

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:

- *Maine LPTV Licensee Agrees to Pay \$2,500 for Closed-Captioning Violation*
- *Georgia Broadcaster Loses FM Translator License, Faces Five-Figure Fine for Various Alleged Rule Violations*
- *FCC Proposes \$9,500 Fine for Missouri LPTV Licensee for Failing to File License Application and Renew Special Temporary Authority*

Low Power Television Licensee Enters Into Consent Decree for Closed Captioning Violation

The Federal Communications Commission's Enforcement Bureau and the licensee of a low power television station entered into a Consent Decree to resolve an investigation into whether the licensee violated the FCC's Rules pertaining to closed captioning of video programming. Under the Consent Decree, the licensee admitted to violating the FCC's closed captioning rules, agreed to implement a compliance plan, and pay a \$2,500 penalty.

The FCC's closed captioning rules are designed to ensure that individuals with hearing disabilities have full access to video programming content. The FCC's Rules, among other things, require Video Programming Distributors to: (1) pass video programming with closed captioning to viewers with the original closed captioning data intact; (2) maintain their equipment and monitor their signal transmissions to ensure the closed captioning is reaching viewers; and (3) maintain records of their maintenance and monitoring activities.

In June 2021, a cable subscriber noticed that the station's programming did not contain closed captioning and contacted their cable provider. The cable provider told the viewer that the signal from the station did not contain closed captioning, so the viewer contacted the station directly in July 2021. The station explained that it was getting new equipment which would fix the closed captioning problem, but after three months, the closed captioning was still missing from the programming. After no further response from the station, the viewer filed a complaint with the FCC in October 2021. Despite telling the FCC in November 2021 that it had identified the problem and was working to replace the deficient equipment, the licensee failed to timely respond to a December 2021 Letter of Inquiry (LOI) from the FCC. A second LOI was issued in April 2022, prompting the licensee to respond in part to both LOIs.

After an investigation, the FCC determined that the licensee had failed to pass through closed captioning on its programming for a total of eight months. Additionally, the FCC found that the licensee was not fully responsive to the viewer's complaint or the FCC's LOIs during the investigation, in violation of Section 1.17 of the Commission's Rules.

To resolve the investigation, the licensee agreed to enter into a Consent Decree under which it will designate a compliance officer, implement a multi-part compliance plan, including implementing procedures to monitor its transmissions, routinely conduct equipment checks, and pay a \$2,500 civil penalty. The Consent Decree also indicates that in the event the licensee fails to comply with the requirements to monitor its transmissions and conduct equipment checks, it will pay an additional \$12,500 civil penalty.

Variety of Alleged Rule Violations by Georgia AM Station Generate Proposed \$16,200 Fine and License Cancellation for Its FM Translator

A Georgia broadcaster faces a Notice of Apparent Liability for Forfeiture (NAL) and a \$16,200 fine for several alleged FCC rule violations, including operating a full-power AM radio station at variance from its license, discontinuing operation of the station without notifying the FCC or obtaining FCC authorization to do so, transferring control of the station and its FM translator to another party without FCC authorization, and failing to completely and fully respond to FCC inquiries. The FCC also found that the translator's license had automatically terminated after the translator failed to operate from its authorized location for more than a year.

According to the NAL, the AM station went off the air in September 2022 after the broadcaster lost access to the station's transmitter site. The broadcaster received special temporary authority (STA) in November 2022 for the station and translator to remain silent, then received permission to operate the AM station from an alternate location with a temporary antenna. The station and translator resumed operation in January 2023. Later in 2023, the FCC's Enforcement Bureau, acting on a complaint, sent a field agent to visit the AM station's licensed transmitter site and the temporary site indicated in its STA request. Neither site had a visible tower or antenna, though electrical infrastructure at the STA site suggested equipment requiring electricity at one time was present there. No broadcast signal was detected at either the AM station's licensed site or the STA site. The translator was later found to be operating more than three miles from its licensed site.

The Bureau issued an LOI to the licensee requesting information about the AM station's and FM translator's operations. In its response, the licensee admitted that it was unaware the AM station had gone off the air, as it lacked the ability to remotely monitor the station's operations at its alternate site. The licensee wrote that it returned the AM station to air as soon as it was able to after receiving the FCC's letter but did not specify on what date that occurred. It also did not provide station or EAS logs to support its claims, and the service location on utility bills did not correspond to the station's STA site. According to the response, the FM translator continued to broadcast while the station was off the air, but the response did not include details on the translator's operating location or technical specifications. Following a second LOI, the licensee provided additional information but still did not include the translator's actual operating location or its technical parameters.

Section 312(g) of the Communications Act of 1934, as amended, provides that a station's license automatically expires if it fails to transmit a broadcast signal from an authorized location for twelve consecutive months unless the FCC finds that the license should be extended or reinstated. In this case, the Enforcement Bureau concluded that the translator had operated from an unauthorized location for more than 12 months, which automatically terminated the translator's license, and the Bureau found no public interest reason to reinstate the license.

With respect to the AM station, the Enforcement Bureau found that the licensee appeared to have operated the station according to the technical parameters of its STA, but continued such operations after the STA expired, in violation of the Communications Act and the FCC's Rules. It also concluded that the station had twice gone silent without notifying the FCC.

Finally, the Bureau found that the licensee had apparently transferred control of the station and translator to another station owner without prior FCC authorization. A broadcast licensee is required to maintain ultimate control of its station, including control of the station's programming, personnel, and finances. Here, the AM station and translator were airing sports talk programming that was simultaneously airing on the other party's stations. The FCC cited this, along with other facts, in concluding that control of the stations no longer rested with the licensee. The Bureau also took issue with the broadcaster's responses to the LOIs, finding that they were incomplete or otherwise inadequate.

For these alleged violations, the licensee faces a proposed fine of \$16,200 and has thirty days to either pay the fine or seek reduction or cancellation of it.

FCC Proposes \$9,500 Fine for Failure to Timely File License Application and Renew Special Temporary Authority

The licensee of a Missouri low power television station failed to timely file an application for a license to cover its constructed facilities, as well as to request an extension of its STA to operate with those facilities while waiting for a grant of its construction permit application. In response, the FCC's Media Bureau issued an NAL proposing a \$9,500 fine.

The station's Channel 51 facilities were displaced in the Incentive Auction and subsequent repacking process. In October 2017, it was granted an STA to begin operating on Channel 32 while its application for a construction permit to build permanent Channel 32 facilities was pending. According to the FCC's order, the broadcaster failed to renew the STA and continued to operate even though the STA expired in April 2018.

Despite that, the station was granted a construction permit for Channel 32 in July 2018. However, the licensee did not file an application to license Channel 32 facilities before the construction permit expired in 2021. The license application was eventually filed more than two years after the construction permit expired, leaving the station without any authority to operate on Channel 32 from the time the original STA expired until grant of the late-filed license application. According to the order, construction of the Channel 32 facilities had been completed nearly four years before the filing of the license application.

The licensee acknowledged in the amended license application that it began operating on Channel 32 in January 2020, and that "due to administrative oversight" it was late in submitting the license application. It asked the FCC to waive its rules and accept the late-filed license application, noting that it would be in the public interest to allow the station to continue to serve its viewers. The licensee acknowledged that it continued to operate on its displacement channel without permission after its STA expired and that it failed to timely file a license to cover.

In response, the Media Bureau emphasized that "administrative oversight" is not an excuse for FCC rule violations, and concluded that the licensee had engaged in unauthorized operations.

Noting that the FCC's *Forfeiture Policy Statement* sets a base fine of \$3,000 for failing to file a required form and \$10,000 for construction and operation of broadcast facilities without authorization, the Media Bureau stated that the licensee had engaged in nearly six years of unauthorized operation by (1) failing to timely renew its STA, (2) failing to timely file its license application, (3) operating after the STA expired, and (4) operating after the Channel 32 facilities were constructed pursuant to the construction permit but before a license application was filed, yielding a potential total fine of \$26,000.

The Media Bureau stated that a substantial fine was appropriate given the nearly six years of unauthorized operation and the broadcaster's failure to timely file essential applications. However, after reviewing all the factors, it decided to reduce the proposed fine from \$26,000 to \$9,500, noting that as a low power television station, the licensee was providing a secondary service. The licensee has thirty days to either pay the fine or seek cancellation or reduction of it.