Advisory

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FCC Enforcement Monitor

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Headlines:

- *FCC Cancels $3,000 Proposed Fine After Discovering TV Licensee Overwrote Children's Programming Reports*
- *Educational FM Licensee Agrees to Pay Reduced Fine of $2,250 for Multiple Violations*
- *Failure to Understand FCC's Filing System Nets $1,500 Fine*

Licensee's Discovery Leads FCC to Cancel $3,000 Proposed Fine

The FCC cancelled a $3,000 proposed fine against a New York TV station after the licensee discovered that it inadvertently overwrote three Children's Television Programming Reports. The FCC had previously proposed to fine the licensee for the untimely filing of the three Reports.

Section 73.3256 of the FCC's Rules requires each commercial broadcast station to maintain a public inspection file containing specific information related to station operations. Subsection 73.3526(e)(11)(iii) of the rule requires licensees to prepare and place in their public inspection files a Children's Television Programming Report for each calendar quarter showing, among other things, the efforts made during that three-month period to serve the educational and informational needs of children.

On January 30, 2015, the licensee filed a license renewal application in which it admitted that it failed to file in a timely manner Children's Television Programming Reports for three quarters between 2012 and 2013. The licensee argued that it was unable to timely upload the Reports because of problems with the FCC's website and computer servers.

The FCC rejected the licensee's claim that FCC server problems prevented timely filing, and issued a Notice of Apparent Liability for Forfeiture ("NAL") proposing a $3,000 fine for the late filings. The FCC explained that it was unaware of any server problems that would have prevented timely filing during the quarters at issue, and the licensee failed to provide any evidence to support its claim.

In its response to the NAL, the licensee asserted that after looking into the matter further, it found that it had in fact timely filed the Children's Television Programming Reports. The licensee included with its response a declaration signed by the employee in charge of filing such reports. The employee stated that the three reports in question were timely filed, but inadvertently overwritten later. Upon discovering that the reports had been overwritten, the station refiled the reports, causing them to appear as though they were filed late. The licensee noted that it had since implemented safeguards to prevent reports from being overwritten in the future.

Based on the new information, the FCC was persuaded that the reports had been timely filed, and therefore rescinded the NAL and cancelled the proposed $3,000 fine.

FCC Reduces $18,000 Fine to $2,250 in Consent Decree With Educational FM Station

The FCC entered a Consent Decree with a North Carolina noncommercial educational ("NCE") FM licensee, terminating the investigation of the licensee's multiple alleged violations. The alleged violations included: (1) failure to notify the FCC that the station had gone silent for ten or more days and failure to seek special temporary authority ("STA") when four of those periods of silence lasted more than 30 days; (2) failure to retain all required documentation in the station's public inspection file; and (3) failure to file biennial ownership reports. Under the terms of the Consent Decree, the licensee agreed to pay a $2,250 fine and abide by a compliance plan.

Section 73.561(a) of the FCC's Rules requires that NCE FM stations "operate at least 36 hours per week, consisting of at least 5 hours of operation per day on at least 6 days of the week." However, NCE FM stations licensed to educational institutions are not "required to operate on Saturday or Sunday or to observe the minimum operating requirements during those days designated on the official school calendar as vacation or recess periods." If causes beyond the control of the licensee make it impossible to adhere to the minimum operating schedule, Section 73.561(d) of the FCC's Rules permits stations to "limit or discontinue operation for a period not exceeding 30 days without further authority from the Commission provided that notice is sent to the Commission . . . no later than the 10th day of limited or discontinued operation." A licensee must request an STA if it cannot resume operations within the 30-day period.

In addition, Section 73.3527 of the FCC's Rules requires NCE licensees to maintain a public inspection file containing, among other things, Quarterly Issues/Programs Lists that detail programs that have provided the station's most significant treatment of community issues during the preceding quarter. Licensees must retain such Lists until final FCC action on the station's next license renewal application. Section 73.3615 of the Rules requires NCE licensees to file a Biennial Ownership Report when filing an application for renewal of license, as well as every two years thereafter.

In a 2014 amendment to a 2011 license renewal application, the licensee indicated that, on eight occasions, it failed to notify the FCC that the station was silent for ten or more days. The licensee further disclosed that, on four occasions, it failed to seek an STA to remain silent when the silence lasted for 30 or more days. The licensee admitted that it failed to prepare and timely place any Quarterly Issues/Programs Lists in its public inspection file since its last license renewal. The licensee also admitted that it was not aware of the biennial ownership report requirement, and as such, did not file three required biennial ownership reports.

On April 28, 2016, the FCC issued a Notice of Apparent Liability for Forfeiture ("NAL"). The NAL proposed an $18,000 fine for the alleged violations and a shortened license term of two years instead of the standard eight year term to provide the FCC with an opportunity to ensure the station's future compliance with its rules. In response, the licensee challenged the proposed sanctions, asserting that the station was student-run at the time the violations occurred and should be shown leniency.

Acknowledging that any proceeding would be time consuming and require substantial expenditure of public and private resources, the FCC and the licensee entered into a Consent Decree to terminate the FCC's investigation. As part of the Consent Decree, the licensee admitted to the above-mentioned violations. In addition, the licensee agreed to pay a $2,250 "civil penalty". Lastly, the licensee agreed to implement a compliance plan designed to prevent future violations. In return, the FCC agreed to grant the licensee's license renewal application for the full eight-year term as long as there "are no issues other than the Violations that would preclude the grant of the Renewal Application."

FM Radio Station Faces $1,500 Fine for Failed License Renewal Application

A California FM radio station licensee received a $1,500 fine for filing its license renewal application over a month 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 file a timely renewal application. In the NAL, the FCC explained that the licensee's renewal application was due by August 1, 2013, and the licensee did not file its application until September 16, 2013.

In response to the NAL, the licensee explained that it thought it submitted a timely license renewal application. Upon review of the licensee's claim, however, FCC staff found that the licensee had started two applications on August 27, 2013, but neither was successfully filed. One application was left in "Valid" status and the other remained in "Pending" status. While the licensee argued that the fine should be reduced or cancelled because it "sought and acted in accordance with advice of Commission staff," the FCC concluded that the failure to timely file appeared to be due to the licensee's misunderstanding of the FCC's electronic filing procedures—which is not an excuse for violations. The FCC also noted that even if the licensee had filed an application on August 27, 2013, it would have still been late because the application was due on August 1, 2013.

The licensee also argued that because it is located in "one of the poorest counties in California" and "relies entirely on local funding," the proposed fine should be reduced or cancelled. The FCC rejected the licensee's request and upheld the $1,500 fine, explaining that the licensee failed to submit any evidence to support its claim of financial hardship.

The FCC's Rules establish a base fine amount of $3,000 for failure to file a required form, but the FCC determined that a reduction to $1,500 was appropriate because the licensee filed its renewal application prior to the expiration of its current license. 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 below.

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