Advisory

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Communications

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FCC Enforcement Monitor

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Headlines:

- *Repetitive Children's Programming Costs TV Licensee $90,000*
- *It's Nice to Be Asked: FCC Faults Red-Lighted Licensee's Failure to Request STA*
- *FCC Proposes $25,000 Fine for Hogging Shared Frequencies*

"Repeat" Offender: Children's Programming Reports Violations Cost Licensee $90,000

A licensee of several full power and Class A TV stations in Florida and South Carolina paid $90,000 to resolve an FCC investigation into violations of the Children's Television Act (CTA) threatening to hold up its stations' license renewal grants.

The CTA, as implemented by Section 73.671 of the FCC's Rules, requires full power TV licensees to provide sufficient programming designed to serve the educational and informational needs of children, known as "Core programming", and Section 73.6026 extends this requirement to Class A licensees. The FCC's license renewal application processing guideline directs Media Bureau staff to approve the CTA portion of any license renewal application where the licensee shows that it has aired an average of 3 hours per week of Core programming. Staff can also approve the CTA portion of a license renewal application where the licensee demonstrates that it has aired a package of different types of educational and informational programming, that, even if less than 3 hours of Core programming per week, shows a level of commitment to educating and informing children equivalent to airing 3 hours per week of Core programming. Applications that do not satisfy the processing guidelines are referred to the full Commission, where the licensee will have a chance to prove its compliance with the CTA.

Among the seven criteria the FCC has established for evaluating whether a program qualifies as Core programming is the requirement that the program be a regularly scheduled program. The FCC has explained that regularly scheduled programming reinforces lessons from episode to episode and "can develop a theme which enhances the impact of the educational and informational message." With this goal in mind, the FCC has stressed that the CTA intends for regularly scheduled programming to be comprised of different episodes of the same program, not repeats of a single-episode special.

Applying this criteria to each of the licensee's 2012 and 2013 license renewal applications, the FCC staff questioned whether certain programming listed in the Children's Television Programming Reports for the stations complied with the episodic program requirement. In particular, the staff looked at single-episode specials that the licensee counted repeatedly for the purpose of demonstrating the number of Core programs aired during each quarter—for example, the licensee listed one single-episode special as being aired 39 times in one quarter. After determining that it could not clear the renewal applications under the FCC's processing guidelines, the staff referred the matter to the full Commission for review.

The FCC and the licensee subsequently negotiated the terms of a consent decree to resolve the CTA issues raised by the Media Bureau. Under the terms of the consent decree, the licensee agreed to make a $90,000 voluntary contribution to the U.S. Treasury. The licensee also agreed to enact a plan to ensure future compliance with the CTA, to be reflected in each station's Quarterly Children's Television Programming Reports. In light of the consent decree and after reviewing the record, the FCC concluded that the licensee had the basic qualifications to be an FCC licensee and ultimately granted each station's license renewal application.

FCC Clarifies "Red Light" Policy Is a Barrier to Grants, Not a Road Block to Filing Requests

An Indiana radio licensee faces a $15,000 fine for failing to retain all required documentation in its station's public inspection file and for suspending operation of the station without receiving special temporary authority (STA) to do so.

Section 73.3526 of the FCC's Rules requires commercial broadcast licensees to maintain a public inspection file housing specific types of information related to station operations. Among the materials a station must maintain in its public inspection file are the station's Quarterly Issues/Programs Lists, which the station must place in the file every three months. The FCC's Rules also require stations to adhere to minimum operating requirements. Section 73.1740(a)(4) of the Rules requires that stations unable to adhere to these minimum operating requirements for more than 30 days request FCC authorization to remain silent.

In its license renewal application, the Indiana licensee acknowledged that it failed to place nine Quarterly Issues/Programs Lists in its public file. An exhibit to the application explained that the station's general manager and sole full-time employee died in 2010 after an extended illness, and that the quarterly lists were not placed in the file during the final stages of his illness and through the time the station suspended operations on March 29, 2011. The licensee also conceded that the station was silent without authorization from March 29, 2011 until January 26, 2012, but explained that the station did not submit an STA request because it was subject to the FCC's "red light" policy as a result of delinquent annual regulatory fees.

Based on the licensee's admissions in its license renewal application, the FCC found that the licensee violated Sections 73.3526 and 73.1740(a)(4) of the Rules. The FCC determined that neither the negligent acts nor omissions of station employees and agents, nor subsequent remedial acts undertaken by the licensee, excuse or nullify a licensee's rule violation. Further, the FCC faulted the licensee for failing to provide any evidence that it attempted to file an STA but was unable to do so because of the outstanding regulatory fees. The FCC explained that while it may withhold action on an application due to delinquent fees, the "red light" policy does not prohibit a licensee from filing applications or STA requests. Adhering to its forfeiture guidelines, the FCC proposed the base fine amounts of $10,000 for failing to maintain the issues/programs lists and $5000 for unauthorized suspension of operations, for a total proposed fine of $15,000.

PLMR Licensee Faces $25,000 Fine for Monopolizing Shared Frequencies

The FCC proposed a $25,000 fine against a California private land mobile radio (PLMR) licensee for failing to monitor and take precautions to avoid causing harmful interference to other licensed stations operating on a shared frequency. The licensee's trunked station was authorized to operate on six frequencies from a fixed location in the Malibu area. Two of the channels were shared with other licensees. Section 90.403(e) of the FCC's Rules requires licensees to take reasonable precautions to avoid causing harmful interference, including monitoring the transmitting frequency for communications in progress and other measures that may be necessary to minimize the potential for causing interference. Additionally, Section 90.187(b) of the Rules requires trunked systems to use equipment that prevents transmission if a signal from another system is present on that frequency.

After investigating complaints of interference against the station in March of 2013, the Enforcement Bureau's LA office issued a notice of violation (NOV) to the licensee for violating the FCC's Rules. The LA office found that the station was operating nearly continuously on its shared frequencies, and therefore determined the licensee had (i) failed to restrict the station's transmissions to the minimum practical transmission time, (ii) failed to monitor the transmitting frequencies of other licensees, (iii) failed to take any other precautions to avoid causing interference, and (iv) failed to operate using trunked technology.

The licensee denied operating continuously, explaining in its response to the NOV that it had programmed the shared channels to pause for 5 seconds every 5 minutes and to hold transmissions if another licensee begins to transmit during that pause. The licensee argued that these voluntary efforts were consistent with the FCC's Rules, and contended that if the FCC wanted to create a "more precise rule" that requires licensees to pause in transmission at any particular interval, the FCC could do so prospectively after complying with the Administrative Procedure Act's rulemaking requirements.

The FCC continued to monitor the station throughout 2014 and 2015 and found that the licensee maintained its nearly constant operation, even when co-channel licensees attempted to use the channel. The FCC thus disagreed that the licensee's efforts complied with Section 90.403(e)'s requirements to minimize the potential for causing interference. The FCC also concluded that the licensee violated Section 90.187(b) of the Rules because the licensee's system did not prevent its synchronizing signals from transmitting on the shared frequencies even when another station was present, resulting in harm to at least one other licensed station on two occasions.

Additionally, the FCC disagreed with the licensee's assertion that the Commission could not enforce Section 90.403(e) absent a "more precise" rulemaking, and explained that the FCC "has already determined precisely what [the licensee] must avoid: causing harmful interference." The base fine amount for causing interference is $7,000 per violation. However, because the licensee continued its near constant operations despite FCC warnings that its actions violated the Rules, the FCC applied an upward adjustment resulting in a total proposed fine of $25,000.

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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