FCC Administrative Law Judge Revokes AM and FM Licenses of Virgin Islands Broadcaster

FCC Administrative Law Judge Richard Sippel has ruled that a Virgin Islands broadcaster is unfit to be a Commission licensee, and its licenses for an AM and FM station will be revoked. The licensee, which admitted guilt to all of the charges brought by the Enforcement Bureau, was found to have engaged in at least six separate acts of misrepresentation, failed to respond to official FCC correspondence on at least six occasions, operated the stations at variance from their authorizations continuously for a period of nearly six years (including operating from unauthorized sites, operating above authorized power, failing to keep the AM tower securely fenced, failing to install and maintain Emergency Alert System equipment, and failing to have a public inspection file for either station).

The violations came to light over a period of four years, as FCC agents conducted inspections of the stations in 1997, 1998, 1999 and 2000. Judge Sippel's Summary Decision notes that the principal of the licensee, in each of those occasions, "either failed to respond to or answered untruthfully multiple requests for information. As indicated by the above findings, the violations found constituted serious deviations from the terms of the licenses including failures to install, operate and maintain EAS equipment, failures to maintain public inspection files, and a failure to erect and maintain a fence suitable to protect the public from harmful radiation emissions."

The licensee's various rule violations, coupled with misrepresentation and outright failure to respond to Commission inquiries, Judge Sippel found, "demonstrate that [the licensee] is not qualified to remain a Commission licensee and that its licenses should be revoked. Truthfulness and reliability, the prerequisites for operating a broadcast station in the public interest, are lacking. It cannot be ignored that [the licensee] has repeatedly deceived the Commission, ignored Commission correspondence, operated its stations at variance with the terms of their licenses, and failed to comply with rules established to promote public safety. The Bureau has made its case that [the licensee] cannot be trusted to be truthful with the Commission or to operate its stations in accordance with the Communications Act and Commission rules or with a genuine concern for public safety."

The licensee, in arguing against license revocation, urged that an interfamilial transfer of control be allowed, thereby removing the licensee's principal from ownership of the stations. Judge Sippel forcefully rejected the licensee's arguments: "[The licensee] ignored the warnings and chose to violate the law. Why should the future be any different? There are presented no reasonable probabilities of future compliance that can alter the historical merits of this case."

While he found that the willful violations of nine different FCC rules by the licensee could support a forfeiture in addition to license revocation, Judge Sippel declined to impose a fine: "However, in view of the finality of revocation which effectively removes [the principal of the licensee] and [the licensee] from Commission licensing, and in view of the age and adverse health of [the principal of the licensee] and the mitigating circumstances of hurricane tragedies on St. Croix, and in view of the fact that the violations apparently did not result in monetary profit for this unsuccessful, small business, as a matter of discretion, a forfeiture shall not be assessed against [the licensee] in this Summary Decision."

Broadcaster Fined $7,000 for Transmitting Programming to a Foreign Broadcast Station Without Valid Permit

A broadcaster has been fined $7,000 by the Chief of the FCC's Enforcement Bureau for transmitting programming to a foreign broadcast station without a valid permit to do so. The broadcaster, which had previously held a permit from the Commission, allowed its permit to expire twice, and filed for a new permit in each instance several months after the previous permit had expired. In its defense, the broadcaster stated that the failure to seek extensions of the permits was "inadvertent." Rejecting the defense, the Chief noted that the violation "is aggravated by [the broadcaster's] history of noncompliance."
Licensee of Utah FM Station Fined $8,000 for Unauthorized Transfer of Control

The licensee of a Utah FM station has been fined $8,000 for engaging in an unauthorized transfer of control. The station, which began operating in 1994, was owned by a corporation which in turn was controlled 50-50 by two individuals. In 1996, one of the two individuals transferred all of his interest to a trust, the sole beneficiary of which was another individual. The transaction was reported to the FCC in June 1996 on an Ownership Report on FCC Form 323, but no request for FCC approval was made. In November 1997, an application was filed seeking approval of a pro forma transfer of control from the individual and the trust to a new corporation. In the course of processing that application, the FCC's staff raised questions about the earlier transfer, leading ultimately to the fine.

In its response to the Enforcement Bureau's Notice of Apparent Liability for Forfeiture, the licensee admitted that a transfer of control had occurred, but called it “technical.” The licensee claimed “that little, if any, change in the operation of the station occurred” as a result of the transfer. The license also argued that “its violation should be considered minor because it did not involve the substitution of an entire new set of owners. It was rather the product of an inadvertent mistake on [the beneficiary of the trust’s] part based on his belief that Commission approval would be required only if 51 percent or more of the ownership were transferred.” The licensee also claimed that a fine was unwarranted because of its history of overall compliance.

Rejecting the licensee's arguments, the Chief of the Enforcement Bureau noted that the beneficiary of the trust “is an experienced broadcaster who should have been aware of the need to make serious efforts to determine whether the proposed transaction required Commission approval. ‘Licensees are expected to know and comply with the Commission's rules, and will not be excused for violations thereof, absent clear mitigating circumstances.’” As for the licensee's record of compliance, the Chief disagreed with the licensee's claims, noting that “we have concluded investigations of two other licensees controlled by [parties to the case] in which we found that the licensees engaged in unauthorized substantial transfers of control. The licensee in one of these investigations admitted the occurrence of the violation. In addition, in another investigation, we concluded that a licensee controlled by [the same two parties to the case] engaged in the operation of a radio station without a license, which the licensee does not dispute.”