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Communications

June 2012

FCC Enforcement Monitor

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Headlines:

- *Long-Term Violation of an FCC Order Leads to $25,000 Forfeiture*
- *FCC Issues $10,000 Fines for Obstruction Lighting Violations*

Licensee Fined $25,000 for Failing to Pay $8,000 Four Years Ago

The licensee of an AM radio station in Puerto Rico was recently fined $25,000 for a string of failures to comply with an FCC Consent Decree issued four years ago, showcasing the FCC's irritation with unpaid fines.

In 2005, the Enforcement Bureau issued a Notice of Apparent Liability for Forfeiture (NAL) for $15,000 against the licensee for failing to properly maintain a fence around its tower, violations related to the public inspection file, and operating with an unauthorized antenna pattern. Following the issuance of this first NAL, the FCC issued a Forfeiture Order which the licensee challenged, arguing that the forfeiture for the fencing violation should be reduced. The FCC eventually issued an Order lowering the penalty amount to $14,000, based on the licensee's efforts to comply with the FCC's antenna structure fencing requirements. Still unhappy with the FCC's decision, the licensee filed a petition for reconsideration of the Order, but ultimately entered into a Consent Decree with the FCC in 2008 terminating the investigation.

In the Consent Decree, the licensee agreed to make a "voluntary" contribution of $8,000 to the U.S. Treasury. The licensee further agreed to submit compliance reports for two years and to certify to the FCC that it is properly maintaining its public inspection file, operating its transmitters as authorized, and has repaired the fence surrounding its tower.

However, the licensee failed to pay the $8,000 or submit its compliance reports to the FCC. In 2010, two years after the Consent Decree, the licensee responded to a letter of inquiry from the FCC, noting that it had sent a check to the FCC to pay the $8,000, but that the check had bounced because the licensee had insufficient funds.

The FCC rejected this excuse, and in May 2011, issued an additional NAL against the licensee for $25,000 for failing to comply with an FCC Order. Notably, the FCC concluded that there is no base forfeiture for failing to comply with an FCC Order, and that it is therefore within the FCC's discretion to determine how serious the violation is and how large a penalty is warranted. In this instance, the FCC considered the licensee's violations to be egregious and determined that "'a consent decree violation, like misrepresentation, is particularly serious. The whole premise of a consent decree is that enforcement action is unnecessary due, in substantial part, to a promise by the subject of the consent decree to take the enumerated steps to ensure future compliance.'"

The licensee responded to the 2011 NAL, requesting that the forfeiture be cancelled due to the licensee's financial situation—the majority of the owner's companies had filed for bankruptcy and the licensee's sole owner was some $70 million in debt. Unfortunately for the licensee, the FCC rejected this request and proceeded to issue a Forfeiture Order this month for the proposed $25,000. In the Forfeiture Order, the FCC acknowledged that the licensee's financial situation indicated that it was unlikely to be able to pay the forfeiture. Nevertheless, the FCC considered the licensee's continuous violation of the terms of the Consent Decree to be a demonstration of "bad faith and a complete disregard for Commission and Bureau authority."

The licensee now has until mid-July to make the $25,000 payment, an amount significantly greater than the initial $8,000 contribution it was unable to pay in 2008.

Lighting Outages Lead to Multiple Forfeitures

The FCC recently issued two NALs to tower owners for violations related to tower obstruction lighting, as well as other violations. In the first NAL, the FCC found that the licensee of an AM station in Mississippi failed to comply with the FCC's obstruction lighting rules. Specifically, in response to a complaint in November 2011, agents from the FCC's Enforcement Bureau inspected the station's site on three separate occasions. During each occasion, the agents noted that the obstruction lights required by Section 17.51(a) of the FCC's Rules were not functioning after sunset. During the inspections, the agents also discovered that the licensee had not notified the FAA of the obstruction lighting outage, in violation of Section 17.48 of the FCC's Rules. When the agents inspected the station's main studio, the employees admitted they were aware the tower lights were not functioning properly, but had taken no action to remedy the situation. For these deficiencies, the FCC fined the licensee $10,000, the base forfeiture for failing to comply with the FCC's obstruction lighting rules.

In addition to the obstruction lighting outages, the licensee was fined $4,000 for operating outside of licensed power limitations during certain evening hours. During the multiple inspections, agents took field measurements of the station at night and observed that the station was not operating at reduced power, but was instead operating at the same power as during the daytime. Section 73.1745(a) requires that stations operate within the power limitations specified in their licenses, and the base forfeiture for these violations is $4,000.

A second NAL was issued this month for $10,000 to the owner of a tower in Texas. In November 2011, agents of the Enforcement Bureau inspected the tower after sunset and observed that the station failed to exhibit red obstruction lighting and that the majority of the obstruction lights were not functioning. The agents also discovered that the owners had failed to notify the FAA of the outage.

Months later, in January 2012, an Enforcement Bureau agent had a phone conversation with the tower owner, who claimed that he did not know the lights were not functioning, even though he should have been aware of the outages from voicemails left by the agent. The owner also admitted that he did not regularly monitor the obstruction lights nor did the structure have any monitoring system to alert the owner when the lights failed to function. Section 17.47(a) of the FCC's Rules requires that tower lighting be visually monitored daily or have an alarm system to detect lighting failures. Based on the November 2011 inspection and follow-up conversation with the tower owner in 2012, the Enforcement Bureau issued the $10,000 NAL.

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

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