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Communications

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FCC Enforcement Monitor

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Headlines:

- *Broadcaster Agrees to Pay $100,000 Fine for Filing Applications Under False Names*
- *FCC Proposes $13,000 Fine for Late License Renewal Application and Unauthorized Operation*
- *Failure to Register with the FCC Results in $100,000 Fine for Telecom Provider*

Catch Me If You Can: Broadcaster Settles Long-Running Investigation into the Use of Pseudonyms in FCC Applications

The FCC entered into a Consent Decree with a radio broadcaster to resolve an investigation into whether the broadcaster filed numerous applications using fake names and refused to cooperate with FCC investigations.

Section 1.17 of the FCC's Rules requires that written and oral statements to the FCC be truthful and accurate. Section 1.65 of the Rules requires applicants to amend applications as needed for continuing accuracy and completeness. In addition, Section 73.1015 requires applicants to respond to FCC inquiries regarding broadcast applications.

The Consent Decree explains that, since 1982, there has been a "cloud of unanswered questions" about whether applications filed by the broadcaster were accurate. In 1993, the FCC sent the broadcaster a letter inquiring into: (1) his role in certain entities; (2) apparent misrepresentations he made to the FCC; (3) his prior failure to respond to certain site availability allegations; and (4) the operation of several FM translators. The broadcaster never responded to the letter, and since that time, the broadcaster's real name has not appeared in any FCC application as a principal of any applicant. Instead, the broadcaster used pseudonyms, as well as the names of his wife, mother, and grandmother.

In addition, the Consent Decree states that a 1997 complaint filed by another broadcaster was never answered or disclosed by the broadcaster. The complaint alleged that the broadcaster was the real party in interest behind a certain licensee, and that the broadcaster had violated several other FCC Rules.

Under the terms of the Consent Decree, the broadcaster admitted to being the real party in interest on numerous applications for which he had used pseudonyms, and admitted to several other violations of FCC Rules. The broadcaster agreed to (1) pay a $100,000 fine; (2) the cancellation of licenses for an AM station and two low power FM stations; and (3) the dismissal of petitions for reconsideration involving two dismissed FM applications. In return, the FCC agreed to grant the license renewal applications for another AM station and seven FM translator stations, each with a shortened license term of one year so that the FCC can closely monitor the licensee's operation of the stations in the future.

FCC Proposes $13,000 Fine for Unauthorized Operation Caused by Late License Renewal Application

The FCC issued a Notice of Apparent Liability for Forfeiture ("NAL") against an Ohio FM licensee for failing to timely file its license renewal application and for continuing to operate the station after its license had expired. The FCC proposed a fine for the violations and simultaneously issued a Memorandum Opinion and Order regarding the licensee's license renewal application.

Section 301 of the Communications Act provides that "[n]o person shall use or operate any apparatus for the transmission of energy or 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]." Section 73.3539(a) of the FCC's Rules requires that broadcast licensees file applications to renew their licenses "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."

In this case, the station's license expired on October 1, 2004, rendering the license renewal application due by June 1, 2004. The licensee, however, did not file the renewal application until July 30, 2004. The FCC dismissed the application due to the licensee's "red light" status for owing a debt to the FCC. Red light status prevents the FCC from providing any government benefit to a licensee, including license renewal. The licensee did not seek reconsideration of the dismissal and, as a result, the station's license expired on October 1, 2004.

In January 2011, the FCC staff was told that the station was off the air. On January 12, 2011, the FCC wrote a letter to the former licensee inquiring into the operating status of the station, and requested a response within 30 days. The station did not respond until March 25, 2011, and stated that it was on-air as of the date of the FCC letter. However, the station explained that it had in fact suspended operations on February 23, 2011, after its transmitter was damaged during the theft of its copper feed lines.

In May 2011, the licensee filed a request for Special Temporary Authority ("STA") to resume operations, stating that its transmitter repair was almost complete. The licensee also noted that it was unaware its 2004 license renewal application had been dismissed, and that it would file another license renewal application "once it [could]." The licensee submitted a license renewal application in July 2011, and the FCC subsequently granted the station's STA request through March 2012.

In February 2012, the licensee filed another STA request to operate with reduced facilities, stating that the damage to the transmitter was far worse than previously thought, and would cost more than the value of the station to repair. The licensee also stated that the landlord of its transmitter site had declined to renew the station's lease, but it had found an alternative, temporary location from which it could operate the station. The FCC granted the STA, and set an expiration date of August 2012. The licensee continued to operate under the STA facilities even after the August 2012 expiration date. The licensee did not file a request to extend the STA until February 2013. That request was granted as a new STA in March 2013, and the licensee has operated under a series of extensions to that STA ever since.

Based on the facts of this case, the FCC proposed the full base fine amount of $3,000 for failure to file a required form, and the full base fine amount of $10,000 for unauthorized operations. The FCC explained that while it typically assesses fines of $7,000 for unauthorized operations, the length of the first unauthorized period in this case—over six years—followed by a second unauthorized period, warranted a $10,000 fine.

The FCC stated that it would grant the station's license renewal application upon the conclusion of the forfeiture proceeding "if there are no issues other than the apparent violation that would preclude grant of the applications."

FCC Fines Prepaid Calling Card Company $100,000 for Failing to Register as Service Provider

The FCC fined a New Jersey provider of international prepaid calling card services $100,000 for failing to register as a telecommunications service provider and adhere to all registration requirements.

Section 64.1195(a) of the FCC's Rules requires that companies providing interstate telecommunications services file an FCC Form 499-A, also known as the Annual Telecommunications Reporting Worksheet, with the Universal Service Administrative Company prior to providing service. The Form 499-A instructions state that "[w]ith very limited exceptions, all intrastate, interstate, and international providers of telecommunications in the United States must file this Worksheet."

According to the FCC, compliance with the registration requirement is critical to determining a provider's payment obligations to the Universal Service Fund, Telecommunications Relay Service Fund, and numbering support mechanisms. The FCC further stated that registration is a way to recover costs, and is a central repository for important details about providers.

Calling it a "dereliction of its responsibilities," the FCC determined that the provider willfully operated for years without filing a Form 499-A, giving the provider an unfair economic advantage over its competitors. The FCC stated that the misconduct started when the provider began providing service in 1997 and continues until the provider files its initial Form 499-A. The FCC proposed a $100,000 fine for the provider's transgressions.

In addition to the fine, the FCC instructed the provider to immediately register as a telecommunications provider, and to come into full compliance with all of its federal regulatory obligations. The FCC also warned that the fine was "a very limited action that does not reflect the full extent of [the service provider's] potential forfeiture liability and that does not in any way preclude the Commission from imposing additional forfeitures … in the future."

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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