

Communications

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FCC Enforcement Monitor

by Scott R. Flick and Christine A. Reilly

Headlines:

- *FCC Levies \$10,000 Fine for Noncommercial Station's Public Inspection File Security Protocols*
- *Louisiana AM Daytimer Fined for Operations After Sunset*
- *\$7,000 Fine for Late-Filed License Renewal Cancelled*

California Broadcaster Fined \$10,000 for Delaying Access to Its Public Inspection File

The FCC has repeatedly held that stations may not require members of the public to make prior appointments to inspect the public inspection file, or otherwise delay or deny access to the public inspection file during normal business hours. In a 2001 decision, the FCC stated that "a delay of ten minutes to satisfy legitimate security concerns *may* be reasonable," but has never established a precise threshold as to how long the security process can take before it becomes too burdensome for the public file visitor. Historically, the FCC has imposed its full base forfeiture of \$10,000 for such violations.

According to a recently released Notice of Apparent Liability ("NAL"), the FCC fined a California noncommercial broadcaster \$10,000 for violating Section 73.3527(c) of the Commission's Rules, which requires broadcasters to provide unfettered access to a station's public inspection file during regular business hours.

The NAL indicated that on three separate occasions in August 2010, an Enforcement Bureau field agent from the Los Angeles office was denied access to the main studio, the station personnel, and the public inspection file. During the three separate visits to the station, the field agent chose not to disclose his connection to the FCC, and instead presented himself as a member of the general public. On each visit, the field agent was denied access to the station by security personnel because the field agent did not have a prior appointment. On his fourth attempt to access the station's public inspection file, the field agent informed the security personnel of his relationship to the FCC, provided formal identification, and requested access to the public inspection file, the main studio, and the station's staff. At that point, the field agent was allowed to enter the station. During the resulting inspection, the field agent determined that the station had a general policy of requiring members of the public to request an appointment to view the public inspection file in violation of the unfettered access provision of Section 73.3527(c) of the Commission's Rules. Upon finally being permitted to look at the file, the agent determined that the public

inspection file was complete. However, because of the obstacles placed in the path of those seeking to view the file, the FCC presented the station with a \$10,000 fine.

Failure to Cease Operations after Sunset Costs Louisiana Broadcaster

An AM daytime-only station, located in Louisiana, received a \$4,000 fine for failing to operate in accordance with its authorization, which is a violation of Section 73.1745(a) of the Commission's Rules. Section 73.1745(a) states that no broadcast station shall operate at times, or with modes or power, other than those specified in its license. The broadcaster was fined an additional \$10,000 for failing to maintain a complete public inspection file in violation of Section 73.3526 of the Commission's Rules.

The FCC's NAL indicates that in October 2010, a New Orleans field agent responding to an interference complaint observed unauthorized post-sunset operation of the AM station. According to the station's authorization, operations should have ceased at 8:30 p.m. The field agent confirmed on two separate occasions that the station continued operating after 8:30 p.m. During a subsequent inspection of the station, the station's general manager informed the field agent that the station had been operating beyond its sunset authority, at reduced power, for several years. The station manager erroneously believed that the current authorization provided for such nighttime operations.

During that inspection, the field agent also reviewed the public inspection file and determined that it lacked the station's current authorization, a pending license application, and the station's last eight quarterly issues/programs lists. The FCC issued the base fines for both violations – \$4,000 for unauthorized nighttime operation, and \$10,000 for the public inspection file violation.

Statute of Limitations Requires FCC to Cancel \$7,000 Forfeiture for Late-Filed License Renewal Application

In April 2007, the FCC issued a \$7,000 forfeiture to an Alabama AM broadcaster for failing to timely file its license renewal application in violation of Section 73.3539 of the FCC's Rules. Section 73.3539 requires licensees to file an FCC Form 303-S, the license renewal application, four months prior to expiration of the current license. Failure to timely file a license renewal application also implicates Section 301 of the Communications Act of 1934, as amended (the "Act") regarding unauthorized operation of a broadcast station. Specifically, any operations beyond the expiration date of a station license are considered unauthorized and in direct violation of the Act where a timely license renewal application has not been filed.

The AM broadcaster's application, which was due to be filed in December 2003, was not submitted to the FCC until March 2005, more than 15 months after the statutory filing deadline. The FCC granted the late license renewal application in January 2007, but released an NAL regarding the matter four months after that.

Pursuant to Section 503(b)(6)(A) of the Act, where a license renewal has been recently granted, a forfeiture may not be imposed if the alleged violation occurred more than one year prior to the NAL. In this instance, the alleged violations occurred over a 15 month period ending in March 2005. Consequently, the 2007 NAL, issued approximately 24 months after the violation had ceased, was issued in violation of the time limit, and was therefore cancelled by the FCC.

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

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