

# FCC Enforcement Monitor

## November 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:*

- *Government Shutdown and Other "Compelling Reasons" Prompt FCC to Reinstate NY Radio Station License*
- *FCC Fines Virginia AM Station and Limits License Renewal to Two Years for Missing Quarterly Programs/Issues Lists*
- *Virginia Station's Late License Renewal Application Proves Costly*

#### **How Do You Measure a Year? "Unique Circumstances" Lead to New York AM Station's Reinstatement**

In a Memorandum Opinion and Order and related Consent Decree, the Media Bureau agreed to reinstate the license of a Long Island, New York AM radio station that had been silent for nearly all of 2018 before going back on air without authorization in the midst of this year's partial government shutdown. The Media Bureau also approved an application to sell the station that had been pending since February.

Section 73.1745(a) of the FCC's Rules requires a station to broadcast according to the "modes and power" specified in its license, and further requires licensees to seek special temporary authority (often referred to as an "STA") when seeking to operate at variance from their license. Even where a station obtains temporary authority from the FCC to remain silent, Section 312(g) of the Communications Act of 1934 provides that a broadcast station's license automatically expires if it does not transmit a broadcast signal for 12 consecutive months. The FCC does not consider unauthorized operation to be a "broadcast signal" for purposes of declaring a station's operations to be resumed under Section 312(g). Fortunately, the FCC has the discretion to reinstate a license that would otherwise be lost under Section 312(g) where it is appropriate as a matter of "equity and fairness."

On January 25, 2018, the AM station went silent due to the loss of its licensed transmitter site. Shortly thereafter, the licensee sought and was granted authority by the FCC to remain silent through August 16, 2018. When that date arrived, the station continued to remain silent, but failed to apply for an extension of that authority. On January 15, 2019, the licensee informed the FCC that it had resumed operations on an emergency antenna at low power, and it filed a request for special temporary authority to operate at those parameters. The station's request fell on deaf ears, however, as the federal government was shut down at that time due to a budget dispute. The FCC did not resume normal operations until January 26, 2019, and did not grant the STA request until February 1.

On February 5, the licensee once again requested authority for the station to go silent because it had lost use of its temporary antenna following a complaint that it was operating at a “residential location.” Two days later, the licensee filed an assignment application seeking FCC approval for the sale of the station. The assignment application triggered the filing of a Petition to Deny by another local broadcaster, leading to an investigation by the Media Bureau.

The petitioner alleged that because the station failed to resume broadcasting on authorized facilities by January 26, 2019, its license should have automatically expired, and the Media Bureau should therefore dismiss the assignment application as moot. The licensee responded that the Media Bureau had implicitly extended or reinstated its license by way of its February 1 STA grant, and that, but for the shutdown, its application would have been granted within the 12-month statutory period anyway. The licensee further alleged that the petitioner was actually a competitor which had “actively interfered” with the licensee’s attempt to resume operations. The licensee pointed to an exclusive lease that the petitioner had arranged several months prior for the station’s licensed transmitter site, which prevented the station from operating from that site. The licensee further challenged the petition by claiming that the petitioner was a “rejected suitor” for the purchase of the station, even submitting in its filing an email and text messages from the petitioner indicating interest in the station.

In response to the petition, the Media Bureau agreed with the petitioner that the station’s license had indeed expired due to its failure to transmit on authorized facilities for 12 consecutive months, and further determined that the licensee’s use of a self-declared “emergency” antenna was merely an attempt to circumvent the rules. The Media Bureau also determined that its February STA grant had not even mentioned the issue of Section 312(g) expiration, much less represented an implicit reinstatement or extension of the station’s license.

However, the Media Bureau determined under the circumstances that it was appropriate to use its Section 312(g) discretion and reinstate the station’s license. While reminding the licensee of the importance of allowing sufficient time for Commission review of applications, the Media Bureau determined that the shutdown, in conjunction with the petitioner’s own behavior in securing an exclusive lease for the station’s licensed transmitter site, presented “compelling reasons” beyond the licensee’s control.

To resolve the investigation, the licensee entered into a Consent Decree with the Media Bureau in which it agreed to pay a \$5,000 civil penalty. Under the terms of the Consent Decree, the Media Bureau will grant the assignment application on the condition that no other issues precluding such grant arise.

### **Don’t You Forget About Me: FCC Proposes \$15,000 Fine and Two-Year License Term for Station With Years of Missing Public Inspection File Documents**

The Media Bureau recently issued a Notice of Apparent Liability for Forfeiture (“NAL”) to the licensee of a Virginia AM radio station for failing to prepare and upload to the station’s online Public Inspection File Quarterly Programs/Issues lists. The Media Bureau further concluded that the station’s pending license renewal application should be granted for only an abbreviated two-year term instead of a full eight-year term.

The FCC requires each broadcast station to maintain and place in the station’s Public Inspection File a Quarterly Programs/Issues List reflecting the “station’s most significant programming treatment of community issues during the preceding three-month period.” According to the FCC, these documents are a “representative indication that a licensee is providing substantial service to meet the needs and interests of its community.”

In 2012, starting with television stations, the FCC began requiring broadcasters to upload and maintain Public File documents in the FCC’s online Public File database. This change was premised in part on giving the public more ready access to the documents in the Public File. By March 1, 2018, all broadcast stations were required to have uploaded their Public File to the FCC’s online database.

When broadcasters apply for renewal of a station’s license, they must certify that all required materials have been timely placed in the station’s Public Inspection File. The license renewal cycle for radio stations **began in June of this year.**

When filling out its license renewal application, the licensee candidly answered “No” when asked to certify that it had timely placed all relevant documentation into its Public File. The licensee explained that its sole principal was a 92-year-old man who was not “computer literate” and did not know how to upload the Quarterly Programs/Issues Lists to the station’s Public Inspection File, nor was he even able to access the online file. The licensee further stated that the man’s adult children had been enlisted to assist him but were unable to find any of the station’s quarterly lists, even in paper form.

The Media Bureau found that the licensee had not uploaded a single quarterly list to the station’s Public Inspection File, and, to make matters worse, found no evidence of a single list at all from the past two successive license terms, representing 16 years.

The FCC’s Rules establish a base fine of \$10,000 for failure to properly maintain the Public Inspection File, and \$3,000 for failure to file required documentation. The FCC may adjust these amounts based on the nature and extent of the violation, as well as the violator’s history of compliance with the rules and its ability to pay. In this instance, the Media Bureau determined that the severity and lasting nature of the violations warranted an upward adjustment to \$12,000 for the licensee’s failure to properly maintain the Public File, noting that the licensee only admitted to the violation when expressly asked about it in the station’s license renewal application. The Media Bureau also tacked on a \$3,000 fine for the licensee’s failure to upload the lists. Despite the principal’s “advanced age”, the Media Bureau chastised the licensee for neglecting its responsibility to comply with the FCC’s rules.

In addition to the proposed \$15,000 fine, the Media Bureau also concluded that the licensee’s conduct had “fallen far short of the standard of compliance” that would warrant a normal license renewal. To further address the licensee’s many years of “willful and repeated violations”, the Media Bureau stated that it would grant the station a brief two-year license renewal term, which would “afford the Commission an opportunity to review the Station’s compliance” and take any additional enforcement actions it deems necessary.

### **Barely Time to Wait: Virginia Radio Station Hit With \$1,500 Fine for Late-Filed License Renewal Application**

As we have been **reminding** our readers, the FCC’s multiyear license renewal application cycle is now upon us, having started with radio stations in June of this year, and proceeding with television stations next June. Section 73.3539(a) of the FCC’s Rules requires stations to file license renewal applications “not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed.” If you find that legalese to be overly complicated, and are unsure of when your station’s renewal application and its associated pre- and post-filing announcements are due, we encourage you to monitor Pillsburylaw.com for our bimonthly reminders, and watch for our upcoming 2020 edition of the **Broadcasters’ Calendar**.

Failure to timely file a license renewal application subjects the offending licensee to fines in the thousands of dollars (not to mention the obvious risk to the license itself). Such was the fate of a Richmond, Virginia low power radio station when, last month, the Media Bureau issued a Memorandum Opinion and Order and NAL proposing to fine the station for filing its license renewal application six weeks late. Virginia radio stations were required to file license renewal applications by June 3, 2019. However, the Virginia licensee did not file its application until July 15, and declined to include in its filing an explanation for its tardy submission.

Though the FCC’s rules set a base fine of \$3,000 for “failure to file a required form”, the Media Bureau adjusted this amount downward to \$1,500, concluding that, despite providing no explanation for its behavior, the licensee had still managed to file its renewal application ahead of the station’s October license expiration. After determining that the late filing did not present a “serous” violation, the Media Bureau stated that it would grant the application in a separate action on the condition that no other issues presented themselves that would prevent such a grant. The licensee has 30 days after the release of the NAL to pay the full \$1,500 or file a written statement seeking reduction or cancellation of the proposed fine.