

# 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:*

- *Telecommunications Carrier Pays \$3.8 Million To Resolve 911 Outage Investigation*
- *FCC Reduces Fine for Late-Filed License Renewal Application*
- *Arkansas Radio Station Faces \$17,500 Fine for Unauthorized Silence and Public File Violations*

#### **77-Minute 911 Outage Results in \$3.8 Million Penalty**

A large telecommunications provider entered into a consent decree with the FCC last month to resolve an investigation into a one hour and 17 minute 911 service outage that occurred on September 28, 2020. Section 9.4 of the FCC's Rules states that all "telecommunications carriers shall transmit all 911 calls to a PSAP [Public Safety Answering Point], to a designated statewide default answering point, or to an appropriate local emergency authority..." Additionally, Section 4.9(h) of the Rules requires a wireline communications provider experiencing a network outage that potentially affects 911 service to notify the designated official at the affected PSAP of the outage "as soon as possible but no later than thirty minutes after discovering the outage[.]" The provider must "convey to that person all available information that may be useful in mitigating the effects of the outage..."

The 911 outage began when two new Global Traffic Managers ("GTMs") were introduced into the carrier's next generation 911 ("NG911") facilities. A configuration error occurred that placed the new GTMs into the carrier's existing, operational environment with a "blank" configuration, meaning they contained no routing data. During the outage, thousands of calls to PSAPs in Arizona, Colorado, Minnesota, North Carolina, North Dakota, South Dakota, and Utah were unable to be completed for a period of one hour and 17 minutes, and the carrier failed to timely notify all affected PSAPs of the outage.

The carrier acknowledged that it was responsible for complying with the applicable FCC rules regardless of any alleged failures by its subcontractors, and ultimately entered into a consent decree with the FCC to resolve the investigation.

The terms of the consent decree require the carrier to pay a \$3,800,000 civil penalty. Additionally, the carrier must implement a compliance plan "to develop and implement processes in the evolving NG911 environment" to identify risks that could result in 911 service disruptions, protect against such risks, detect 911 outages when they occur, respond to such outages with remedial actions, and recover from such outages as soon as practicable. The carrier is also required to report

any material violations of the 911 rules or the terms and conditions of its consent decree within fifteen calendar days of discovering a violation.

### **Broadcaster's Fine for Late License Renewal Application Reduced to \$5,000**

In a December 2021 Forfeiture Order ("Order"), the FCC reduced the fine issued to a Rhode Island broadcaster for failing to timely file a license renewal application for its FM translator station. As we [discussed in September](#), the FCC originally issued a Notice of Apparent Liability for Forfeiture ("NAL") proposing a \$7,000 fine.

The broadcaster had acquired the translator after its prior owner received only a short-term license renewal for it, meaning that its license would expire earlier than those of other Rhode Island stations. Because of the shorter term, a license renewal application should have been filed by July 1, 2017, the first day of the fourth month prior to the license expiration date. Unfortunately, the broadcaster did not file a license renewal application until September 11, 2020, and did not request Special Temporary Authority ("STA") to operate without a license until September 16, 2020. In its defense, the broadcaster informed the FCC that there was a discrepancy in the FCC's LMS database, which indicated the translator's license would expire on April 1, 2022, the same date as all other Rhode Island radio licenses.

The Commission granted the STA on October 2, 2020 for a period of six months, allowing the station to operate while the renewal application was processed. However, the renewal processing took longer than six months, so the broadcaster timely filed for an extension of the STA in March 2021, which remains pending.

Ultimately, the FCC issued an NAL in September 2021, proposing a fine of \$7,000 – \$3,000 for failing to timely file a license renewal application and \$4,000 for the resulting unauthorized operation. The NAL gave the broadcaster thirty days to either pay the fine or seek reduction or cancellation of it. In response, the broadcaster filed a Petition for Reconsideration asking the FCC to reduce or cancel the fine.

In the petition, the broadcaster argued that: (1) it acted in good faith and was not responsible for the previous licensee's misconduct resulting in the short-term license renewal; (2) though it operated after the license expired, its broadcast was a public service which did not result in interference to any other station; (3) it has a record of compliance with the FCC's Rules; (4) the FCC incorrectly discounted the LMS database error because, although LMS did not exist at the time of violation, the incorrect expiration of April 1, 2022 was also listed in the CDBS database which was in use at the time; (5) the violation was over a shorter period of time than was initially thought due to a covering license application being filed; and (6) the broadcaster was unaware the license expired because the station was still assessed regulatory fees and was listed as "licensed" in queries performed in the FCC's databases.

In its Order responding to the Petition for Reconsideration, the FCC reduced the fine by \$2,000, citing the broadcaster's history of compliance with the Commission's Rules. It reduced the fine by \$500 for each of the two regulations violated (failure to timely file a license renewal application and the resulting unauthorized operation). The FCC then acknowledged that there was "a possibility, albeit remote," that the incorrect date listed in the databases may have been a contributing factor. The Commission also noted that a Covering License granted in January 2020 also had the short-term license expiration date listed, but again acknowledged that some time after that January 2020 grant, the incorrect April 1, 2022 expiration date would have appeared in searches in LMS and CDBS. As a result, the FCC agreed to further reduce the fine by another \$1,000, bringing the total amount down to \$5,000.

### **FCC Fines Arkansas Broadcaster for Silent Radio Station and Public File Violations**

The FCC fined an Arkansas radio station \$17,500 for (1) discontinuing operation of its AM radio station and FM translator without first requesting authority from the FCC to do so, (2) Public Inspection File rule violations, and (3) failing to update certifications made in its license renewal applications.

In January of 2020, the broadcaster had filed license renewal applications for both stations in which it certified the stations were operating and had not been silent during the license term for more than 30 days. However, on March 6, 2020, the broadcaster's AM station, and therefore the associated FM translator, went silent due to failure of the AM transmitter. The FCC was alerted to this fact through an informal objection to the AM station's pending license renewal application.

Shortly after the informal objection was filed with the FCC, the broadcaster submitted STA requests seeking authority for both stations to stay silent. The FCC granted the STA requests on May 22, 2020, but noted that the requests had not been timely filed, as the stations were silent for thirty days as of April 6, 2020, and the grant of the STAs did not authorize the stations' silence between April 6, 2020 and May 22, 2020.

The FCC's rules require stations to notify the Commission within 10 days of discontinuing operations, and to obtain FCC authorization if the station will be silent for more than 30 days. Here, both stations went silent on March 6, 2020, with the AM station resuming operations on July 29, 2020 and the FM translator resuming operations on September 25, 2020. As a result, the broadcaster should have notified the FCC the stations had gone silent no later than March 17, 2020, and sought authority to remain silent by April 5, 2020. Since the STA requests were not filed until May 22, 2020, the FCC found that the broadcaster had willfully and repeatedly violated Sections 73.1740(a)(4) and 74.1263(e) of its Rules.

Additionally, Section 73.3526(e)(11)(i) of the FCC's Rules requires every station to place in its Public Files "a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period." The list must be placed in the Public Inspection File on a quarterly basis within ten days of the end of each calendar quarter. The FCC's review of the AM station's Public File revealed that the Programs/Issues Lists for six quarters were filed late, and eight were missing.

Finally, the FCC noted that under Section 1.65 of its Rules, applicants are responsible for the continuing accuracy and completeness of information furnished in pending applications. In this instance, the broadcaster certified in its license renewal applications that the stations were "currently on the air broadcasting," that there had been no rule violations by the licensee, and that the stations had not been silent for more than 30 days. The FCC explained that the first certification became inaccurate when the stations went off the air on March 6, 2020 and the second certification became inaccurate when the broadcaster failed to notify the Commission the stations were off the air on March 16, 2020. The third certification became inaccurate on April 6, 2020, the 31st day the stations were silent.

The Commission's base fine for unauthorized silence is \$5,000. The base fine for failure to file required forms or information is \$3,000, and the base fine for Public Inspection File violations is \$10,000. In determining the amount of a proposed fine, the FCC may adjust its base fine upward or downward based upon the nature, circumstances, extent, and gravity of the violation, in addition to the licensee's degree of culpability and any history of prior offenses. In this case, the Commission concluded a proposed total fine of \$17,500 was appropriate.

Fortunately for the broadcaster, the FCC did not find that the violations constituted a "serious violation" or pattern of abuse preventing renewal of the stations' licenses. Barring other issues arising, the FCC indicated that both license renewal applications would be granted in separate Commission actions upon conclusion of the stations' forfeiture proceedings. However, given the importance the FCC places on its Public Inspection File requirements, the FCC stated that any grant of the license renewal applications would be conditioned on the AM station submitting a report regarding its compliance with those requirements.