

# FCC Enforcement Monitor October 2019

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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:*

- *Virginia FM Station's Years of Missing Quarterly Lists Lead to Proposed \$15,000 Fine and a Reduced License Term*
- *FCC Investigates Ohio College Station Over Unauthorized Silence and Scheduling Violation*
- *New York Amateur Radio Operator's Threats and Harmful Interference Lead to Proposed \$17,000 Fine*

### **Feeling Listless: Virginia Station With Years of Missing Quarterly Issues/Programs Lists Hit with Proposed \$15,000 Fine, Shortened License Term**

In a Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, the FCC found that a Virginia FM station failed to prepare and upload eight years' worth of Quarterly Issues/Programs lists, resulting in a proposed \$15,000 fine. The FCC also indicated it would grant the station's license renewal application, but only for an abbreviated two-year license term.

As we noted in a [recent advisory](#), the FCC requires each broadcast station to maintain and place in the station's online Public Inspection File a Quarterly Issues/Programs List reflecting the "station's most significant programming treatment of community issues during the preceding three month period." At license renewal time, the FCC may review these lists to determine whether the station met its obligation to serve the needs and interests of its local community during the license term. The FCC has noted this and other such "public information requirements" are "integral components of a licensee's obligation to serve the public interest and meet its community service obligations."

Starting with TV stations in 2012, the FCC has required stations to transition their physical local Public Inspection Files to the FCC's online portal. By March 1, 2018, all broadcast radio stations were required to have uploaded the bulk of their Public File materials to the online Public Inspection File and maintain the online file going forward. At license renewal time, licensees must certify that all required documentation has been placed in a station's Public Inspection File in a timely fashion. The license renewal cycle for radio stations **began in June of this year**.

In its license renewal application, the FM station admitted that it had run into some "difficulties" with the online Public Inspection File and had not met "certain deadlines." In the course of its investigation, the Media Bureau found that the

licensee had in fact failed to prepare any Quarterly Issues/Program Lists during the preceding eight-year license term, and, as a result, also failed to upload the materials to the station's Public Inspection File.

The FCC's forfeiture policies establish a base fine of \$10,000 for failure to maintain a station's Public File. However, the FCC may adjust a fine upward or downward depending on the circumstances of the violation. Considering the extensive nature of the violations and the station's failure to disclose its behavior in the years prior to its license renewal application, the Media Bureau increased this amount to \$12,000. The Media Bureau then tacked on an additional \$3,000 fine, the base amount for a station's failure to file required information, for a total proposed fine of \$15,000.

Turning to the station's license renewal application, the Media Bureau deemed the station's behavior "serious" and representative of a "pattern of abuse" due to years of violations. As a result, the Bureau indicated it would only grant the station a shortened license term of two years, instead of a full eight-year term, and even then, only assuming the Bureau found no other violations that would "preclude such a grant."

### **In a Silent Way: University FM Station Warned Over Unauthorized Silence and Time Share Violation**

In a recent Notice of Violation, the FCC cited a northern Ohio university's FM station for failing to request authorization to remain off-air for several months and for altering the broadcast schedule that it shares with another station on the same frequency without notifying the FCC.

Part 73 of the FCC's Rules requires a station to broadcast in accordance with its FCC authorization. While stations are generally authorized to operate for unlimited time, some noncommercial FM stations split time on a shared frequency via a time-sharing agreement. The FCC will usually only permit a departure from the schedule set forth in a time-sharing agreement once a written and signed agreement to that effect has been filed with the FCC by each licensee. In the event that circumstances "beyond the control of a licensee" make it impossible for a station to adhere to this schedule or continue broadcasting altogether, the station must notify the FCC by the tenth day of limited or discontinued operation. A station that expects to be silent for over 30 days must request Special Temporary Authority from the FCC to do so.

In mid-February 2019, the station's transmission equipment failed, causing the station to go dark until July. The FCC indicated that the station never requested Special Temporary Authority to remain silent during that five-month period. A deeper look into the station's public records shows that the station failed to notify the FCC of its operational problems during the entire five-month period of silence.

Instead of dead air, however, local listeners were treated to jazz all day, every day, for the duration of the university's equipment troubles. The university station shares its frequency with a jazz station licensed to a nearby municipal school district. Per the stations' time-sharing agreement, the municipal school district controls the frequency on weekdays from 8 a.m. to 8 p.m., with the university controlling the frequency for the rest of the week. The FCC states that it was left in the dark when the university departed from the predetermined schedule by having the jazz station broadcast full time without filing an executed agreement with the FCC indicating the change.

The university now has 20 days to respond to the Notice of Violation. In its response, it must provide: (1) a complete explanation of each violation; (2) a description of the university's corrective measures; and (3) a timeline for completion of these actions. The FCC will then consider the university's responses and all relevant information to determine what, if any enforcement action it will take against the university for the violations.

### **Amateur Hour: FCC Proposes \$17,000 Fine Against Amateur Radio Operator for History of Threats and Harmful Interference**

The FCC recently issued a Notice of Apparent Liability for Forfeiture against a Queens, New York amateur radio licensee for repeatedly and deliberately causing harmful interference to other amateur radio licensees, including making threatening comments to other licensees operating on a shared frequency.

According to FCC databases, there are over 700,000 licensed amateur radio operators in the United States. These licensees operate on shared frequencies, and, under Part 97 of the FCC's Rules, may not "willfully or maliciously interfere with or cause interference to any radio communications or signal." Such interference can come in the form of repeated interruptions or noises that prevent other operators from utilizing the frequencies.

In this case, the FCC received multiple complaints that the New York licensee was causing interference to a local radio repeater, thereby preventing its use by other amateur licensees. A radio repeater picks up nearby radio signals and transmits them over large geographic areas. The FCC initially responded in June 2017 by issuing the licensee a Warning Letter detailing the complaints against him and demanded that he cease operating on the repeater. Despite the warning, the FCC continued to receive complaints about the man's interference with the repeater, as well as claims that the man had begun making threats against other local amateur operators.

These continued complaints prompted the Enforcement Bureau to dispatch agents to deal with the matter more directly. In April 2018, two agents from the Enforcement Bureau's regional office drove to the licensee's home, inspected his station, and issued a written statement reiterating that he was prohibited from using the local repeater.

Unsurprisingly, the complaints continued to pour in. Six months after the inspection, an agent was once again dispatched, this time to monitor errant transmissions over the repeater's frequencies. The agent tracked the transmissions back to the licensee's station and recorded the licensee interfering with the repeater and making "threatening comments" to other amateur operators. According to the FCC, these transmissions were "a deliberate act to control the frequency and prevent other amateur radio operators from conducting legitimate communications." A few months later, the Enforcement Bureau's Regional Director called the licensee directly to admonish him against continuing to transmit on the repeater frequency.

The Communications Act of 1934, as amended, and the FCC's Rules authorize a base fine of \$7,000 for each day an entity causes interference to authorized stations. Noting that the licensee's egregious conduct demonstrated both an intent to violate the Communications Act and disregard for "the very spirit of the Amateur Radio Service," the FCC adjusted the base amount upward and proposed a \$17,000 fine.

According to the Notice of Apparent Liability for Forfeiture, the licensee must now either pay the full amount of the fine or file a written statement with the FCC seeking reduction or cancellation of the fine.