ADVISORY

FCC Enforcement Monitor October 2021

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HEADLINES

Pillsbury's communications lawyers have published FCC Enforcement Monitor monthly since 1999 to inform our clients of notable FCC enforcement actions against FCC license holders and others. This month's issue includes:

- *Streaming Service Agrees to Pay $3.5 Million for Violating FCC's Closed-Captioning Rules*
- *FCC Enters Consent Decree with Kentucky Broadcaster for Failing to Timely File License Renewal Application*
- *Alabama Television Station Fined for Late Issues/Programs Lists*

Streaming Service Enters Into Consent Decree for Violating Closed Captioning Rules

The FCC's Enforcement Bureau and a multinational entertainment company entered into a Consent Decree to resolve an investigation into whether a streaming service owned by the company violated the FCC's Rules pertaining to the closed captioning of video programming. To settle the matter, the company agreed to admit to violating the Internet Protocol Closed Captioning Rules, implement a compliance plan, and pay a $3,500,000 penalty.

The FCC's Rules pertaining to the closed captioning of IP-delivered Video Programming require that all "nonexempt full-length video programming delivered using Internet Protocol must be provided with closed captions if the programming is published or exhibited on television in the United States with captions." Most nonexempt full-length Video Programming delivered using Internet Protocol has to be provided with closed captioning if that programming aired with captions on television in the United States after September 30, 2013. For uncaptioned programming that is later aired on television with captions, video programming distributors have 15 days after that airing to add captions.

Section 79.4 of the FCC's Rules requires that Video Programming Distributors "[e]nable the rendering or pass through of all required captions to the end user" and maintain the quality of the captions provided by the programming owner, as well as transmit the captions in a way that will reach the user with that same level of quality. Video Programming Distributors providing a device to receive their programming also need to comply with Section 79.103. That provision requires that such devices format captions in such a way as to permit viewers to control the display by changing the font, character size, or background color of the captioning. Video Programming Distributors are also required to "[m]ake contact information available to end users for receipt and handling of written closed captioning complaints."

Beginning in January 2018, the FCC received consumer complaints about the closed captioning on the streaming service. Initially, the FCC's Consumer and Governmental Affairs Bureau sought to informally resolve the complaints by requiring the company to submit progress reports. In May 2019, the company filed a Petition for Waiver of Section 79.4. It eventually filed a Request to Withdraw its Petition for Waiver in September 2021, and the Media Bureau granted that request at the same time it adopted the Consent Decree.

While the public comment period on the Petition for Waiver was ongoing, the Enforcement Bureau issued a Letter of Inquiry to the company in February 2020, which the company then responded to the following month. An investigation found that the company continued to offer programming that did not comply with the closed captioning rules after it had been reminded of its captioning obligations and even after it had received and responded to the Letter of Inquiry. Ultimately, the FCC concluded that the company failed to (1) enable the rendering or pass through of all required captions to the end user as required by Section 79.4, (2) implement the closed captioning functionality requirements of Section 79.103, and (3) make contact information available to end users wishing to complain about captioning.

To resolve the investigation, the company agreed to enter into a Consent Decree under which it will designate a compliance officer, implement a multi-part compliance plan, including developing a compliance manual and compliance training program, disclose within fifteen days any violations of the Consent Decree or the captioning requirements, file annual compliance reports for the next three years, and pay a $3.5 Million civil penalty.

Kentucky AM Station Pays $4,500 for Late-Filed License Renewal Application and Related Violations

A Kentucky broadcaster recently agreed to enter into a Consent Decree with the FCC for failing to timely file its license renewal application, failing to submit an EEO Program Report, and failing to place Quarterly Issues/Programs Lists in its online Public Inspection File throughout the license term.

Section 73.3539(a) of the FCC's Rules requires that license renewal applications be filed no later than "the first day of the fourth full calendar month" before the license expires. As a result, an application to renew a Kentucky radio license needed to have been filed by April 1, 2020. However, the AM station did not file its license renewal application until July 20, 2020.

Additionally, Section 73.2080(f)(1) of the FCC's Rules requires broadcast stations to file an EEO Program Report in connection with their license renewal application filings. In this case, the broadcaster did not do so. Finally, in its late license renewal application, the broadcaster certified compliance over the license term with the Public Inspection File rule, but had failed to place any Quarterly Issues/Programs Lists in its Public Inspection File during the license term.

As a result, the broadcaster elected to enter into a Consent Decree with the FCC to resolve the matter rather than face an extended FCC investigation. In it, the broadcaster admitted to the violations and agreed to pay a civil penalty of $4,500. The Consent Decree also requires the broadcaster to file an EEO Program Report within thirty days, implement and maintain a compliance program, including appointment of a compliance officer, development of a compliance manual, implementation of a training program, filing of a compliance report with the FCC a year after entering into the Decree, and reporting to the FCC any violations of either the Consent Decree or the Public File Rule within ten days of discovering such violation.

FCC Proposes Fine for Alabama Television Station with Late-Filed Issues/Programs Lists

The FCC fined an Alabama television station for failing to timely upload all of its Quarterly Issues/Programs Lists to its Public Inspection File. The station recently filed a license renewal application, and an FCC staff review of the stations' Public Inspection File revealed that the station uploaded fourteen of the Lists late during the license term.

Section 73.3526(e)(11)(i) of the FCC's Rules requires every commercial television station to place in its Public Inspection File "a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period." The list must include a brief narrative of the issues addressed, as well as the date, time, duration, and title of each program addressing those issues. The list must be placed in the Public Inspection File on a quarterly basis within ten days of the end of each calendar quarter.

The FCC noted that five of the Lists were uploaded more than one year late, four Lists were between one month and one year late, and five Lists were uploaded between one day and one month late. When the licensee failed to provide an adequate explanation for the late uploads, the Commission concluded that the licensee willfully and repeatedly violated Section 73.3526 of the FCC's Rules.

Section 1.80(b)(10) of the FCC's Rules establishes a base fine of $10,000 for Public Inspection File violations. However, the Commission may adjust the amount upwards or downwards based upon factors such as the "nature, circumstances, extent and gravity of the violation," in addition to the licensee's "degree of culpability" and "any history of prior offenses." Taking those factors into account, the FCC proposed a fine of $9,000 as appropriate. Noting that the violation did not constitute a "serious violation" nor a pattern of abuse that would prevent renewal of the station's license, the FCC indicated it would grant the license renewal application in a separate proceeding if no other issues arose.