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## FCC Enforcement Monitor

By Scott R. Flick, Jessica Nyman and Joseph A. Cohen

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### *Headlines:*

- *Time Brokerage Agreement Costs Station and Broker/Buyer \$10,000*
  - *Telecom Provider Agrees to Pay \$620,500 to Resolve Investigation of Cell Tower Registration and Lighting Violations*
  - *FCC Admonishes TV Station Licensee for Failing to Upload Past Issues/Programs Lists to Online Public Inspection File*
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### **Brokering Bad: Non-Compliant Time Brokerage Agreement Ends With \$10,000 Consent Decree**

The FCC's Media Bureau entered into a Consent Decree with a North Carolina noncommercial educational FM broadcast licensee and a company seeking to acquire the station's license. The decree resolved an investigation into whether the licensee violated the FCC's Rules by receiving improper payments from, and ceding control of key station responsibilities to, the proposed buyer.

Under Section 73.503(c) of the FCC's Rules, a noncommercial educational FM broadcast station may broadcast programs produced by, or whose creation was paid for by, other parties. However, the station can receive compensation from the other party only in the form of the radio program itself and costs incidental to the program's production and broadcast.

In addition, the FCC requires a station licensee to staff its main studio with at least two employees, one of whom must be a manager (the "main studio rule"). The FCC has clarified that, while a licensee may delegate some functions to an agent or employee on a day-to-day basis, "ultimate responsibility for essential station matters, such as personnel, programming and finances, is nondelegable."

In March 2013, the station licensee and the company jointly filed an application to assign the station's license to the company, which had been brokering time on the station for a number of years. The application included a copy of the Time Brokerage Agreement ("TBA") the parties executed in 2003. In return for airing the broker's programming, the TBA provided for a series of escalating payments to the station, including initial monthly payments of \$6,750 for the first year of the TBA, increasing to \$8,614 per month in 2008, and then increasing five percent per year thereafter.

Upon investigating the TBA, the FCC found that the payments were unrelated to “costs incidental to the program’s production and broadcast.” Additionally, the FCC concluded that the TBA violated the main studio rule and resulted in an improper transfer of control of the station license by improperly delegating staffing responsibilities to the broker.

To resolve the investigation into these violations, the licensee and the broker/buyer agreed to jointly pay a \$10,000 fine. In exchange, the FCC agreed to grant their assignment application provided that the following conditions are met: (1) full and timely payment of the fine; and (2) “there are no issues other than the Violations that would preclude grant of the Application.”

### **Telecommunications Provider Settles FCC Investigation of Unregistered and Unlit Cell Towers for \$620,500**

An Alaskan telecommunications provider entered into a Consent Decree with the FCC’s Enforcement Bureau to resolve an investigation into whether the provider failed to properly register and light its cell towers in violation of the FCC’s Rules. With few exceptions, Section 17.4(a) of the FCC’s Rules requires cell tower owners to register their towers in the FCC’s Antenna Structure Registration (“ASR”) system. In addition, Section 17.21(a) requires that cell towers be lit where their height may pose an obstruction to air traffic, such as towers taller than 200 feet and towers in the flight path of an airport. The FCC’s antenna structure registration and lighting rules operate in conjunction with Federal Aviation Administration regulations to ensure cell towers do not pose hazards to air traffic.

In this case, the provider acquired another Alaskan telecommunications company’s cell towers in mid-2013, at which time it conducted an internal inventory of its cell towers. The provider found that 118 cell towers, including many of the recently acquired towers, were not registered in the ASR system in violation of the FCC’s Rules. It also concluded that three of its towers were not properly lit. The company self-reported the apparent violations to the FCC in early 2014, and thereafter began a complete review of its towers.

The provider settled the FCC’s subsequent investigation into the tower violations with a hefty \$620,500 payment. In addition, the provider agreed to complete the tower review it commenced in 2014 and to bring all of its towers into compliance by April 30, 2016. The Consent Decree comes on the heels of a June 17, 2015 FCC [Public Notice](#) reminding cell tower owners of their registration obligations and warning of fines and other enforcement actions for failing to properly register towers.

### **Clouding the Issue: FCC Admonishes Station for Failing to Upload Old Quarterly Issues/Programs Lists**

The FCC admonished a Maine TV licensee that failed to upload information relating to its station’s treatment of community issues to the FCC’s online public inspection file database. The FCC requires each broadcaster to air a reasonable amount of programming responsive to significant community needs and interests as determined by the station. To demonstrate compliance with this public interest obligation, Section 73.3526(e)(11) of the FCC’s Rules requires each commercial TV licensee to place in its public inspection file each quarter a list of the most significant programming aired concerning issues of importance to the community (“Quarterly Issues/Programs Lists”).

Although the public inspection file was historically maintained only at a station’s main studio, the FCC adopted Section 73.3526(b)(2) of the FCC’s Rules in 2012, requiring TV licensees to upload certain parts of the physical file—including the Quarterly Issues/Programs Lists—to an FCC-hosted online public inspection file. The FCC adopted a phased-in approach to the rule, requiring licensees to upload new

documents on a going-forward basis beginning August 2, 2012, and to upload prior documents (i.e., those placed in the public file prior to August 2, 2012) by February 4, 2013.

An FCC inspection of the station's public file triggered by the filing of the station's license renewal application revealed that, while the licensee complied with the requirement to upload new documents, it failed to upload any of its Quarterly Issues/Programs lists from the period prior to the third quarter of 2012. While showing restraint in not issuing any fines for the violation, the FCC warned that it would not rule out more severe sanctions for similar violations in the future.

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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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