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FCC Imposes a Reduced $17,500 Fine on Wyoming Commercial AM/FM Station Combo for Multiple Violations

The FCC has released a Forfeiture Order asserting that the licensee of a Wyoming AM/FM station combination failed to maintain an operational EAS system, failed to consistently prepare and include programs/issues lists in its public inspection file, and failed to operate a wireless radio service station from its authorized location. Specifically, the FCC's Order cited Sections 11.35, 11.52(d), 11.61(a), 73.3526(e)(12), 1.903(a), 1.929 and 74.532(e) of the FCC's Rules, which require broadcasters to use common EAS protocols, ensure operability of EAS equipment, conduct regular tests of a station's EAS system to ensure such operability, prepare and include quarterly programs/issues reports in the public inspection file, and operate wireless radio service facilities as specified in their current authorizations.

In December 2008, the FCC issued a Notice of Apparent Liability ("NAL") specifying a $20,000 forfeiture. According to the NAL, the forfeiture was based on the limited functionality of the station's EAS equipment, the absence of at least nine quarterly programs/issues reports from the public inspection files, and the unauthorized operation of a studio transmitter link. In their response, the stations claimed that the violations were "not willful," were the result of an "untruthful [former] employee" and were "corrected after the inspection took place." The Wyoming broadcaster sought a reduction or cancellation of the fine based on employee error and its inability to pay. The FCC dismissed this request, noting that broadcasters are responsible for their employees' actions, and indicating that the licensee failed to provide the requisite financial records to prove an inability to pay the forfeiture. Ultimately, the FCC reduced the fine somewhat based on the broadcaster's good faith claim that the quarterly programs/issues reports were not missing, but merely misplaced.

Pennsylvania TV Station Fined $32,000 for Violating FCC's Sponsorship ID Rule

Following the receipt of "several thousand complaints," the FCC began investigating allegations of payola violations that occurred during a six month period in 2004. In 2005, the FCC issued Letters of Inquiry to various entities, including the licensee of a Pennsylvania television station, asking about the allegations. Two years later, the FCC issued an NAL to the Pennsylvania television station. The 2007 NAL alleged a violation of Section 73.1212(a) of the FCC's Rules, which requires broadcasters to identify when programming is sponsored or "paid for" by any source other than the licensee, and levied a $40,000 forfeiture. The Pennsylvania television station responded to the NAL stating that it believed sponsorship identification was "implied" in the programming since the program's host was also its producer. Additionally, since the licensee only received $100 from the program's host/producer, the station argued that the infraction was "minor" at best. The response also sought a reduction or cancellation of the forfeiture based on "good faith efforts to comply with the Commission's Rules," inability to pay, and overall compliance history. The FCC rejected the first two defenses, but did reduce the forfeiture to $32,000 based on the broadcaster's past history of compliance.

Licensee Fined $13,000 for Antenna Structure Violations

According to the FCC, a licensee failed to register and properly light and mark a tower in accordance with the FCC's Rules. Following a complaint concerning an unlit tower, and a subsequent field inspection, the FCC issued an NAL specifying a $13,000 forfeiture for failure to register, light and paint a tower taller than 200 feet as required by Sections 17.4 and 17.21 of the FCC's Rules. According to the NAL, the 206 foot tower was both unlit and unmarked, and posed a "serious hazard to air navigation." In its response, the licensee sought a reduction or cancellation, arguing that the violation was "minor" and that the height of the tower had since been reduced to less than 200 feet with the removal of a top mounted lightning rod. The FCC disagreed, finding no basis to reduce or cancel the forfeiture, and therefore letting the $13,000 forfeiture stand.

FCC Fines California Noncommercial FM Station $9,000 for Failure to Properly Maintain a Public Inspection File

A California noncommercial FM station has been fined $9,000 for failure to properly maintain a public inspection file in violation of Section 73.3527 of the FCC's Rules. When filing its 2005 license renewal application, the licensee truthfully indicated in response to Section III, Question 3 of FCC Form 303-S that it had not complied with the public inspection file rule requirements throughout the license term. In an exhibit, the station disclosed that it had failed to place quarterly programs/issues reports in its public inspection file for the period from 2001 through the date of its license renewal application. The noncommercial station sought a reduction or cancellation of the forfeiture, stating that the amount was "inconsistent with precedent," that the "staff failed to explain the imposition of a higher forfeiture," and that it was unable to pay such an amount. The FCC rejected the first two assertions, stating that while the fine might be inconsistent with one prior decision, the amount was consistent with more *recent* precedent. With regard to the licensee's inability to pay, the FCC rejected that argument as well, noting that the station had failed to provide the required financial documents to support an inability to pay.

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

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