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FCC Enforcement Monitor December 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:

- *FCC Proposes $20,000 Fine for Broadcast of False EAS Alert Tone*
- *Mississippi Television Station Fined $18,000 for Late Issues/Programs Lists and Failure to Disclose Violation*
- *Illinois High School Agrees to Consent Decree for Violations Relating to Periods of Silence, Late Issues/Programs Lists, and Failing to File a Biennial Ownership Report and EEO Program Report*

Nevada Radio Licensee Receives Proposed Fine of $20,000 for Transmitting False EAS Tone

The FCC issued a Notice of Apparent Liability for Forfeiture (NAL) to a radio station licensee for violating the Commission's Emergency Alert System (EAS) rules—specifically Section 11.45 of the Commission's Rules, which prohibits the transmission of false or deceptive EAS tones.

The EAS is a nationwide public warning system designed to alert the public in an emergency. In order to maintain the effectiveness of such emergency alerts, EAS tones may only be aired in specific circumstances, such as an actual emergency, an authorized test, or a public service announcement educating the public about EAS. Section 11.45 strictly prohibits airing an EAS tone, or simulations thereof, except in connection with of one of these permitted uses.

In October 2020, the FCC received a complaint alleging that a Nevada radio station had transmitted EAS tones during a talk show that were not connected to an actual emergency. In January 2021, the FCC's Enforcement Bureau sent a Letter of Inquiry to the broadcaster seeking information regarding the potential violation.

The broadcaster responded that the tones had indeed aired, and included an audio recording of the program in question. The broadcaster indicated it did not review the program containing the EAS tones prior to broadcast as the program was part of a programming block purchased by the talk show's host. It noted that the program containing the EAS tones was also simulcast on the digital subchannel of another co-owned radio station and on an FM translator.

Based on the broadcaster's admissions and the FCC's review of the audio recording, the Commission found that the broadcaster willfully violated Section 11.45 of the Commission's Rules. The FCC also noted that while the base fine for violations of the EAS rule is $8,000, it looks at the particular facts of each case and may upwardly adjust that amount based on a number of specific factors, including the number of repetitions, the duration of the violation, the audience reach of the transmission, and the public safety impact.

In this instance, the FCC emphasized the stations' sizeable audience reach, noting that the violation was exacerbated by rebroadcasts on the digital subchannel and FM translator. Because all three stations are located in Las Vegas, a top 50 market, the audience reach was substantial. The FCC therefore concluded that an upward adjustment was warranted, proposing a total fine of $20,000. The company has 30 days from release of the NAL to pay the fine or file a written statement seeking reduction or cancellation of the proposed fine.

FCC Proposes $18,000 Fine for Mississippi Television Station's Late-Filed Issues/Programs Lists

The FCC fined a Mississippi television station $18,000 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 station's Public Inspection File revealed that during the license term, the station uploaded twenty-one of the Lists late and failed to properly disclose these violations in its application.

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 10 days of the end of each calendar quarter.

The FCC noted that six of the Lists created during the license term were uploaded more than one year late, eleven Lists were uploaded between one month and one year late, and four Lists were uploaded between one day and one month late. The licensee also did not disclose the violations in its license renewal application. 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. The FCC also found that the failure to report the violations constituted an apparent violation of Section 73.3514(a) of its Rules, which requires that applications filed with the Commission be accurate and complete.

Section 1.80(b)(10) of the FCC's Rules establishes a base fine of $10,000 for Public Inspection File violations and a base fine of $3,000 for failure to file a required form or information. 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 $15,000 for the late-filed Lists and a fine of $3,000 for the failure to disclose those violations in the license renewal application, resulting in a total proposed fine of $18,000. 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 by separate action if no other issues arose.

Illinois High School Enters Into Consent Decree for Violations Relating to Periods of Silence, Late Issues/ Programs Lists, and Failure to File a Biennial Ownership Report and EEO Program Report

An Illinois High School, the licensee of a noncommercial radio station, recently entered into a Consent Decree with the FCC for failing to (i) promptly notify the Commission that the station was silent for more than ten days, (ii) request Commission authorization to remain silent for more than 30 days, (iii) file required Biennial Ownership Reports, (iv) submit an EEO Program Report, and (v) timely upload its quarterly Issues/Programs Lists to its Public Inspection File throughout the license term.

Section 73.561(d) of the FCC's Rules permits stations to limit or discontinue operation for a period of no more than 30 days, but requires licensees to notify the Commission no later than the 10th day of limited or discontinued operation. If the station needs to remain silent beyond 30 days, a licensee must request Special Temporary Authority (an "STA") from the FCC to do so. In this case, the station discontinued operations on June 1, 2019 but did not notify the FCC until September 24, 2019, when it sought an STA.

The FCC granted the STA request on October 10, 2019 for a period of no longer than 180 days. The licensee requested an STA extension on March 10, 2020 which was granted on March 17, 2020 for a period ending June 1, 2020. Citing reasons associated with the COVID-19 pandemic, the licensee filed a final extension request on June 1, 2020 which the FCC granted on July 15, 2020 for a period ending December 1, 2020. During this time, the licensee filed the station's license renewal application on August 3, 2020. The station resumed operations on November 14, 2020.

In October 2020, an informal complaint was filed against the license renewal application, arguing that the station was silent for longer than 12 months and that granting the application would be unfair to other high school stations in the region. The complaint also pointed out that the application falsely certified that the station had not been silent for any consecutive 12-month period. Section 312(g) of the Communications Act states that a license shall automatically expire if a broadcast station "fails to transmit broadcast signals for any consecutive 12-month period."

In response, the FCC noted its discretion under Section 312(g) to extend or reinstate a license "to promote equity and fairness." The FCC also noted that the station did resume operations on November 14 – prior to the STA expiring on December 1. The Commission agreed that the licensee incorrectly certified compliance with Section 312(g), but indicated it did not believe the licensee's incorrect certification was intentionally false, as the station had an STA allowing it to remain silent. However, the FCC did conclude that the licensee violated Section 73.3615(d) (failing to file required Biennial Ownership Reports), Section 73.2080(f)(1) (failing to submit an EEO Program Report with the license renewal application), and Section 73.3527(b)(2)(i) (failing to timely upload Issues/Programs Lists to the Public Inspection File).

In light of the Commission's findings, the licensee elected to enter into a Consent Decree with the FCC to resolve the matter rather than face an extended FCC proceeding. Pursuant to the Consent Decree, the licensee admitted the violations and agreed to pay a civil penalty of $1,000. The Consent Decree also requires the licensee to file an EEO Program Report within 10 days, and implement 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 violation of the Consent Decree, the Silent Notification Rule, the Ownership Report Rule, the EEO Program Report Rule, or the Public Inspection File Rule within 10 days of discovering a violation.