FCC Enforcement Monitor

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Headlines:

- *Noncommercial FM Broadcaster Fined $10,000 for Public Inspection File Violations*
- *TV Licensee Faces $20,000 Fine for Untimely Filing of 16 Children's TV Programming Reports*
- *Man Agrees to $2,360 Fine for Using GPS Jamming Device at Newark Airport*

FCC Refuses to Take Pity on "Mom and Pop" FM Public Broadcaster With Public Inspection File Violations

The FCC's Media Bureau denied a New York noncommercial FM licensee's Petition for Reconsideration of a March 2015 Forfeiture Order, affirming a $10,000 fine against the licensee for failing to place 13 Quarterly Issues/Programs Lists in the station's public inspection file.

Section 73.3527 of the FCC's Rules requires noncommercial educational licensees to maintain a public inspection file containing specific types of information related to station operations. Among the materials required for inclusion in the file are the station's Quarterly Issues/Programs Lists, which must be retained until final Commission action on the station's next license renewal application. Issues/Program Lists detail programs that have provided the station's most significant treatment of community issues during the preceding quarter.

In February 2014, the licensee filed an application for renewal of the station's license, which it had acquired from a university in 2010 after the university decided to defund the station. In the application, the licensee admitted that the station's public inspection file was missing 13 Quarterly Issues/Programs Lists, commencing with the licensee's acquisition of the station in 2010.

In March 2015, the FCC issued a Notice of Apparent Liability for Forfeiture in the amount of $10,000, the base fine for a public inspection file violation. The licensee filed a Petition for Reconsideration, urging the FCC to withdraw the fine. While the licensee did not dispute the violations, it explained that it had a history of compliance with the FCC's rules, and that it was the public radio equivalent of a "mom-and-pop-operation." It further explained that it only had several employees and volunteers, including an unpaid manager, and was under constant financial strain.

In response, the FCC contacted the station on three separate occasions in 2015 to request that the licensee provide documentation supporting its claim of financial hardship. After receiving no response to these requests, the FCC chose not to reduce the fine based on financial hardship when it issued the resulting Forfeiture Order. In addition, the FCC chose not to reduce the fine based on the station's history of compliance with the rules because of the "extensive" nature of the violations. Ultimately, however, the FCC stated that it would grant the license renewal application upon the conclusion of the forfeiture proceeding if "there are no issues other than the violations discussed here that would preclude grant of the application."

Sour Sixteen: Failing to Timely File 16 Children's TV Programming Reports Nets Proposed $20,000 Fine

A Texas TV licensee is facing a $20,000 fine for failing to timely file sixteen Children's Television Programming Reports.

Section 73.3526 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) requires a commercial licensee to prepare and place in its public inspection file a Children's Television Programming Report for each calendar quarter. The report sets forth the efforts the station made during that quarter and has planned for the next quarter to serve the educational and informational needs of children. Licensees are required to file the reports with the FCC and place them in their public files by the tenth day of the month following the quarter.

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 2014, the licensee filed its license renewal application. While it did not report the violations on the application, an FCC review of the station's online public inspection file revealed that the station did not file its Children's Television Programming Reports in a timely manner for sixteen straight quarters, between the third quarter of 2006 and the second quarter of 2010. All of the untimely reports were eventually uploaded at the same time to the station's electronic public inspection file in February 2013.

The licensee acknowledged the late reports, but said that a severe illness that overcame the officer in charge of filing the reports was to blame. It explained that, when the officer went ill, he delegated the filing to a subordinate. Upon his return, the officer incorrectly assumed that the person to whom he delegated the work would continue the filing. In response, the FCC said that it was "sympathetic" to the officer's illness, but that the responsibility to file the reports ultimately lies with the licensee.

The FCC's base fine for failing to file a required form or information is $3,000, although it can adjust the amount upwards or downwards in response to factors such as the nature, circumstances, extent, and gravity of the violation. Using this discretion, the FCC proposed to fine the licensee $17,000 for its failure to file the sixteen Children's Television Programming Reports in a timely manner, and another $3,000 for the failure to report the violations on its license renewal application, for a total proposed fine of $20,000.

That's My Jam: Man Admits to Using GPS Jamming Device, Agrees to $2,360 Reduced Fine

The FCC's Enforcement Bureau entered into a Consent Decree with a man to resolve an investigation into the man's use of a Global Positioning System ("GPS") jamming device at Newark Airport in New Jersey. Signal jammers operate by transmitting radio signals that overpower, jam, or interfere with authorized communications. According to the FCC, these devices have been marketed with increasing frequency over the Internet, but with very limited exceptions, have no lawful use in the United States.

Section 301 of the Communications Act prohibits the use or operation of "any apparatus for the transmission of energy or communications or signals by radio" within the United States unless such use is licensed or authorized. Section 302(b) of the Act provides that "[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section." Section 333 of the Act states that "[n]o person shall willfully or maliciously interfere with or cause interference to any radio communications of any station licensed or authorized by or under this chapter or operated by the United States government."

In August 2012, the FCC received a complaint from the Federal Aviation Administration reporting that the Port Authority of New York and New Jersey had been experiencing interference during pre-deployment testing of a ground-based augmentation system ("GBAS") at Newark Airport. The GBAS provides enhanced navigation signals to aircraft in the vicinity of an airport for precision approach and departure procedures, and terminal area operations. In response to the complaint, an FCC agent found that a pickup truck was emanating radio signals within a restricted band, and that the signals were blocking the GBAS's reception of GPS signals.

The FCC agent interviewed the driver of the truck, who admitted to using the radio transmitting device that was jamming the GPS transmissions. The driver was apparently using the jamming device to prevent his employer from tracking his truck's location with its GPS system. The man voluntarily surrendered the jammer to the agent. In August 2013, the FCC issued a Notice of Apparent Liability for Forfeiture to the man in the amount of $31,875.

During settlement negotiations between the man and the FCC, the man asserted that he was unable to pay the $31,875 fine. As evidence, the man submitted financial information, including tax and wage documents, bank statements, and mortgage information, and swore to their authenticity. As a result, the FCC agreed to suspend most of the fine if the man paid a $2,360 fine through installment payments over a one year period. The Consent Decree stipulates that if the man fails to pay the fine, violates jamming laws again within three years, or if the FCC discovers that the man misstated his financial condition, he will be required to pay the remaining $29,515.

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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