Communications

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FCC Enforcement Monitor

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Headlines:

- *Online Public File Violations and Failure to Respond Result in $14,400 Fine*
- *Unlicensed Broadcast Operation Draws $7,000 Fine*
- *Fines Continue for Class A Children's Television Violations*

Licensee Fined for Public Inspection File Violations and Failure to Respond to FCC Inquiries

The FCC issued a Forfeiture Order in the amount of $14,400 to a California television licensee for failing to keep its online public inspection file up to date and for not responding to the FCC's letters of inquiry.

Earlier this year, the FCC issued a Notice of Apparent Liability for Forfeiture ("NAL") against the licensee, asserting that the station had failed to place required documentation in its online public inspection file and failed to respond to FCC letters of inquiry. The NAL concluded that the licensee should be assessed a $16,000 forfeiture for these violations, which was comprised of $10,000 for the public file violation and $6,000 for failure to respond to the FCC's correspondence. Although the usual penalty for failure to respond is $4,000, the FCC imposed the higher penalty of $6,000 on this licensee because its "misconduct was egregious and repeated."

The licensee timely responded to the NAL and argued against the imposition of a $16,000 fine. The FCC rejected all but the last of the station's arguments. First, the FCC disagreed with the licensee's argument that uploading documents into its online inspection file was unnecessary because of their availability at the station's main studio, noting that "the online public file is a crucial source of information for the public." Second, the FCC noted that providing the FCC with updated contact information is the responsibility of the licensee, and therefore rejected the licensee's argument that the station's failure to reply to FCC letters sent to an outdated address was unintentional. Third, the FCC ignored the licensee's argument that paying a fine would impose a financial hardship, as the station declined to provide the required documentation of its financial status. Ultimately, however, the FCC agreed to reduce the fine from $16,000 to $14,400 in light of the station's history of compliance with the FCC's Rules.

Unauthorized Station Operation Leads to $7,000 Fine

Late last month, the FCC issued an NAL against a Tennessee radio station that failed to timely file its license renewal application and then operated its station after the current station license had expired.

Under Section 73.3539(a) of the FCC's rules, a broadcast licensee must apply to renew its license "not later than the first day of the fourth calendar month prior to the expiration date of the license sought to be renewed." In this case, the licensee never submitted an application for renewal, and therefore its license expired. The FCC notified the station approximately four weeks after the license expiration date that it no longer had authority to operate the station and that all station operations must immediately cease. After receiving the FCC's letter, the station submitted a license renewal application and concurrently filed and received Special Temporary Authority ("STA") to continue operating for six months while the FCC made a decision about whether to renew the license. However, the licensee did not seek to extend its STA after the six-month period expired, and continued operating the station.

The base fine for operating "without an instrument of authorization for the service" is $10,000, and the base amount for failing to file an FCC form is $3,000. In this case, the FCC noted that the licensee had operated for a total of six months without a license, which included both the initial expiration of the license before the station applied for an STA and the period after the STA had expired.

In deciding to reduce the base fine of $13,000, the FCC contrasted this station, which at one time had a valid license, with unlicensed "pirate" operations. The FCC concluded that the station's fine for unauthorized operation should not be as high as the $10,000 fine typically issued to pirate stations, and decided to reduce that portion of the fine to $4,000. However, the FCC did assess the full $3,000 fine for failing to file a timely license renewal application, resulting in a total fine of $7,000.

Kidvid Violations by Multiple Class A Stations Result in Nearly $30,000 in Fines

As we have reported on a number of occasions, the FCC continues to impose fines on Class A TV licensees that fail to timely file their Children's Television Programming Reports on FCC Form 398.

Earlier this month, the FCC issued multiple fines against Class A TV stations for failing to file Form 398. First, the FCC issued an NAL against a California licensee that did not file its Children's Television Programming Report for 22 quarters during its license term and another 23 quarters after the station filed a license renewal application. After examining the facts and circumstances, including that the violations were "willful and repeated", the FCC determined that the station should be assessed a fine of $20,000.

The FCC also fined a Georgia licensee for failing to file Children's Television Programming Reports. This station had not filed its Children's Television Programming Reports for 20 quarters. The FCC reduced its originally proposed $10,000 fine to $9,000 on the grounds that the Georgia licensee otherwise had a history of compliance with the FCC's Rules.

The FCC clearly continues to be on the lookout for Class A TV kidvid violations. As a result, Class A TV licensees should be particularly vigilant to ensure they are in full compliance with such regulations, both to avoid fines like those discussed above, and to prevent loss of the station's Class A status.

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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