
FCC Enforcement Monitor

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Headlines:

- *TV Licensee Agrees to Pay \$18,000 for Public Inspection File Violations*
 - *FM Translator Licensee Faces \$9,000 Fine for False Certification and Unauthorized Operation Violations*
 - *AM Licensee Pays \$10,000 to End Investigation into Alleged Ownership Violations*
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Mistakes Over Off-Air Time in Public Inspection File Cost TV Licensee \$18,000

The FCC's Media Bureau entered into a Consent Decree with a Las Vegas Class A television licensee to resolve an investigation into whether the licensee violated the FCC's Rules by improperly indicating on four Children's Television Programming Reports and TV Issues/Programs Lists that it was off-air, and failing to prepare mandatory certifications of Class A eligibility for over five years.

Section 73.3526 of the FCC's Rules requires each commercial broadcast licensee to maintain a public inspection file containing specific information related to station operations. Subsection 73.3526(e)(11)(iii) requires TV licensees to prepare and place in their public files a Children's Television Programming Report for each calendar quarter showing, among other things, the efforts made during that three-month period to serve the educational and informational needs of children. In addition, Subsection 73.3526(e)(11)(i) requires TV licensees to place in their public file, on a quarterly basis, an Issues/Programs List that details programs that have provided the station's most significant treatment of community issues during the preceding quarter. Also, Subsection 73.3526(e)(17) requires each Class A television station to include in its public file documentation sufficient to demonstrate that it continues to meet the Class A eligibility requirements as set forth in Section 73.6001.

On May 28, 2014, the licensee filed its station's license renewal application. In the process of evaluating the application, FCC staff found that the licensee indicated the station was off-air in its Children's Television Reports and Issues/Programs Lists for two quarters during which it was on the air for a portion of the quarter, and for two quarters during which the station did not have Special Temporary Authorization

("STA") to go off-air. In addition, the station failed to prepare any Class A certifications during its license term, which began in the third quarter of 2009.

The licensee explained that it had mistakenly indicated that the station was off-air in the Children's Television Reports and Issues/Programs Lists filed for the last three quarters of 2010 because its compliance official mistook the station's engineering STA for an STA to go off-air. With regard to the first quarter 2012 reports, the licensee explained that the compliance official mistook another station's STA to go off-air for this station's STA.

To resolve the investigation, the licensee admitted to the violations and agreed to pay an \$18,000 fine. The licensee also agreed to a two-year compliance plan, which directs the licensee to institute management checks, training, and other measures designed to prevent a re-occurrence of the violations. Despite the imposition of a fine and compliance plan, the FCC renewed the station's license, finding that the licensee met the minimum qualifications to hold an FCC license, and that grant of the license renewal application was in the public interest.

FCC Proposes \$9,000 Fine on FM Translator Licensee for False Certification and Unauthorized Operation Violations

The FCC's Media Bureau proposed to fine a Texas FM translator licensee \$9,000 for falsely certifying in a license application that its translator was constructed as specified in its construction permit, and for operating the translator at variance from its license. The FCC also admonished the licensee for including incorrect information in a related application.

Section 1.17(a)(2) of the FCC's Rules provides that no person may provide, in any written statement of fact, "material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading." Even absent an intent to deceive, a false statement can be an actionable violation of Section 1.17(a)(2) if it is submitted without a reasonable basis for believing that the statement is correct and not misleading.

Section 73.1745(a) of the Rules provides that no broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license." On August 30, 2013, the licensee filed an application for a new translator and specified a tower site for its antenna. Following FCC grant of the application, the licensee filed three modification applications between March 2014 and February 2015, the second of which required the licensee to apply for a license to cover the construction to receive program test authority. Each application was uncontested at the FCC and ultimately granted.

The licensee's troubles began when its March 2015 application to assign its license to another company was challenged. In a petition to deny the assignment, the petitioner argued that the licensee made false statements in several of its applications between 2013 and 2015. The FCC dismissed the petition for lack of standing, and chose to instead treat the petition as an informal objection under Section 73.3587 of its Rules. While the FCC stated that it could not re-open the proceedings absent an indication of fraud or a showing that the results were unconscionable, it noted that it did have authority to impose a forfeiture through the current license term.

After reviewing the petitioner's allegations, the FCC found that the January 2015 license to cover application contained a false certification that the translator had been constructed as specified in the licensee's second modification application, when the translator had in fact been constructed with a different

antenna orientation. The licensee admitted to the discrepancy, and attributed it to “inadvertent error.” The FCC concluded that, because the licensee had operated the station for 34 days in a manner inconsistent with its license, it had engaged in unauthorized operation. The FCC also found that the licensee had specified, and included a picture of, a tower site in its 2013 application that was not actually its tower site.

Finding that the licensee did not benefit in any way from the violations, the FCC determined there was no intent to deceive on the part of the licensee. The FCC therefore chose not to fine the licensee for misrepresentation or lack candor. The FCC did, however, propose a fine of \$5,000 for false certification and \$4,000 for unauthorized operation, for a total proposed fine of \$9,000. The FCC treated the inclusion of incorrect information in the licensee’s 2013 application as a separate violation, and chose to only admonish the licensee for that failure. The FCC also required that the licensee submit a copy of the Notice of Apparent Liability associated with the violations with every facility application it files for the next five years. Despite describing the licensee’s conduct as “unacceptable,” the FCC ultimately granted the licensee’s assignment application after assessing the fines.

AM Licensee Not Required to Admit Fault in \$10,000 Settlement

The FCC’s Media Bureau entered into a Consent Decree with a Washington State AM radio licensee to resolve an investigation into several alleged violations of the Communications Act and the FCC’s Rules. The allegations stem from a petition to deny and objections filed in response to a license renewal application the licensee filed in September 2013.

The petition and objections alleged five violations. Two of the allegations related to ownership of the license, two related to the licensee’s plans to construct a tower array near the Canadian border, and the fifth allegation was that the licensee failed to comply with the local public notice provisions of Section 73.3580(c)(3) of the FCC’s Rules.

The FCC dismissed the allegations relating to the tower array and public notice because they were actually collateral attacks on a previously granted modification application. Additionally, the licensee had already abandoned its plans for the tower array following its failure to obtain a Conditional Use Permit for construction.

The two remaining allegations contended that (1) the licensee had violated Section 310(d) of the Act and Section 73.3540 of the FCC’s Rules by transferring control of the license without FCC authorization through a Time Brokerage Agreement (“TBA”) and (2) that the licensee violated Section 310(b)(3) of the Act by allowing more than 20 percent of the license to be owned by foreign (Canadian) individuals.

The licensee denied these allegations, and stated that the TBA in question was terminated in October 2014 and that the license was 100 percent controlled by a U.S. citizen as of November 2014.

Alluding to the licensee’s November 2015 decision to abandon its plans to construct the tower array, the termination of the TBA, and the change in ownership, the FCC acknowledge that any proceeding resulting from the FCC’s investigation would be time consuming and costly. To conserve resources, the FCC terminated the investigation and entered into a consent decree with the licensee. Although the consent decree specifically stated that the licensee “does not admit or deny any liability,” the licensee agreed to make a \$10,000 “voluntary payment” to the U.S. Treasury.

As a result of the consent decree, the FCC denied the petition to deny and objections, and conditionally granted the station’s license renewal application provided the licensee pays the \$10,000 and “there are no

issues unrelated to the matters addressed in the Bureau's Investigation that would preclude grant of the Renewal Application.”

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

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