Communications

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FCC Enforcement Monitor

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Headlines:

- *FCC Cancels $20,000 Children's Television Fine*
- *Fine and Reporting Requirements Imposed for EEO Violations*
- *Individual Fined $15,000 for Unauthorized Operation of a Radio Transmitter*

$20,000 Kidvid Fine Rescinded Due to Timely Filing

The FCC has continued to impose fines on numerous licensees for failing to timely file their Children's Television Programming Reports on FCC Form 398. The FCC's rules require that full power and Class A television stations file a Children's Television Programming Report each quarter listing the station's programming that is educational and informational for children, and regularly notify the public as to where to find those reports. The base fine for failing to file a required form with the FCC is $3,000.

In July of this year, the FCC issued a Notice of Apparent Liability for Forfeiture ("NAL") against a Louisiana licensee for failing to timely file its Children's Television Programing Reports 18 times. After examining the facts and circumstances, including the licensee's failure to disclose the late filings in its license renewal application, the FCC proposed a $20,000 fine.

In response to the NAL, the licensee asserted that the reports in question had been timely filed, and that the "late" dates the FCC was seeing in its filing database were merely amendments to the timely filed reports. Unfortunately, as those who have dealt with the FCC's filing systems are aware, when an amendment to an existing report is filed, the FCC's filing system changes the filing date shown from the original filing date to the filing date of the amendment. That is why it is important to print out evidence of the original filing when it is made, allowing the licensee to demonstrate that a timely filing was made if it is later questioned.

Based on the licensee's ability to produce Submission Confirmation printouts showing that the reports were timely filed, the FCC agreed to rescind the NAL and cancel the $20,000 fine.

License Assessed $20,000 Fine and Reporting Obligations for Failing to Notify Job Referral Sources and Self-Assess Its EEO Performance

Earlier this month, the FCC imposed a $20,000 fine and detailed reporting requirements on an Illinois radio licensee. Under Section 73.2080(c)(1)(ii) of the FCC's Rules, a licensee must provide notices of job openings to any organization that "distributes information about employment opportunities to job seekers upon request by such organization," and under Section 73.2080(c)(3), must "analyze the recruitment program for its employment unit on an ongoing basis."

The Media Bureau discovered the violations during an EEO audit covering the period August 1, 2009 through July 31, 2011. The audit revealed that the licensee had filled 36 full-time positions at its stations, but had not provided notification to organizations that had asked for that information for 33 of these vacancies. The number of organizations that did not receive requested information ranged from 21 organizations for some vacancies to two organizations for other vacancies. The FCC also found that the licensee had not sufficiently analyzed its recruitment program, nor had it corrected problems in its process for "achieving broad outreach to potential applicants."

The FCC does not have a base fine for EEO violations. Therefore, the Commission looked at prior decisions and the circumstances of this case in assessing a $16,000 fine for failing to provide vacancy information to requesting organizations, and a $4,000 fine for failing to self-assess the effectiveness of its EEO program. In addition, the FCC required the licensee (and any successor licensee of any or all of the stations) to submit annually for the next three years a sworn statement to the FCC including: (1) the EEO public file report, (2) dated copies of communications announcing each full-time vacancy, (3) the recruitment source that referred the hiree and the job title of each full-time vacancy, (4) the number of people interviewed for each available position and the person or organization who referred each interviewee, (5) a list of all sources requesting job notifications, and (6) a list of who the licensee notified of job vacancies.

Individual Fined $15,000 for Operating CB Radio Transmitter from His Home

Last month, the FCC issued an NAL against an Oklahoma man for operating a radio transmitter from his home without permission from the FCC.

A local FCC Enforcement Bureau agent using direction finding techniques detected strong signals coming from a home in Oklahoma. The agent saw an antenna on the roof of the house, as well as a coaxial cable running from the antenna into the home. When the agent sought to speak with a resident of the house, the occupant initially refused to answer the door and another person told the agent that the resident was not home. However, the occupant eventually appeared at the door. He showed the Enforcement agent the CB transmitter, which was warm to the touch, but not connected to the coaxial cable from the rooftop antenna. The agent traced the path of the coaxial cable coming from the antenna, which led to a linear amplifier hidden behind a couch that was also "warm to the touch."

The Communications Act of 1934 (the "Act") prohibits anyone from transmitting "energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license." CB operators are not required to have a license because the FCC's rules authorize their operation, but only where that operation otherwise complies with the FCC's rules. However, one of those rules is that "CB operators may not attach external radio frequency (RF) power amplifiers . . . to certificated CB transmitters in any way." The FCC assumes that a person is using an amplifier if it "is located on the individual's premises and if there is other evidence showing that a CB station was operated with more power than allowed by the Rules." Under this test, the FCC found that the Oklahoma resident operated his

CB station with the amplifier since the agent saw the amplifier at his residence and the signal coming from the home demonstrated "that his CB station was operated with more power than allowed by the Rules."

The base fine for unlicensed operation is $10,000, and the FCC has discretion to increase the fine based upon the circumstances. In this case, the local FCC office had previously sent two written warnings to the resident warning him that using an amplifier with a CB transmitter violated the Communications Act and the FCC's Rules. Because of this, the FCC determined that a $5,000 increase from the base fine was warranted and imposed a fine of $15,000.

If you have any questions about the content of this Advisory, please contact the Pillsbury attorney with whom you regularly work, or the authors of this Advisory.

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