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Special Advisory to Broadcasters
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Communications Broadcast Advisory

FCC Enforcement Monitor

FCC Designates Texas Radio Station's Renewal Application for Hearing in Response to Licensee's False Certifications

The Commission has designated a Texas radio station's renewal application for hearing after determining that the licensee made several false certifications to the Commission, calling its basic character qualifications into question. In January 2003, the licensee applied for a license to cover a previously-granted construction permit, and certified that the station's new facilities had been constructed as authorized. In May 2003, however, Commission personnel observed the station transmitting from a site approximately 5 miles from the location specified in its license, within . During the inspection, the licensee acknowledged that it had not commenced construction at the authorized site as certified, but that it had filed the license to cover application in order to prevent the expiration of the construction permit.

In June 2004, the Commission learned that the station's owner had been convicted of felony theft in Texas state court. In response, the Enforcement Bureau issued a Letter of Inquiry requesting further information from the licensee. The licensee failed to fully respond to this Letter, or to a second Letter of Inquiry issued in August 2004. Further, when the licensee applied to renew the station's license in April 2005, it certified that no adverse findings had been made against any party with an attributable interest in the station.

In designating the licensee's renewal application for hearing, the Commission noted that, "[m]isrepresentation and lack of candor raise immediate concerns as to whether a licensee will be truthful in future dealings with the Commission." The Commission noted that the licensee had made false certifications to the Commission with respect to both its license to cover application and its renewal application. The Commission further noted that the licensee had repeatedly failed to give full and candid responses to Commission inquiries, in an apparent attempt to frustrate the Commission's efforts. Accordingly, the Commission designed the station's renewal application for hearing.

FCC Fines Missouri Radio Station \$16,800 for Violating the Commission's Public Inspection File and Main Studio Rules and Exceeding Authorized Nighttime Power Limits

The Commission recently fined a Missouri radio station \$16,800 after determining that the station had violated the Commission's public inspection file and main studio rules, and had operated above the nighttime power limits specified in the station's license. In December 2005, an Enforcement Bureau agent monitored the station's operations and determined that the station was not reducing its power at night as required by the station's license. The agent unsuccessfully attempted to contact the station via its listed telephone number to obtain further information. Eventually, the agent reached the executive assistant to the station's owner, who informed the agent that (i) the station had no main studio and was remotely programmed via computer; and (ii) the station's public inspection file might be located at a nearby motel. The agent then contacted the station's consulting engineer, who confirmed that (i) the station had not altered its power level for several months; and (ii) the station had no main studio or studio equipment. The engineer also informed the agent that the station's owner had asked the owner of a nearby motel to remotely control the station from the motel, although further inquiry revealed that the motel's employees had no knowledge of any station operation or station records.

The Enforcement Bureau fined the station \$16,800 after determining that the station had (i) violated the Commission's main studio rule by failing to maintain a studio within the station's community of license, the principal community contour of any full-power broadcast station licensed to that community of license, or 25 miles from the reference coordinates of the community of license; (ii) violated the Commission's technical rules by failing to reduce its nighttime power as required by the station's license; and (iii) violated the Commission's public inspection file rule by failing to maintain such a file at the station's main studio for inspection during normal business hours. The Bureau refused to lower this fine in response to the licensee's attempts to cure its violations, finding that "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."

FCC Rejects Mississippi Radio Station's Attempt to Avoid Fine for Alleged Inability to Pay

The Commission upheld a \$20,000 fine it previously imposed on a Mississippi radio station, rejecting the licensee's attempt to avoid the fine by claiming an inability to pay. In May 2004, an Enforcement Bureau agent monitoring the station determined that it had failed to discontinue operation at 8:00 p.m. as required by its license. The agent subsequently inspected the station, and found that the station's EAS encoder / decoder would not function as required, and that only one EAS receiver was present. Station personnel reported that the EAS encoder/decoder had been broken for several months. There were no logs or other evidence that the EAS encoder/decoder had ever been in operation or that it was being repaired. The agent also found that the station was operating at a transmitter power of 425 watts, or 170% of the authorized power of 250 watts. Finally, the station owner was able to produce the bulk of the station's public file.

The Bureau proposed a \$20,000 fine for these violations, and the station made no objection. However, the station subsequently filed a petition for reconsideration of this fine, claiming that it lacked the financial resources to pay. In rejecting this argument, the Commission noted that "in the absence of supporting financial documentation (i.e., claimant's federal tax returns, GAPP standard accounting statements, or other reliable, objective information reflecting financial status), the Commission will not consider reductions or cancellations of forfeitures on the basis of inability to pay," and found that because "none of the documents pro-

vided by [the licensee] provides us with reliable, objective information reflecting his financial status . . . no reduction or cancellation of the proposed forfeiture is warranted in this regard.”

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