Pillsbury Winthrop Shaw Pittman LLP

Communications Advisory

FCC Enforcement Monitor
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FCC Fines Licensee $10,000 for Unauthorized Operation After License Expiration

A Michigan licensee was recently fined $10,000 for engaging in unauthorized operation of its station after expiration of its license. The licensee's authority to operate a broadcast station expired in October 2004. No renewal application was filed, nor was operation pursuant to Special Temporary Authority requested. During a July 2006 inspection, an agent monitored transmissions and found that unauthorized transmissions were being conducted from the station's previously authorized transmitter location. The agent then spoke to the licensee and advised the station owner that the station was unlicensed and not authorized to operate. The owner stated that he had attempted to file a renewal application electronically but was unable to do so. The owner further indicated that he spoke with a representative of the FCC who indicated that the renewal application must be filed electronically. Accordingly, the agent provided the owner with the telephone number for the FCC's Audio Service Division. In March and May 2007, the agent again monitored the frequencies in question and verified that the station was continuing to broadcast and had still failed to file a license renewal application. Section 301 of the Communications Act specifies "that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license." Based on this violation, a $10,000 fine was assessed.

FCC Fines Licensee $2,000 for Operation at an Unauthorized Location

The Enforcement Bureau recently fined an Oregon licensee $2,000 for operating from a site other than the one specified in its license. In response to a complaint, an Enforcement Bureau agent performed an inspection in October 2006. Using direction-finding equipment, the agent traced the source of the station's signal. When questioned, a station representative admitted that he had been operating the station from his home pursuant to a grant of Special Temporary Authority which had expired in February 2004. Section 73.1350(a) of the Commission's Rules states that "[e]ach licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules set forth elsewhere in this part and in accordance with the terms of the station authorization." Accordingly, a Notice of Apparent Liability for $4,000 was issued. In response, the licensee produced a Special Temporary Authority extension request and an accompanying cancelled check for the filing, arguing that the station had been operating pursuant to the pending request. The Commission denied knowledge of this application for Special Temporary Authority, noting that such a grant would have only permitted operation at this location for up to 180 days rather than for over 2 years. However, based on the licensee's efforts to secure an extension, the fine was reduced from $4,000 to $2,000.

FCC Fines Two Licensees for Failure to Maintain a Complete Public Inspection File

Emphasizing the FCC's requirement that stations maintain a complete public inspection file, the Commission recently fined two broadcast licensees for violating the public inspection file rule. Section 73.3526 of the Commission's Rules requires permittees and licensees to maintain a public inspection file at the main studio of their station. This file must be available for public inspection at all times during regular business hours, including lunchtime.

In the first case, a New Mexico licensee was fined $8,000 for failing to maintain or make available for inspection a complete public inspection file. In January 2007, an Enforcement Bureau agent performing an inspection found that two co-owned stations' public inspection files did not contain all of the required quarterly issues/programs lists for the entire license term. The stations' General Manager and Sales Manager were present for the inspection but were unable to locate the missing items when the agent inquired about their location. In responding to the Notice of Apparent Liability, the licensee argued that because the station had been acquired by another licensee since January 2007, "the proposed forfeiture is moot and should be cancelled." The Commission disagreed, specifically finding that there was no evidence or financial documentation showing that payment of the forfeiture would impose a financial hardship. Accordingly the Commission upheld the $8,000 fine.

In the second case, an Alabama licensee was fined $12,000 for failing to maintain a complete public inspection file at its main studio. During a January 2007 inspection, an Enforcement Bureau agent found that three collocated stations' public inspection files were contained in a single file cabinet. Further inspection found that the stations' owner had not compiled any quarterly issues/programs lists since March 2003. In responding to the Notice of Apparent Liability, the licensee requested cancellation of the fine because the documents had been prepared but had not been placed in the public inspection files. Specifically, the licensee argued that "due to the owner's nervousness, he did not know the agent wanted to see the stations' issues / programs lists because she referred to 'issues lists.'" The Commission rejected this argument because the owner "was aware of what a public inspection file is and admits that, during the inspection, he produced public inspection files, which included a folder containing an old issues/programs list." Accordingly, the $12,000 fine was upheld.

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