

FCC Enforcement Monitor

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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:

- *FCC Settles with Six Major Radio Groups Over Political File Violations*
- *Texas Radio Stations Face Proposed Fines for Contest Rule Violations*
- *\$15,000 Fine Proposed for LPFM Station Airing Commercial Ads*

The Six Decrees of Compliance: Major Radio Broadcasters Settle with FCC Over Political File Violations

Last week, the FCC announced that it had entered into settlements with six large radio broadcasters over violations of the political file rules. In a flurry of Consent Decrees, the FCC settled investigations into various political file recordkeeping violations. Combined, these broadcasters operate roughly 1,900 stations across the country.

Section 315(e)(1) of the Communications Act ("Act") requires broadcast stations to retain records of requests to purchase political advertising time made (1) by or on behalf of a legally qualified candidate for public office; or (2) by third parties whose ads communicate a message relating to "a political matter of national importance." Under the Act and Section 73.1943 of the FCC's Rules, stations must upload such records to their online political files "as soon as possible", which means "immediately absent unusual circumstances." According to the FCC, maintaining a complete and current political file is critical, in part, because the information affects opposing candidates' right to an equal opportunity to purchase airtime. The FCC has also stated that political file disclosures promote the First Amendment goal of fostering an informed electorate capable of holding political interests accountable.

The six Consent Decrees are nearly identical, and concern the failure of the broadcasters' respective stations to timely upload requests to purchase political advertising time. Earlier this year, the broadcasters had voluntarily disclosed to the Commission that many of their stations had not timely uploaded the required documents. One case, however, was prompted by a separate investigation involving an allegation that three New York stations had violated the "lowest unit charge" requirement, which prohibits stations from charging a candidate more than they charge their most favored advertiser for a spot of the same length, class, and daypart during certain periods before an election. The investigation included a review of the stations' political files and revealed wider recordkeeping issues.

According to the FCC, all of the stations' political file violations were "consistent" with disclosures the broadcasters had made in past license renewal applications.

During the spring of 2020, the broadcasters had voluntarily adopted short-term compliance plans, which the FCC noted led to improvements in the stations' compliance with the political file obligations during that time. Citing this cooperation and the voluntary disclosures, as well as the significant stress on the radio industry brought on by the COVID-19 pandemic, the Commission ended its investigation by entering into settlements with the parties, declining to impose fines for these violations.

Under the terms of the settlements, the broadcasters agreed to implement additional measures, including: (1) a more comprehensive compliance plan, (2) periodic compliance reports to the Commission, and (3) cooperation with the National Association of Broadcasters and state broadcasters associations to encourage and promote education and training for all radio broadcasters on political file obligations.

Since late last year, the FCC has issued a series of decisions and clarifications involving stations' obligations under the political broadcasting rules. As FCC guidance in this area continues to evolve, stations are advised to work with counsel to ensure compliance with these complicated rules, particularly as political ad buying picks up in the course of this year's election cycle. Additional information on the recordkeeping requirements and other political broadcasting rules is included in our [Advisory](#) on the subject.

No-Win Situation: Pair of Texas Radio Stations Face Proposed Fines Over Contest Rule Violations

The FCC's Enforcement Bureau recently issued Notices of Apparent Liability ("NAL") against the licensees of an El Paso and a Houston-area FM station, each proposing fines for violations of the Commission's rules governing on-air contests.

The FCC regulates on-air contests conducted by broadcasters to protect against practices that may deceive or mislead the public. Section 73.1216 of the FCC's Rules requires a licensee to "fully and accurately disclose the material terms of the contest" and the contest must be conducted consistent with those terms ("Contest Rule").

The FCC's investigation into the El Paso station's contest began in March 2017, when it received a complaint alleging that the station failed to award concert tickets to the winner of an on-air contest that occurred at the end of the prior year. The contest winner claimed that after being crowned the winning caller, they were informed by the station that the tickets were not yet available, and despite repeated requests over the next several months leading up to the concert, the station never awarded the prize. The day after the concert, the caller filed their complaint.

In response, the Enforcement Bureau issued a Letter of Inquiry ("LOI") to the station seeking additional information about the contest. The station responded by acknowledging that it had held the contest and had no record of issuing the prize to the contestant, but maintained that the failure to award the tickets was due to "human error." The station further claimed that it was unaware of the issue altogether until it received the LOI, at which point it sought to remedy the error by offering the winner tickets to see the same performer in Las Vegas, along with complimentary travel accommodations.

In response, the FCC concluded that the station's remedial efforts did not negate its violation of the Contest Rule, noting that the award of additional prizes does not excuse a rule violation. Under the Commission's forfeiture guidelines, the base fine for a Contest Rule violation is \$4,000, which the FCC may adjust upward or downward based on the facts of a particular case. In this case, the FCC proposed an upward adjustment in light of an unrelated 2012 enforcement action against a commonly-owned station. Deeming this a "history of prior violations" by the station's parent company, the FCC increased the proposed fine to \$6,000.

The complaint against the Houston-area station similarly alleged that the station failed to timely award an advertised prize, this time in the form of an all-expenses-paid vacation, to the winner of a 2016 fantasy sports contest. In October 2018, the Enforcement Bureau issued an LOI to the station seeking information and documents related to the contest. According to the station, the resort operator withdrew its commitment and the station employee overseeing the contest failed to inform station management or otherwise take action to make good on the prize. Though the contestant eventually accepted a \$3,600 cash replacement prize in return for withdrawing the FCC complaint, the Commission determined that this occurred only after the station received the LOI, and did not warrant ending the investigation.

Consistent with Commission precedent, the FCC found that the remedial measures taken did not negate the rule violation, as the station failed to promptly respond to the contestant's inquiries about the prize, allowing the issue to remain unresolved for two years. As a result, the FCC proposed an upward adjustment to the \$4,000 base fine, resulting in a total proposed fine of \$5,200.

Ads on Colorado Noncommercial LPFM Station Lead to Proposed \$15,000 Fine

In an NAL issued this month, the FCC's Enforcement Bureau proposed a \$15,000 fine against the licensee of a Colorado low power FM ("LPFM") station for violating the underwriting laws, which prohibit commercial advertisements on stations with noncommercial authorizations.

While noncommercial stations may broadcast announcements acknowledging their financial supporters, Section 399B of the Communications Act and Section 73.503(d) of the FCC's Rules prohibit such stations from airing paid advertisements on behalf of for-profit entities. The FCC has explained that these rules are meant to preserve a locally focused, commercial-free service, and in turn, these stations benefit from access to spectrum designated for their service and fewer regulatory requirements. Although the Commission permits noncommercial licensees to exercise reasonable "good faith" judgment in determining whether an announcement complies with the Commission's underwriting requirements, it has also established categorical prohibitions on certain forms of announcements.

Since 2015, the FCC had received complaints from local listeners alleging that the licensee was airing advertisements on the station. After reviewing these complaints, local FCC field agents began monitoring the station, and recorded what sounded like commercial announcements for 14 different sponsors. The FCC followed up with an LOI, to which the licensee responded. The response acknowledged that more than 1,600 advertisements were aired on the station over a three-month period in late 2018, and that the licensee had entered into contracts to air paid announcements for over a dozen for-profit entities.

The FCC identified 14 announcements which violated its underwriting rules that had been aired repeatedly by the station. It noted that these spots contained numerous prohibited promotional practices, including the use of comparative language to describe products or services, the inclusion of pricing information, references to "menu listings" of products or services, and announcements exceeding 30 seconds in length. With respect to the length of the announcements, the Commission previously determined that longer announcements are more likely to exceed the limited purpose of merely identifying underwriters, instead becoming promotional in nature.

The FCC's forfeiture guidelines establish a base fine of \$2,000 for underwriting violations, which may be adjusted upward based on the specific facts of the case. In light of the protracted period of time over which the violations occurred, and the number of announcements at issue, the FCC proposed a \$15,000 fine.