Advisory

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Communications

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FCC Enforcement Monitor

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Headlines:

▪ FCC Proposes $40,000 Fine for Public Inspection File/License Renewal Violations

▪Short-Term License Renewal and Hefty Fine for Missing QIP Lists

▪ $5,000 Fine for FM Station's Failure to Maintain Minimum Operating Hours

Failure to Disclose Rules Violations Leads to $40,000 Fine

Late last month, the FCC issued two essentially identical orders against co-owned Milwaukee and Chicago Class A TV stations in response to a number of missing Quarterly Issues/Programs Lists and Children's Television Programming Reports and for not reporting the missing issues/programs lists in the stations' license renewal applications. The FCC's Media Bureau proposed a $20,000 fine against each station, for a total fine of $40,000.

In late December of last year, the FCC issued Notices of Apparent Liability for Forfeiture ("NAL") for the two stations, noting that the stations had mentioned in their license renewal applications that they had failed to timely file numerous Children's Television Programming Reports, but had not disclosed the absence from their online public files of over a dozen (each) Quarterly Issues/Program Lists. Section 73.3526 of the FCC's Rules requires licensees to maintain information about station operations in their public inspection files so the public can obtain "timely information about the station at regular intervals."

The base fine for failure to file a required form is $3,000, and the base fine for public file violations is $10,000. After considering the facts, the FCC concluded in each NAL that the respective station was liable for $9,000 for the missing Quarterly Issues/Programs Lists, $9,000 for the missing Children's Television Programming Reports, and an additional $2,000 for failing to disclose the missing Quarterly Issues/Program Lists in their renewal applications.

After receiving the NALs, each station requested that the fine be reduced due to an inability to pay. The FCC will not consider reducing a fine based on a claimed inability to pay unless the licensee submits federal tax returns for the last three years, financial statements, or other documentation that accurately demonstrates its financial status. In this case, each station submitted appropriate documentation about its financial condition. However, the FCC was not persuaded that the amount of the fines exceeded each station's ability to pay, and declined to reduce the fines.

Public Inspection File Violations Lead to $46,000 in Fines and Limited License Terms

In connection with recent license renewal applications, the FCC issued four essentially identical *Memorandum Opinions and Orders and Notices of Apparent Liability for Forfeiture*, resulting in $46,000 in fines for a Washington radio licensee. In addition, three of the licensee's four stations' license renewal applications were granted for only a four-year term rather than the normal eight-year term.

The first three of the licensee's stations were missing, respectively, 24, 26, and 20 Quarterly Issues/Programs Lists for various periods during the license term. The fourth station's public inspection file was missing 12 reports for a two-year period spanning from 2006 to 2008.

All four stations indicated that they "had some significant changes in management" during the periods for which their public inspection files were missing Quarterly Issues/Programs Lists. The stations were not able to recreate the missing lists, but did indicate they had since implemented procedures to prevent similar violations from occurring in the future.

While the base fine for a public inspection file violation is $10,000, the FCC has authority to modify that amount based on the circumstances of a rule violation. With regard to the three stations missing the most reports, the FCC found that the lengthy periods of time for which reports were missing, along with the number of missing reports, "constitute[d] a pattern of abuse." The FCC also noted that the violations warranted an upward adjustment of the fine because the stations did not disclose the public inspection file violations until they were compelled to do so in filling out their license renewal applications. The FCC therefore increased the fine, proposing a fine of $12,000 for each of those three stations.

In addition, the FCC decided that "additional measures are necessary in order to ensure that the Station[s are] operated in compliance" with the FCC's rules, granting those three stations' license renewal applications for a term of only four years instead of the standard eight-year term.

Because the fourth station was missing only 12 reports, the FCC determined that "no serious violation" had occurred with regard to that station and imposed the base fine of $10,000 while granting the station a full eight-year license renewal.

Texas Radio Station Licensee Fined for Reducing Operations Without Obtaining Special Temporary Authority

The FCC issued an order and NAL in connection with a license renewal application for a Texas radio station that failed to meet its minimum daily operating hours without first obtaining special temporary authority ("STA") from the FCC to do so.

Section 73.1740(a)(1) of the FCC's Rules requires that FM stations operate "[t]wo-thirds of the total hours they are authorized to operate between 6 a.m. and 6 p.m. local time and two-thirds of the total hours they are authorized to operate between 6 p.m. and midnight, local time, each day of the week except Sunday." Section 73.1740(a)(4) further requires that if a station cannot meet these operating requirements for more than 30 days, it must request permission from the FCC to limit its operations.

When the licensee filed its license renewal application, it was unable to certify that it had complied with the FCC's minimum operating requirements during the license term. For almost four years, the station had stopped daily programming at 7:00 p.m. Monday through Saturday and had not requested authority from the FCC to operate at these reduced hours. The licensee indicated in its renewal application that it did not realize until it began preparing its renewal application that authorization was required to operate at reduced hours.

The base fine for unauthorized discontinuance of radio service is $5,000. The FCC noted that even a rule violation stemming from an accidental error or oversight still constitutes a willful violation of its rules and imposed a $5,000 fine. In evaluating the license renewal application, the FCC determined that the licensee's violation of the rules was not a "serious violation" and that there was no pattern of abuse. As a result, it said it would grant the license renewal application in a separate action.

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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