
FCC Enforcement Monitor

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Headlines:

- *\$86,400 Fine for Unlicensed and Unauthorized BAS Operations*
 - *Missing “E/I” Graphic for Children’s Television Programs Results in Fine*
 - *Multiple Rule Violations Lead to \$16,000 in Fines*
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Increased Fine for Continuing Broadcast Auxiliary Services Operations After Being Warned of Violations

Earlier this month, the FCC issued a Notice of Apparent Liability for Forfeiture (“NAL”) against a Texas licensee for operating three broadcast auxiliary services (“BAS”) stations without authorizations and operating an additional six BAS stations at variance with their respective authorizations. The FCC noted that it was taking this enforcement action because it has a duty to prevent unlicensed radio operations from potentially interfering with authorized radio communications in the United States and to ensure the efficient administration and management of wireless radio frequencies.

Section 301 of the Communications Act provides that “[n]o person shall use or operate any apparatus for the transmission of energy of communications or signals by radio . . . except under and in accordance with this Act and with a license in that behalf granted under the provisions of the Act.” In addition, Section 1.947(a) of the FCC’s Rules specifies that major modifications to BAS licenses require prior FCC approval, and Section 1.929(d)(1) provides that changes to BAS television coordinates, frequency, bandwidth, antenna height, and emission type (the types of changes the licensee made in this case) are major modifications. The base fine for operating a station without FCC authority is \$10,000 and the base fine for unauthorized emissions, using an unauthorized frequency, and construction or operation at an unauthorized location, is \$4,000.

In April 2013, the licensee submitted applications for three new “as built” BAS facilities and six modified facilities. The modifications pertained to updates to the licensed locations of some of the licensee’s transmit/receive sites to reflect the as-built locations, changes to authorized frequencies, and recharacterization of sites from analog to digital. The licensee disclosed the three unauthorized stations and six stations operating at variance from their authorizations in these April 2013 applications. As a result of the licensee’s disclosures, the Wireless Telecommunications Bureau referred the matter to the Enforcement Bureau (the “Bureau”) for investigation. In November 2013, the Bureau’s Spectrum

Enforcement Division instructed the licensee to submit a sworn written response to a series of questions about its apparent unauthorized operations. The licensee replied to the Bureau in January 2014 and admitted that it operated the nine BAS facilities either without authorization or at variance with their authorizations. The licensee also admitted that it learned of the violations in May 2012 while conducting an audit of its BAS facilities. Finally, the licensee noted that it could not identify the precise dates when the violations occurred but that they had likely been ongoing for years and possibly since some of the stations were acquired in 1991 and 2001.

The FCC concluded that the licensee had willfully and repeatedly violated the FCC's rules and noted that the base fine amount was \$54,000, comprised of \$30,000 for the three unauthorized BAS stations and \$24,000 for the six BAS stations not operating as authorized. The licensee had argued that a \$4,000 base fine should apply to the three unauthorized BAS stations because the FCC had previously imposed a \$4,000 fine for similar violations when the licensee had color of authority to operate the BAS stations pursuant to an existing license for its full-power station. The FCC rejected this argument and noted that its most recent enforcement actions applied a \$10,000 base fine for unlicensed BAS operations even where the full-power station license was valid.

The FCC concluded that the extended duration of the violations, including the continuing nature of the violations after the licensee became aware of the unlicensed and unauthorized operations, merited an upward adjustment of the proposed fine by \$32,400. The FCC indicated that the licensee's voluntary disclosure of the violations before the FCC began its investigation did not absolve the licensee of liability because of the licensee's earlier awareness of the violations and the extended duration of the violations. The FCC therefore proposed a total fine of \$86,400.

Reliance on Foreign-Language Programmer Did Not Affect Licensee's \$3,000 Fine

The Chief of the Video Division of the FCC's Media Bureau issued an NAL against a California licensee for failing to properly identify educational children's programming through display on the television screen of the "E/I" symbol.

The Children's Television Act of 1990 introduced an obligation for television broadcast licensees to offer programming that meets the educational and informational needs of children ("Core Programming"). Section 73.671(c)(5) of the FCC's Rules expands on this obligation by requiring that broadcasters identify Core Programming by displaying the "E/I" symbol on the television screen throughout the program.

The licensee filed its license renewal application on August 1, 2014. The licensee certified in the application that it had not identified each Core program at the beginning of each program and had failed to properly display the "E/I" symbol during educational children's programming aired on a Korean-language digital multicast channel. In September 2014, the licensee amended its license renewal application to specify the time period when the "E/I" symbol was not used and two days later amended the renewal application again to state that it had encountered similar issues with displaying the "E/I" symbol on the station's Chinese-language digital multicast channel.

The Korean-language programming did not contain the "E/I" symbol during the first quarter of 2007, and the problem was fixed before the second quarter of 2007. However, in the first quarter of 2012, the licensee had a change in the source of its Korean-language programming, and programming was aired again without the "E/I" symbol until September 5, 2014. The station began airing Chinese-language programming in January 2011, and had never displayed the "E/I" symbol in its Chinese-language programming. The station's Korean-language and Chinese-language programmers had informed the

licensee that they “did not have English language graphic insertion capability because the [foreign] language[s] do[] not use characters from the Roman alphabet” and that “adding the E/I symbol would not be meaningful to the [foreign language] speaking audience.” The licensee promised in its renewal application to begin displaying the “E/I” symbol no later than October 1, 2014.

The Chief of the Video Division determined that the licensee had willfully and/or repeatedly violated Section 73.671 of the FCC’s Rules. The Chief noted that the licensee’s reliance on its programmers’ comments about Roman alphabet characters did not absolve the licensee of responsibility for the violations. While noting that the station was working toward displaying the “E/I” symbol at the appropriate times, the Chief reiterated that corrective action does not absolve a licensee of liability for violations that have already occurred. The base fine for violating the FCC’s children’s requirements is \$8,000. The Chief, after reviewing the facts and circumstances of the licensee’s violations, ultimately proposed a fine of \$3,000.

Licensee Receives Fines for Late License Renewal Application and Variety of Accompanying Violations

Earlier this month, the Chief of the Video Division of the Media Bureau issued an NAL against an Ohio licensee for (1) failing to timely file its license renewal application, (2) engaging in unauthorized operation of its station after its license expired, (3) failing to file in a timely manner its Children’s Television Programming Reports for eight quarters, (4) failing to report the late filings of its Children’s Television Programming Reports in its eventual license renewal application, and (5) failing to file its 2011 biennial ownership report.

Section 73.3539 of the FCC’s Rules requires that a broadcast television license renewal application be filed by the first day of the fourth calendar month before the license’s expiration date. Section 301 of the Communications Act prohibits operating a station without a license from the FCC. Section 73.3526 of the FCC’s Rules requires commercial broadcast licensees to maintain a public inspection file containing specific types of information relating to the station, including Children’s Television Programming Reports for each calendar quarter reflecting the efforts the station made during that quarter to serve the educational and informational needs of children. Section 73.3514(a) of the FCC’s Rules requires that licensees include all information requested in any application they file. The license renewal application form requires licensees to certify that they have complied with Section 73.3526 and filed their Children’s Television Programming Reports with the FCC. The last rule relevant to this case is Section 73.3615(a), which requires the filing of an ownership report every two years.

The Chief determined that the licensee violated each of these rules. The station’s license expired on October 1, 2013, which meant that under Section 73.3539, the licensee was required to file its renewal application on or before June 1, 2013. The licensee did not file its license renewal application and applied for Special Temporary Authority on November 22, 2013 to continue operations. The Chief concluded that before the licensee filed its application for Special Temporary Authority, it was operating without a valid license in violation of Section 301. The licensee filed its license renewal application on December 4, 2013, over six months late. The Chief determined that the licensee violated Section 73.3526 after a review of the station’s online public inspection file revealed that the station had failed to file eight quarterly Children’s Television Programming Reports. Since the licensee did not report the eight late-filed reports in its license renewal application, the Chief determined that the licensee had also violated Section 73.3514(a) of the FCC’s Rules. Finally, the licensee disclosed in its license renewal application that it had inadvertently failed to file its 2011 ownership report because it was not familiar with the FCC’s electronic filing systems. The Chief determined that this missing ownership report was a violation of Section 73.3615.

The Chief determined that each of the above-described violations was both willful and repeated under the Act. The base fine for failing to file a required form with the FCC is \$3,000, and the base fine for operating a station without a license is \$10,000. In this case, the FCC noted that the \$10,000 base fine for unlicensed operation is generally imposed on “pirate” stations that did not previously have any FCC authorization. In cases where a pre-existing licensee operates without authorization, the FCC generally imposes a fine of \$7,000, which is the amount the Chief decided to assess for the unauthorized operation violation in this case. In addition, the Chief assessed a \$3,000 fine for the failure to file the Children’s Television Programming Reports, a \$3,000 fine for failure to report the Children’s Television Programming Report violations in the station’s license renewal application, and a \$3,000 fine for failure to file the 2011 ownership report. As a result, the fines assessed against the licensee totaled \$16,000.

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

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