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## FCC Enforcement Monitor

by Scott R. Flick and Christine A. Reilly

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### **FCC Reduces Fine from \$9000 to \$1000 Based on Alternative Broadcast Inspection Program Participation**

The licensee of a Virginia FM station indicated in its 2003 license renewal application that it was unable to certify that all the required documentation had been included in its public inspection file (“PIF”) during the previous license term. An exhibit to the application stated that 12 issues/programs lists were missing from the PIF. In December 2004, the FCC issued a Notice of Apparent Liability (“NAL”) citing a violation of Section 73.3526, which requires licensees to maintain a public inspection file, including quarterly issues/programs lists. The licensee’s response to the NAL sought a reduction or cancellation of the forfeiture since the documents were “only briefly missing from the file.” The response stated that the station had undergone and passed an Alternative Broadcast Inspection Program (“ABIP”) inspection within the five months prior to filing its June 2003 license renewal application and that the lists were present at the time of the ABIP inspection. Therefore, the station had been in full compliance with the Commission’s rule until just before submission of its license renewal application. The licensee declared that it had begun maintaining a duplicate PIF in an effort to avoid such mishaps in the future. In its subsequent Forfeiture Order, the FCC indicated that the station’s participation in its state broadcasters association’s Alternative Broadcast Inspection Program equated to a “good faith” effort to comply with the Commission’s Rules and that the corrective measures taken as a result qualified the licensee for a downward adjustment of the fine from \$9000 to \$1000.

### **FCC Fines Three Commercial Television Stations for Failure to Publicize the Existence and Location of Their Quarterly Children’s Television Programming Reports**

In a recent series of decisions, the FCC issued \$8,000 to \$10,000 fines to three commercial television stations for failing to publicize the existence and location of their quarterly Children’s Television Programming Reports in violation of Section 73.3526(e)(11)(iii) of the Commission’s Rules. That provision states that “[l]icensees shall publicize in an appropriate manner the existence and location of these Reports.” In two of the three cases, the stations had failed to comply for *almost* all of their license term. The violation for the third case extended over the licensee’s entire license term. In all three cases, the licensees claimed that the forfeitures should be reduced or cancelled based on the fact that the FCC had not provided significant guidance on what it deems to be an *appropriate manner* of publication. In one of the cases, the FCC stated that publication solely through the station’s website was insufficient since it did not adequately apprise the public of the existence and location of the Reports. In that case, the FCC agreed that the licensee’s corrective action, an on-air notice broadcast weekly, complied with the rule. In another case, the FCC approved a licensee’s corrective actions where those actions included an on-air notice broadcast daily. In those two

cases, the FCC reduced the initial forfeiture from \$10,000 to \$8,000. The licensee in the third case failed to undertake any remedial action and was assessed the full \$10,000 forfeiture.

### **New York FM Station Fined \$16,000 for Violating FCC's Telephone Broadcast Rule**

Following receipt of a complaint, the FCC investigated allegations that a New York FM station broadcast a telephone conversation without first obtaining the caller's prior approval in violation of Section 73.1206 of the FCC's Rules. Section 73.1206, which was established in an effort to "protect an individual's legitimate expectation of privacy and to preserve their dignity by avoiding nonconsensual broadcasts of their conversations," requires prior approval before a station may broadcast or record a telephone conversation for replay over the air. According to the FCC's forfeiture order, the station aired a pre-recorded telephone conversation obtained from an independent contractor, who, masquerading as a local hospital employee, contacted a woman to inform her that her spouse had died as the result of a motorcycle accident. Only after the woman became distraught did the independent contractor inform her that the call had been a prank. In 2008, the FCC issued a letter of inquiry ("LOI"). In its response to the LOI, the station stated that the call had been pre-recorded by a third party vendor and later played on the air. The station admitted that the vendor had not informed the woman that she was being recorded or that the recording would be replayed on the air at a later date. The vendor obtained the woman's permission only after the station had aired the pre-recorded segment. The licensee, which broadcast the call twice in one day, claimed that the third party vendor, not the licensee, was responsible for the violation. The FCC noted that the licensee will be held liable for the actions of third party vendors under the Commission's longstanding policy that licensees are responsible for the acts and omissions of their employees and independent contractors. Taking into consideration the licensee's past history of similar violations, the FCC upwardly adjusted the base forfeiture from \$4,000 to \$16,000.

### **FCC Imposes a Reduced \$15,200 Fine on New York Low Power Television Station for Multiple Violations**

The FCC has released a Forfeiture Order asserting that the licensee of a New York Low-Power Television ("LPTV") station commenced operation with an unauthorized antenna and orientation, failed to operate a wireless radio service station from its authorized location, and failed to install the required Emergency Alert System ("EAS") equipment. Specifically, the FCC's Order cited Sections 1.903(a)-(b) and 11.35(a) of the FCC's Rules, which require broadcasters to operate stations in accordance with the rules applicable to their particular service, to construct and operate wireless radio service facilities as specified in their current authorizations and to install EAS equipment. According to the FCC's Order, agents were sent to the LPTV station following a complaint of harmful interference by an area broadcaster. Upon inspection, the FCC field agents determined that the station's antenna and transmitter were located approximately 700 feet from the station's authorized location, that the antenna in use was a single panel design instead of the dual panel design authorized by the station's construction permit, and that the antenna orientation was at 230° instead of 130°. During the investigation, a station employee disclosed that the single panel antenna had been approved by the FCC in a recent DTV application filed on behalf of the LPTV. In April 2009, the FCC issued an NAL in the amount of \$19,000. The licensee's response sought a reduction or cancellation of the fine based on the fact that the coordinates provided in the original construction permit were provided by the tower owner and citing the licensee's history of rule compliance. The FCC's Order reiterated that licensees are "obligated to verify the accuracy of the information provided in an application." The FCC did, however, grant a reduction of the forfeiture from \$19,000 to \$15,200 based on the licensee's past history of compliance.

### **FCC Fines Missouri Noncommercial FM Station \$7,200 for Failure to Properly Maintain a Public Inspection File**

A Missouri noncommercial FM station has been fined \$7,200 for failure to properly maintain a public inspection file in violation of Section 73.3527 of the FCC's Rules. When filing its 2004 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 to the license renewal application, the station disclosed that it was rebroadcasting another area full-power noncommercial FM station, that it had been unaware it was required to maintain copies of the rebroadcast station's quarterly programs/issues lists in its own public inspection file and, as a consequence, had failed to place eight quarterly programs/issues reports in its public inspection file for the period from 2002 through the date of its license renewal application. In 2005, the FCC issued an NAL specifying a \$9,000 forfeiture. In its response to the NAL, the noncommercial station sought a reduction or cancellation of the forfeiture, stating that it was unaware of the obligation, that it would be unable to pay based on its limited budget, and that the FCC had previously granted such reductions and cancellations based on a licensee's voluntary disclosure. The station provided the FCC with documentation detailing budget projections, but did not provide the required gross revenue documentation. In the forfeiture order, the FCC rejected each of the station's requests, noting that ignorance of the law is not a defense, that inability to pay must be demonstrated based upon revenues, not budgets, and that disclosure on a required form was not a considered a voluntary disclosure. Ultimately, the FCC readjusted the forfeiture to \$7,200 based upon the station's past history of compliance.

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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:

Scott R. Flick **(bio)**  
Washington, DC  
+1.202.663.8167  
scott.flick@pillsburylaw.com

Christine A. Reilly **(bio)**  
Washington, DC  
+1.202.663.8245  
christine.reilly@pillsburylaw.com

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