

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:

- *Washington State Television Licensee Agrees to \$29,000 Consent Decree for Public File Violations*
- *Numerous FCC Rule Infractions Lead to Notice of Violation for Virginia AM Station*
- *Multinational Media Company Agrees to Consent Decree and \$244,952 Penalty to Resolve EAS Violations*

Public File Violations by Washington State Television Licensee Yield \$29,000 Consent Decree

In the course of processing license renewal applications for three Washington state television stations, the FCC's Media Bureau noted that the applicant certified that all required documentation had been uploaded to the stations' Public Inspection Files when required. According to the Media Bureau, however, the licensee failed to timely upload 40 Quarterly Issues/Programs Lists.

Section 73.3526(e)(11)(i) of the FCC's Rules requires that every full power commercial 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 must include a brief narrative of the issues addressed, as well as the date, time, duration, and title of each program aired that addressed those issues. The list must be placed in the Public Inspection File within 10 days of the end of each calendar quarter.

The Media Bureau noted that the Washington stations had failed to upload some quarterly lists at all, and many others had been uploaded late. With regard to the licensee's Spokane station, the FCC stated that three of the lists created during the license term were uploaded more than one year late. Its Richland station uploaded seven lists more than one year late, six lists between one month and one year late, and three lists under one month late. Lastly, its Yakima station uploaded nine lists over one year late, seven lists between one month and one year late, and five lists under one month late.

Compliance with the FCC's rules requires that all reports be timely uploaded and that any failure to do so be disclosed in making the relevant certification in a station's license renewal application. At the request of the FCC, the licensee uploaded the lists that were entirely missing from the stations' Public Inspection Files and amended the stations' license

renewal applications to change its certifications that “the documentation, required by 47 C.F.R. Section 73.3526 ... has been uploaded to the station’s public inspection file when required” from a “Yes” response to a “No.” The licensee also included attachments in the amendments disclosing the lists that were filed late.

To bring the investigation to a close, the licensee entered into a Consent Decree with the FCC in which it admitted to the violations and agreed to pay a \$29,000 civil penalty. It also agreed to implement a compliance plan going forward, including two years of annual compliance reports to the FCC. If the Media Bureau is not satisfied with those reports, it can unilaterally extend the reporting period for another two years. For its part, the Media Bureau granted the stations’ license renewal applications in the Adopting Order that accompanied the Consent Decree.

Virginia AM Station Receives Notice of Violation for a Variety of FCC Rule Violations

Following an inspection by an FCC field agent, a Virginia AM station owner received a Notice of Violation (NOV) asserting violations of numerous FCC regulations.

Among the regulations cited in the NOV was Section 73.49 of the FCC’s Rules, which requires that towers “having radio frequency potential at the base ... be enclosed within effective locked fences or other enclosures.” The agent observed that a portion of the fence had fallen, allowing unrestricted access to the tower.

Also cited was Section 73.1350(a) of the FCC’s Rules, requiring licensees to operate according to their FCC-granted authorizations. The AM station is authorized to operate with 9.0 kW during the day but must reduce its power after sunset to 52 watts. The agent observed the station had not reduced power after sunset consistent with its license.

The agent tried to contact a Vice President of the broadcaster while the station was on-air in order to inspect the station. Under Section 73.1225(a) of the FCC’s Rules, “[t]he licensee of a broadcast station shall make the station available for inspection by representatives of the FCC during the station’s business hours, or at any time it is in operation.” However, the Vice President informed the agent that no station personnel were able to meet the agent, and then failed to return the agent’s follow-up phone calls and emails seeking to reschedule the inspection.

Section 17.48(a) of the FCC’s Rules requires the owner of any antenna structure registered with the Commission and assigned lighting specifications to immediately report a lighting outage not corrected within 30 minutes to the Federal Aviation Administration (FAA). While at the tower site, the agent observed that all obstruction lighting on the structure was off, despite a requirement to “display at top-level a red beacon and at mid-level steady burning obstruction lighting for nighttime illumination.” The agent confirmed that the lighting outage had not been reported to the FAA.

Finally, according to FCC records, the station last filed a transfer of control application in 2002 seeking approval for an individual to acquire 100% control of the licensee corporation, which the FCC granted. However, following that individual’s death in March 2023, the station failed to file an application to transfer control of the station to his estate or to another person or entity. Sections 73.3540(a) and (b) of the FCC’s transfer of control rules require that an involuntary transfer of control application be filed within 30 days of the controlling shareholder’s passing. As of the date the Notice of Violation was released, no transfer of control application had been filed with the FCC.

The NOV requests additional information from the station concerning the asserted violations. It instructs the station to submit within 20 days a written response fully explaining each alleged violation and all relevant surrounding facts and circumstances, including the specific actions taken to correct any violations and prevent them from recurring. The NOV also requires the station to include a timeline for completing any pending corrective actions and to support its response with an affidavit or declaration from an authorized officer of the licensee. Though the NOV itself carried no monetary penalty, the FCC can take additional action in the future, including issuing a Notice of Apparent Liability for Forfeiture if it is not satisfied with the licensee’s response.

Global Media Company Enters into Six-Figure Consent Decree Over EAS Tone Misuse

A multinational media and content company that owns a broadcast network as well as broadcast radio and TV stations entered into a Consent Decree with the FCC's Enforcement Bureau to resolve investigations into its conduct relating to the prohibited use of actual or simulated Emergency Alert System (EAS) tones. The company will implement a compliance plan and pay a \$244,952 civil penalty.

The EAS is a nationwide public warning system designed to alert the public in case of emergencies, such as severe weather warnings or AMBER alerts, and EAS tones may only be aired in connection with an actual emergency, an authorized test, or in a qualified public service announcement (PSA). Section 11.45 of the FCC's Rules strictly prohibits airing an EAS tone, or a simulation of it, except in connection with one of these permitted uses.

In mid-2023, the company disclosed to the FCC that an episode of network programming in which the characters are trying to escape severe weather by car used certain sound effects. Viewers of the show heard (i) dialogue dramatizing a National Weather Service tornado warning; (ii) five artificial noises (together with dialogue between the characters); (iii) dialogue between the characters (with sirens and dialogue dramatizing a National Weather Service tornado warning in the background); and (iv) dialogue dramatizing the beginning of a National Weather Service warning. The company's self-disclosure asserted that the episode did not contain any actual or simulated EAS tones, but that it was reporting the use of various sound effects out of an abundance of caution.

Next, as part of an entertainment program aired in late 2023, the company's broadcast network distributed to its TV stations and affiliates a clip that contained a roughly one-second actual or simulated EAS tone. The video clip containing the tone was provided by a third party to publicize an upcoming movie release and was not transmitted in connection with an actual emergency, authorized test of the EAS, or qualified public service announcement.

Finally, in mid-2024, the company reported to the FCC that it distributed a newscast which may have contained roughly three seconds of actual or simulated EAS tone. The story, about a theme park, was distributed to hundreds of radio stations. Responding to a subsequent FCC inquiry, the company disclosed that one of its employees copied an audio clip containing an EAS tone that the theme park had posted online, and then included that audio in the theme park story. The company stated that the employee failed to recognize the EAS tone and the clip was not reviewed by any other company employee prior to its distribution.

To resolve each of these investigations, the company agreed to enter into a Consent Decree with the FCC. In the Consent Decree, the company admitted to two of the three alleged EAS violations, and admitted the accuracy of the facts stated by the FCC relating to the third alleged violation. The company must pay a \$244,952 civil penalty, and implement a multi-part compliance program that includes appointing a compliance officer, adopting new operating procedures to prevent future violations, drafting a compliance manual, and conducting a compliance training program for employees. It must also report any future violations within fifteen days of discovery, and file annual compliance reports with the FCC for the next three years.