

FCC Enforcement Monitor

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HEADLINES

Pillsbury's communications lawyers have published the 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:

- *Late License Application Leads to \$8,500 Consent Decree for Digital Replacement Translator Licensee*
- *Hawaii TV Station's Late Uploads Lead to Proposed \$20,000 Fine*
- *Key West LPTV Station Faces \$6,500 Fine for Failure to File a License Application and Unauthorized Operation*

Indiana Broadcaster Agrees to \$8,500 Consent Decree for Unauthorized Operation and Untimely License Applications

The FCC's Media Bureau and the licensee of a Digital Replacement Translator (DRT) for a television station entered into a Consent Decree to resolve an investigation into whether the licensee failed to file a timely license application for the DRT and subsequently engaged in unauthorized operation of it.

Section 73.3598 of the FCC's Rules specifies that construction permits are valid for three years and requires that a license application must be filed upon completion of construction. Section 73.1745 of the Rules requires a station to hold an FCC license to operate.

In this case, the Media Bureau granted a DRT construction permit in November 2019, with an expiration date in November 2022. However, upon completion of construction, the licensee failed to file a license to cover application. The licensee began operating the DRT in March 2020, but explained that it overlooked filing the application due to an "administrative oversight" that coincided with the beginning of the COVID-19 pandemic. The licensee did not file a license to cover application until June 2024, more than four years after it began operating the facility and a year and a half after the construction permit expired.

The licensee filed a petition for reconsideration asking that its construction permit be reinstated and requesting permission to file a late license application. The licensee explained that the facility was operating and providing viewers in the area improved reception of local news programming. It asserted that terminating operation of the DRT would therefore not serve the public interest.

Acknowledging that the licensee had a history of compliance with the FCC's rules, the Bureau agreed to enter into a Consent Decree with the licensee under which the licensee admitted that its actions were willful and repeated violations of the FCC's rules, it agreed to pay a civil penalty of \$8,500, and it committed to implement a multi-part compliance plan, including appointing a compliance officer, creating a compliance manual, training its employees, and submitting annual compliance reports to the Commission until the grant of its next license renewal application.

In adopting the Consent Decree, the Bureau agreed to grant the licensee's currently pending license renewal application for a full license term of eight years, but with a condition requiring compliance with the Consent Decree.

FCC Proposes \$20,000 Fine for Hawaii Noncommercial Television Station's Late-Filed Issues/Programs Lists

A noncommercial educational TV station licensed to Honolulu received a Notice of Apparent Liability (NAL) from the FCC's Media Bureau for failing to timely upload Quarterly Issues/Programs Lists to the station's Public Inspection File. The NAL proposed a \$20,000 fine.

When processing the station's 2022 license renewal application, an FCC staff investigation found that multiple Issues/Programs Lists were uploaded late to the station's Public Inspection File. Section 73.3527(e)(8) of the FCC's Rules requires that every noncommercial educational television station 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 is to be uploaded to the station's Public Inspection File by the tenth day following the end of each calendar quarter.

In this case, the NAL states that 10 lists were uploaded more than one year late, 11 lists were uploaded between one month and one year late, and 2 lists were uploaded between one day and one month late, for a total of 23 quarters' worth of late uploads. The licensee explained in its license renewal application that the station's manager through early 2019 "did not understand that the reports were due quarterly" and that after a management change the new "manager and the licensee, whose board members were quite inexperienced in broadcasting, were unaware of the need to prepare and post the issues/programs lists." The FCC noted that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations," and that "ignorance of the law is not an excuse."

Citing the FCC's *Forfeiture Policy Statement* and its rules, the Media Bureau noted that the base fine for public file violations is \$10,000. However, the Bureau has discretion to consider the violations at issue and adjust the base fine upward or downward according to "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require." In this case, the Bureau found that an upward adjustment of the proposed fine was warranted due to the large number of late uploads and because many were exceedingly late.

Under the Communications Act of 1934, when deciding whether to grant an application for renewal of license, the FCC must consider whether (1) the station has served the public interest, convenience, and necessity, (2) there have been no serious violations of the Communications Act or the FCC's rules, and (3) there have been no other violations which, taken together, constitute a pattern of abuse. Here, the NAL found that the station served the public interest during its license term and that the violations cited are not "serious violations" and do not constitute a pattern of abuse. In light of this, the Media Bureau proposed a fine of \$20,000 and indicated that it would grant the license renewal application if no additional issues arise. The licensee has 30 days to either file a written statement seeking reduction or cancellation of the proposed fine or to pay it.

Failure to File License Applications Triggers \$6,500 Proposed Fine for Florida LPTV Station

According to a Media Bureau NAL, the licensee of a Florida low power television station failed to timely file an application for a license to cover its constructed facilities and therefore engaged in unauthorized operation. In response, the FCC's Media Bureau proposed a \$6,500 fine.

The licensee purchased the station in July 2020, and the station went silent on July 31, 2020. The licensee filed a minor modification application on April 14, 2021, as it intended to relocate the station to a new tower. A construction permit for the minor modification was granted April 15, 2021 with an expiration date of April 15, 2024.

Based on statements made in the station's license renewal application, the Media Bureau sent a Letter of Inquiry (LOI) to the licensee on February 9, 2024 requesting information about whether the station was operational or if it had remained silent since July 31, 2020. After the licensee did not respond to the LOI or to follow-up phone calls and emails, the FCC cancelled the station's license and construction permit on April 5, 2024, believing the station had been silent since July 2020. The licensee ceased operations on April 5, 2024 after it received the cancellation letter.

In May 2024, the licensee filed a petition for reconsideration asking the FCC to reinstate its construction permit, license, and license renewal application, and for permission to file an application for license to cover. The licensee provided evidence that the station's facilities had been constructed in accordance with the construction permit and that the station had operated from July 2021 until April 5, 2024 (over two and a half years) before receiving the cancellation letter. Although the FCC found the licensee had failed to timely file a license to cover application, it agreed that the station had been constructed in accordance with the construction permit and instructed the licensee to file a license to cover application.

The licensee acknowledged that, due to an administrative oversight, it had not timely filed the license to cover application as required by Section 73.3598(a) of the FCC's Rules. In the NAL, the Media Bureau emphasized that "administrative oversight" is not an excuse for FCC rule violations, and concluded that the licensee had engaged in unauthorized operations for over two and a half years.

In November 2024, the Media Bureau released the NAL, which concluded that the licensee had willfully violated Section 73.3598(a) of the FCC's Rules by failing to timely file a license to cover application, and apparently willfully and repeatedly violated Section 73.1745(a) of the FCC's Rules and Section 301 of the Communications Act by engaging in unauthorized operation. Section 312(f)(1) of the Communications Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law, and "repeated" as an act that occurs more than once or, if an act is continuous, for more than one day.

The FCC's *Forfeiture Policy Statement* sets base fines of \$3,000 for failing to file a required form and \$10,000 for construction and operation of broadcast facilities without authorization. As discussed above, these amounts can be adjusted upward or downward based on the severity of the violation and other relevant factors. Here, the Media Bureau found a downward adjustment was warranted, noting that as an LPTV station, the licensee was providing a secondary service. However, the Media Bureau explained that an upward adjustment was also warranted given that the station operated for over two and a half years without authorization. The end result was a proposed fine of \$6,500. The licensee has 30 days from release of the NAL to pay the fine or to file a written statement seeking reduction or cancellation of it.