
FCC Enforcement Monitor

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Headlines:

- *Florida AM Licensee Hit with \$15,000 Fine for Failing to Maintain Public Inspection File and Provide Immediate Access to It*
 - *New York Amateur Radio Operator Fined \$23,000 and Arrested for Unlicensed Operations and False Officer-in-Distress Call*
 - *Late-Filed License Renewal Nets Washington AM Station \$1,500 Fine*
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FCC Fines AM Licensee \$15,000 for Public Inspection File Violations

The FCC's Media Bureau fined a Florida AM licensee \$15,000 for failing to provide immediate access to the station's public inspection file and for failing to maintain the file in accordance with FCC Rules. It also admonished the licensee for making a false certification to the FCC.

Under Section 73.3526 of the FCC's Rules, each commercial broadcast station is required to maintain a public inspection file containing specific information related to station operations. Subsection 73.3526(e) lists the required information, and subsection 73.3526(c)(1) directs stations to make the file available for public inspection at all times during regular business hours.

In this case, the licensee filed a license renewal application on September 20, 2011 in which it certified that the public file had been maintained throughout the term in compliance with the FCC's Rules. On December 27, 2011, however, a petition to deny the application was filed with the FCC. The petitioner claimed that on the morning of December 5, 2011, the station's staff denied him immediate access to the public inspection file and treated him disrespectfully. The petitioner stated that he returned in the afternoon, as station staff requested, at which point he was allowed to view the file, but was not allowed to make copies of anything in the file. The petitioner further alleged that the file was missing information related to its authorization, applications filed with the FCC, the political file, all issues/programs lists, and the most recent ownership report. The petitioner claimed that the file was also missing letters and emails from the public, material related to FCC investigations or complaints, and certain agreements – but failed to demonstrate any basis for these claims.

In response, the licensee asserted that the petition was filed as “payback” for not hiring the petitioner as a station employee. The licensee also explained that the petitioner was not granted immediate access because the station was on-air at the time of his request. The station noted that access to the public file was subsequently granted, and that the file was “in order” for the inspection.

In response, the FCC issued a Notice of Apparent Liability for Forfeiture (“NAL”), and determined that the licensee apparently violated subsections 73.3526(c)(1) and 73.3526(e). Specifically, the FCC was concerned that the licensee (1) conceded that it did not provide immediate access to the petitioner, (2) did not deny that it refused to allow the petitioner to make copies, and (3) provided only a brief and general response to the allegation that the public file was deficient. Most importantly, according to the FCC, the licensee never stated that the public file was properly maintained for the entire license term.

The FCC’s Rules establish a base fine of \$10,000 for violating Section 73.3526, but because this was not the licensee’s first public inspection file violation, the FCC determined that an upward adjustment to \$15,000 was warranted based on the licensee’s “pattern of abuse.” The FCC also admonished the licensee for falsely certifying in its license renewal application that it had properly maintained the public file. The FCC stated it would withhold grant of the license renewal application until the licensee paid the fine in full, and would then grant renewal for only a two-year term instead of the standard eight-year term.

False Police Distress Call Causes Arrest and Associated Distress for Unlicensed Amateur Radio Operator

The FCC proposed a fine of \$23,000 against an amateur radio station operator for operating without FCC authorization and falsely transmitting an officer-in-distress call from his residence in New York. The FCC explained that such fraudulent transmissions potentially impact public safety and property, and place unnecessary strain on safety and rescue agencies.

Section 301 of the Communications Act bars unlicensed radio operations, and Section 325(a) prohibits any person in the United States from transmitting a false or fraudulent signal of distress or similar communication. The Act and the FCC’s Rules require that the conduct be either willful or repeated to constitute a violation.

The FCC began receiving complaints in 2012 about a person operating on numerous amateur radio frequencies without FCC authorization. The Commission subsequently issued Warnings of Unlicensed Operations to the operator in May and August of 2012. The complaints, however, continued through 2016, with the FCC receiving ten complaints in 2014 that identified the operator by name, nine more complaints in 2015, and one complaint in January 2016. On April 7, 2016, the FCC assigned field agents to monitor the area where the operator reportedly resided. Using direction finding techniques, the agents determined that the voice transmissions were originating from the roof of the operator’s residence. The operator allowed the agents to enter his home, where they discovered three mobile radios connected to three antennas on the roof of the building. The operator admitted to making the transmissions with two-way transmitting equipment in his bedroom, and was verbally warned by the agents that such unauthorized operation was illegal. The FCC issued a Notice of Unlicensed Operation to the operator later that month.

Around the same time, the FCC field agents learned from the New York City Police Department (“NYPD”) that the operator had been taken into custody for sending false radio transmissions over the NYPD’s radio system frequencies. One report indicated that a distress call went out for an officer in need. The operator, once again, admitted to the violation, and further stated that “he had more radios and would continue to transmit on police frequencies.” That precipitated the issuance of a search warrant for the operator’s apartment and the confiscation of all of his transmitting equipment, except the antennas.

The FCC concluded that the operator acted willfully in violating Sections 301 and 325(a) of the Act. Pursuant to the FCC's forfeiture guidelines, the base fine for unlicensed operations is \$10,000, and \$8,000 for the transmission of a false distress signal. However, the FCC found that the violations in this case were egregious, the operator deliberately ignored previous warnings, and the unlawful act continued over an extended period of time. Accordingly, the FCC determined an upward adjustment of \$5,000 was warranted, for a total proposed fine of \$23,000.

AM Radio Station Fined \$1,500 for Late-Filed License Renewal Application

A Washington AM radio station licensee received a \$1,500 fine for filing its license renewal application almost four months after the filing deadline. Section 73.3539 of the FCC's Rules requires stations to file their license renewal applications "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."

The FCC issued an NAL proposing a \$1,500 fine for the licensee's failure to timely file its license renewal application. In the NAL, the FCC explained that the licensee's renewal application was due by October 1, 2013, but that the licensee did not file its application until January 23, 2014, a little over one week before the license expiration date. The licensee did not provide an explanation for the untimely filing in its application, nor did it respond to the NAL.

The FCC's guidelines establish a base fine amount of \$3,000 for failing to file a required form. However, acknowledging that the licensee filed its license renewal application prior to the expiration of its current license, and considering each of the factors required by its guidelines, the FCC determined that a reduction to \$1,500 was appropriate. The FCC stated that it will, however, withhold grant of the station's license renewal application until the licensee pays the fine.

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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