverse auction application and is not currently subject to one, and given that the licensee had provided no documentation showing its inability to pay the fine, any request for a waiver would be prospective and speculative.

The FCC indicated the licensee therefore had two options: (i) pay the proposed fine in full, or (ii) seek a reduction or cancellation. Because the licensee did neither, and instead merely provided a statement about its inability to pay the fine without any supporting documentation, the FCC ordered the licensee to pay the \$15,000 fine.

Too Soon? Radio Licensee Faces \$20,000 Fine for Premature Implementation of Time Brokerage Agreement

The FCC proposed to fine a New York radio licensee \$20,000 for implementing a Time Brokerage Agreement ("TBA") that violated the Commission's multiple ownership rule before the FCC had an opportunity to rule on the licensee's waiver request.

Section 73.3555(a)(1)(ii) of the FCC's Rules permits a cognizable interest in not more than seven commercial radio stations in total and not more than four commercial radio stations in the same service (AM or FM) in a radio market with between 30 and 44 full-power commercial and noncommercial radio stations. There were 41 stations in the relevant market.

On March 28, 2016, the licensee entered into an agreement with another party to exchange two of its radio stations for one of the other party's radio stations, all in the same market. On the same day, the two parties entered into a TBA whereby the licensee would broker 100 percent of the programming of the station it was acquiring, and the other party would broker 100 percent of the programming of the two stations it was acquiring. The TBA went into

effect on the day it was signed. Under Section 73.3555 Note 2(j)(1) of the FCC's Rules, a party with a cognizable interest in one station that programs more than 15 percent of the airtime of another station in the same market is deemed to have an ownership interest in the brokered station.

On April 8, 2016, the licensee and the company filed assignment applications to implement the station swap. In the licensee's application, it requested a temporary waiver of the radio multiple ownership limits pending FCC action on the sale of its two stations.

Prior to executing the TBA, the licensee held attributable interests in seven radio stations (four FM and three AM) in the market. According to the FCC, the commencement of the TBA resulted in the licensee having an attributable interest in eight local radio stations (five FM and three AM) in violation of Section 73.3555(a)(1)(ii). Moreover, the FCC noted that the licensee knew it was in violation of the ownership rules because the licensee requested a waiver in its assignment application. In noting that the licensee did not attempt to explain why it could not wait for the FCC to approve the waiver request before implementing the TBA, the FCC commented that "[b]usiness expedience is not synonymous with the public interest."

The FCC explained that, "[r]egardless of whether or not a waiver of the Commission's local radio ownership rule is warranted in this case, we cannot countenance [the licensee's] unorthodox approach to waivers." As a result of the licensee's "fully known and clear" violation of the rules, the FCC dismissed both parties' assignment applications as defective and proposed a \$20,000 fine against the licensee.

A Failure to Communicate: FCC Assesses \$12,000 Fine Against Radio Broadcaster and Imposes Short-Term License Renewal for Public Inspection File and Biennial Ownership Report Violations

A California radio licensee recently found itself in hot water with the FCC for failing to timely draft Quarterly Issues/Programs Lists and for failing to file three Biennial Ownership Reports.

Subsection 73.3526(e)(11)(i) of the FCC's Rules requires each commercial TV licensee to place in its public file, on a quarterly basis, an Issues/Programs List that details programs that have provided the station's most significant treatment of community issues during the preceding quarter. In addition, Section 73.3615 requires each broadcast licensee or entity that holds an attributable interest in a broadcast station to file a biennial Ownership Report.

In August 2013, the licensee filed its license renewal application. The license renewal form asks the licensee to certify that the documentation required by Section 73.3526 has been placed in the station's public inspection file at the appropriate times. The licensee answered "No" to that certification and attached an exhibit explaining that, upon review, the licensee noticed that "the quarterly programs/problems reports were not filed when due. The Licensee is going back and creating these lists to bring the public file up to date." In an amendment to the application, the licensee reported that it had "recreated these lists to bring the public file up to date. To the extent the information relating to the issues programs lists were [sic] available, the public file is up to date." FCC staff made repeated requests for a detailed listing of the missing Issues/Programs Lists that were recreated, but the licensee failed to provide this information.

Further, the FCC concluded that the licensee's amendment incorrectly certified that all Biennial Ownership Reports had been filed. The FCC explained that the licensee failed to file three such Reports between 2007 and 2011, and that the licensee had not corrected this error despite repeated requests from the FCC.

Finding the licensee's violations to be "serious," and noting that the FCC had attempted to obtain factual information pertaining to the violations for over eighteen months, the FCC proposed a fine of \$12,000. The FCC also noted that it would grant the licensee only a short-term license renewal of four years, rather than the standard eight year term, to ensure "an opportunity to review the Station's compliance with the [Communications] Act and the FCC's rules and to take whatever corrective actions, if any, that may be warranted at that time."

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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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