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## FCC Enforcement Monitor

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### *Headlines:*

- *Nonexistent Studio Staff and Missing Public Inspection File Lead to \$20,000 Fine*
  - *Failure to Route 911 Calls Properly Results in \$100,000 Fine*
  - *Admonishment for Display of Commercial Web Address During Children's Programming*
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### **Missing Public Inspection File and Staff Result in Increased Fine**

A Regional Director of the FCC's Enforcement Bureau (the "Bureau") issued a Forfeiture Order against a Kansas licensee for failing to operate a fully staffed main studio as well as for failing to maintain and make available a complete public inspection file.

Section 73.1125(a) of the FCC's Rules requires that a broadcast station have a main studio with a "meaningful management and staff presence," and Section 73.3526(a)(2) requires that a broadcast station maintain a public inspection file. In July of 2012, a Bureau agent from the Kansas City Office tried to inspect the main studio of the licensee's station but could not find a main studio. Although the agent was able to find the station's public inspection file at an insurance agency in the community of license, the file did not contain any documents dated after 2009. After the inspection, the licensee requested a waiver of the main studio requirement, which the FCC's Media Bureau ultimately denied.

In May of last year, the Bureau issued a Notice of Apparent Liability for Forfeiture ("NAL") against the licensee. In the NAL, the Bureau noted that the base fine for violating the main studio rule is \$7,000 and the base fine for violating the public file rule is \$10,000. However, due to the over two-year duration of the public inspection file violation and the 14 month duration of the main studio violation, the Bureau increased the base fines by \$2,000 and \$1,000, respectively, resulting in a total proposed fine of \$20,000.

In its response to the NAL, the licensee did not deny the facts asserted in the NAL. Therefore, the Forfeiture Order affirmed the factual determinations that the licensee had violated Sections 73.1125(a) and 73.3526(a)(2) of the FCC's Rules. However, in its NAL Response, the licensee requested that the

proposed fine be reduced because the licensee's station serves a small market and it would face competitive disadvantages if it were required to fully staff the main studio.

The Bureau rejected the licensee's request to reduce the fine based on an inability to find qualified staff because there is no exception to Section 73.1125(a)'s requirement of a main studio due to staffing shortages. The Bureau also pointed out that the licensee had no staff presence at the main studio for more than a year. The Bureau briefly entertained the idea that the licensee had intended to argue that it was financially unable to maintain a fully staffed studio; however, since the licensee did not submit any financial information with its response to the NAL, the Bureau dismissed the possibility of reducing the fine amount based on the licensee's inability to pay.

The Bureau also rejected the licensee's argument that maintaining a main studio would place the station at a competitive disadvantage because the licensee's main studio waiver request was based only on financial considerations, which is not a valid basis for a waiver of the main studio rule. Moreover, the Bureau pointed out that even if the waiver had been granted and the licensee had then staffed the studio, corrective action after an investigation has commenced is expected by the FCC, and does not warrant reduction or cancellation of a fine. Therefore, the Bureau affirmed the fine of \$20,000.

### **Automated Response to 911 Calls Leads to Substantial Fine**

The Enforcement Bureau issued an NAL against an Oklahoma telephone company for routing 911 calls to an automated operator message in violation of the 911 Act and the FCC's Rules.

Under Section 64.3001 of the FCC's Rules, telecommunications carriers are required to transmit all 911 calls to a Public Safety Answering Point ("PSAP"), to a designated statewide default answering point, or to an appropriate local emergency authority. Section 64.3002(d) of the FCC's Rules further requires that if "no PSAP or statewide default answering point has been designated, and no appropriate local emergency authority has been selected by an authorized state or local entity, telecommunications carriers shall identify an appropriate local emergency authority, based on the exercise of reasonable judgment, and complete all translation and routing necessary to deliver 911 calls to such appropriate local emergency authority."

This NAL came about because the FCC's Public Safety and Homeland Security Bureau ("PSHSB") received a complaint in May of last year from an Oklahoma county's E911 Communications Center, which was a PSAP, alleging that the Oklahoma telephone company was routing 911 calls to an automated operator service instead of to the PSAP in the county. The operator service provided the caller with a message instructing the caller, who had already dialed 911, to hang up and dial 911 if the call was an emergency or to dial zero to remain on the line for further assistance. PSHSB staff notified the company of the complaint, and in August of last year, the company told PSHSB staff that it had previously routed 911 calls to a live operator, who then routed those calls to emergency authorities. The company told PSHSB staff that it was the operator company who had discontinued the live operator service and substituted an automated operator. The PSHSB staff directed the company to immediately implement a 911 solution for its customers, and the company was able to commence properly routing the 911 calls within four days.

At the beginning of this year, the Bureau's Spectrum Enforcement Division began an investigation and required the company to respond to a set of inquiries about its 911 service. In its response, the company explained that it did not have a PSAP until December 2012 and that the company had not received a request to direct calls to that PSAP until the first week of January 2013. Before the PSAP was designated, the state of Oklahoma had not specified an emergency number answering point for the county, and no

local entity had agreed to accept 911 calls. Finally, the company explained that in 2002, the county Sheriff's Office had refused to accept 911 calls because it lacked staff and resources, and that the live operator was therefore the only way to route 911 calls. However, the company had received notice that the operator service had switched from a live to a recorded operator when it performed a test call in May 2013, but continued to route calls to the automated operator until August 2013.

The company made the following four arguments as to why its use of the automated operator was reasonable: (1) technical challenges limited its call routing options, (2) the Oklahoma Corporation Commission had imposed restrictions that required routing long distance and operator assistance calls to the operator company's tandem office in another city, (3) the county offices had not established direct trunking to the company's switch, which was technically necessary for proper routing of 911 calls, and (4) the Oklahoma Corporation Commission told the company that it could continue to route 911 calls to the operator until the PSAP was operating.

The Bureau determined that before the county PSAP was designated, it was reasonable for the company to route 911 calls to the live operator. However, the Bureau said that once the company had learned that its calls were being routed to an automated operator, the company was required under Section 64.3002(d) to identify an alternative local emergency authority and that the company had taken no action along these lines. Finally, the Bureau noted that the fact that the company was able to implement a 911 solution within four days of being ordered to do so by the PSHSB indicated that it was unreasonable for the company to not have done so once it found out about the automated operator.

There is no base fine amount for violations of Sections 64.3001 and 64.3002 of the FCC's Rules. However, the Bureau noted that the 911 rules play a "critical function . . . in promoting and safeguarding life and property" and that the company's violations of those rules merited a "substantial" fine, and therefore proposed a fine in the amount of \$100,000.

### Three Stations Receive Admonishment for Fleeting Display of a Commercial Website in Children's Programming

The Video Division of the FCC's Media Bureau admonished three stations (one in Iowa, one in Ohio, and one in Florida) for failing to comply with the limits on commercial matter in children's programming.

The Children's Television Act of 1990 directed the FCC to adopt rules limiting the amount of commercial matter that commercial television stations may air during children's programming and to consider compliance with these limits when evaluating stations' license renewal applications. Section 73.670 of the FCC's Rules implements this mandate by limiting commercial matter in children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. In addition, Section 73.670(b) permits the display of Internet website addresses during children's programming only if: (1) the website offers a substantial amount of *bona fide* program-related or other noncommercial content; (2) the website is not primarily intended for commercial purposes, including either e-commerce or advertising; (3) the website's home page and other menu pages are clearly labeled to distinguish the noncommercial from the commercial sections; and (4) the page of the website to which viewers are directed by the website address is not used for e-commerce, advertising, or other commercial purposes (e.g., contains no links labeled "store" and no links to another page with commercial material).

All three stations filed amendments to their license renewal applications and disclosed that in October of last year, the stations aired a URL address that appeared during the closing credits of a program supplied by NBC. The network told the stations that the display was "inadvertently included" and "fleeting" and

noted that it was taking precautions to avoid further incidents. The web address at issue was displayed on each of the three stations for less than one-half of one second during the closing credits of the show.

In response, the Video Division determined that the display of the website address for even such a short duration does not meet the fourth prong of the above-mentioned test and is a violation of Section 73.670(b) because the closing credits are part of television programming material. However, the Video Division determined that each of the violations was an isolated occurrence and chose to issue an admonishment to each of the three stations, noting that similar violations of this nature in the future could result in more severe sanctions.

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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 of this Advisory.

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