Communications

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FCC Enforcement Monitor

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Headlines:

- *FCC Assesses Substantial Fine for Antenna Lighting Outage*
- *Big Fines for Children's Television Violations*

Failure to Monitor Antenna Lighting Costly

The FCC issued a Notice of Apparent Liability for Forfeiture (NAL) in the amount of $20,000 to an Alaskan telecommunications company for tower lighting violations.

The height of the antenna structure placed it within the jurisdiction of both the FAA and the FCC. FAA rules required the structure to have dual lighting: red lights at night and medium intensity flashing white lights during the daytime and at twilight.

The company's troubles began when an agent from the FCC's Anchorage Enforcement Bureau office observed that the tower was unlit during the daytime. The FCC agent contacted the FAA, which confirmed that no Notice to Airmen (NOTAM) had been issued for the lighting outage. Tower operators are required to notify the FAA immediately of any lighting outage lasting more than 30 minutes. The FCC agent also alerted the tower owner of the situation. According to the FCC, the owner did not appear to have a functioning monitoring system for the tower lighting.

The NAL cited the owner's failure to visually monitor obstruction lighting on a daily basis or to maintain a functioning alarm system. In response, the owner acknowledged the violation and stated it had identified the source of the problem to be a failing capacitor on the system's control board. It then replaced the failing component and installed a remote monitoring and alarm system for the antenna structure.

The base fine for failing to comply with tower lighting and monitoring requirements and for failing to provide notification of extinguished lights is $10,000. The NAL stated that the fine was increased to $20,000 as part of the FCC's policy of fining "large" companies larger dollar amounts to ensure that the fine "is a deterrent and not simply a cost of doing business."

FCC Actively Pursuing Kidvid Violations

This month, the FCC has once again been bringing enforcement actions against a number of Class A stations for failure to timely file Children's Television Programming Reports on FCC Form 398. The Commission has issued at least ten NALs for Kidvid violations since the beginning of this month.

Pursuant to FCC rules, each calendar quarter, full power and Class A TV stations are required to prepare and place in their public inspection files a Children's Television Programming Report that reflects the efforts the station made during the prior quarter to serve the educational and informational needs of children. Stations must also file the reports with the FCC and publicize the existence and location of the reports to the public.

The FCC pursued an Indiana licensee of two Class A TV stations for failing to timely file the stations' children's programming reports. The failure resulted in assessment of an $18,000 fine. The FCC's review of its records indicated that the licensee had routinely filed its Children's Television Programming Reports late, which it found constituted willful and repeated violations of its rules. One station failed to timely file reports for eight quarters and the other station for nine quarters. As a baseline, the normal FCC fine for failing to file a required form is $3,000. However, the FCC indicated that the willful and repeated nature of these violations caused it to triple the fine amount for each of the licensee's stations. The Commission therefore concluded that each station merited a $9,000 forfeiture, making the licensee's total fine $18,000.

The FCC also found a North Carolina licensee liable for failing to timely file its Kidvid reports, assessing a $16,000 fine for failing to timely file reports on 29 occasions. The licensee argued that the amount of the fine should be reduced, citing its prior history of compliance with the FCC's rules, and asserting that it was unable to pay the fine. In response, the FCC concluded that the licensee's legal arguments did not justify a reduction in the fine, but the Media Bureau did examine the licensee's ability to pay, and ultimately reduced the fine to $12,000.

Finally, a Tennessee Class A station was fined a total of $20,000 for failing to timely file its children's programming reports and for failing to report the violations in its license renewal application. According to the NAL, the station late-filed reports for 20 quarters during the license term (including four reports that were filed more than a year late). In response, the Bureau assessed a $17,000 fine for failing to timely file the reports and an additional $3,000 for failing to disclose the late filings as required in the station's license renewal application.

These fines, along with the numerous other Kidvid fines over the past several months, continue to indicate an FCC intently focused on children's television issues. That, in combination with the ease with which the FCC can check to determine a particular station's compliance with the Kidvid regulatory filing obligations, means that full power and Class A stations need to be vigilant about ensuring their reports are not just properly prepared and filed, but that those filings are made by the respective deadline.

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

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