
FCC Enforcement Monitor

By Scott R. Flick, Jessica Nyman and Joseph Cohen

Headlines:

- *FM Licensee and Prospective Buyer Agree to Jointly Pay \$8,000 for Unauthorized Transfer of Control*
 - *TV Licensee Faces \$13,000 Fine for Children's Programming and Public Inspection File Violations*
 - *Late License Renewal Applicant Escapes With \$1,500 Fine*
-

Licensee Admits Time Brokerage Agreement Improperly Ceded Control of Station

The FCC's Media Bureau entered into a Consent Decree with a Colorado FM broadcast licensee and a company seeking to acquire the station. The decree resolved an investigation into whether the licensee violated the FCC's Rules by ceding control of key station responsibilities to a company through a Time Brokerage Agreement ("TBA").

Section 310(d) of the Communications Act and Section 73.3540 of the FCC's Rules prohibit voluntary assignments or transfers of control of broadcast licenses without the consent of the FCC. The Consent Decree noted that TBAs are not precluded by any FCC rule or policy, provided that licensees remain in compliance with the ownership rules and maintain ultimate control over their facilities. The Consent Decree explained that a licensee maintains such control when it holds ultimate responsibility for essential station matters such as programming, personnel, and finances.

The licensee and company entered into a TBA in 1992, and in 2006 the company assigned its rights under the agreement to an affiliated corporate entity. On April 23, 2015, the licensee and company jointly filed an application to assign the station's license to the company, initiating the FCC's investigation into the TBA.

The FCC concluded that the TBA effected an unauthorized transfer of control of the station license. Specifically, the TBA improperly delegated core licensee financial responsibilities by allowing an affiliated corporate entity of the broker to directly pay for certain station obligations and expenses, including a debt owed to a third party, site rent, and the bill for the station's telephone service.

To resolve the investigation, the licensee and the company stipulated that they had each violated Section 310(d) of the Communications Act and Section 73.3540 of the FCC's Rules, and agreed to collectively pay an \$8,000 fine. In exchange, the FCC indicated it would grant the assignment application subject to full and timely payment of the fine and the absence of any other violations that would preclude such a grant.

FCC Proposes \$13,000 Fine for Children's Programming and Public Inspection File Violations

The FCC's Media Bureau proposed a \$13,000 fine for a Texas TV station for failing to properly identify children's programming with an "E/I" symbol onscreen, and for several public inspection file violations. Additionally, the FCC admonished the licensee for its failure to upload required documents to the online public inspection file.

The Children's Television Act requires TV stations to offer programming that meets the educational and informational needs of children, which the FCC calls "Core Programming." Section 73.671 of the FCC's Rules requires licensees to, among other things, display an "E/I" symbol to identify such content.

In addition, Section 73.3526 of the FCC's Rules requires broadcasters to maintain public inspection files containing specific types of information related to station operations, and subsection 73.3526(b)(2) requires full-power and Class A TV licensees to upload most of that information to an online public inspection file. Among the information broadcasters are required to place in their public inspection files are Quarterly Issues and Programs lists for each of their stations describing the "programs that have provided the station's most significant treatment of community issues during the preceding three month period," and Equal Employment Opportunity ("EEO") information. Further, subsection 73.3526(e)(11)(ii) requires broadcasters to prepare and place in their public inspection files certifications of compliance with the commercial limits on children's programming.

When the station filed its most recent license renewal application, it admitted that it failed to use the "E/I" symbol to identify Core Programming on three of its five digital multicast channels airing foreign language programming. The licensee explained that it did not have the capability to insert the "E/I" symbol into the foreign language programming produced overseas, but that it had since remedied the error by having it inserted by the providers of the programming. Based on these circumstances, the licensee requested a waiver, "to the extent necessary," of the "E/I" requirement.

The FCC refused to grant a waiver, explaining that the station should have requested a waiver of the "E/I" requirement under Section 1.3 of the FCC's Rules, rather than in its license renewal application. The FCC added that the licensee did not adequately explain why it was previously unable to have foreign program providers insert the "E/I" symbol, when it has since been able to coordinate with overseas providers to accomplish that.

The FCC also found that the licensee failed to timely complete and subsequently upload certain documents to the station's online public file, including: (1) the station's Issues/Programs Lists for fifteen quarters, and (2) the station's EEO public inspection file reports for two years. The FCC determined that the station had also failed to timely upload certifications of its compliance with the commercial limits on children's programming for ten quarters. While the FCC acknowledged that the licensee "has worked to correct these problems," it concluded that such progress does not relieve the licensee of liability for past violations.

The base fine for a violation of the children's television requirement is \$8,000, failure to file a required form yields a base fine of \$3,000, and the base fine for a public file violation is \$10,000. However, the FCC

exercised its discretion, instead proposing a \$3,000 fine for the station's failure to properly identify children's programming with an "E/I" symbol, and a \$10,000 fine for failing to timely prepare and place in the public inspection file the station's Issues/Programs Lists and EEO reports, leading to a total proposed fine of \$13,000. The FCC treated the licensee's failure to upload required documents to the online public file as a separate violation, and chose only to admonish the licensee for that failure.

FM Licensee Faces \$1,500 Fine for Late-Filed License Renewal Application

A Pennsylvania FM radio licensee received a \$1,500 fine this month for filing its license renewal application four months after the filing deadline. Section 73.3539 of the FCC's Rules requires stations to file their license renewal applications "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."

The station's license renewal application was due by April 1, 2014, but the licensee did not file the application until July 29, 2014. It failed to provide any explanation for its untimely filing in its license renewal application, and the FCC subsequently issued a Notice of Apparent Liability for Forfeiture ("NALF").

In the NALF, the FCC explained that its rules and Forfeiture Policy Statement establish a base fine amount of \$3,000 for failure to file a required form. However, the FCC used its discretion to adjust the fine downward to \$1,500, reasoning that such a reduction was warranted because the licensee filed its license renewal application prior to the expiration of its current license.

The licensee failed to challenge the NALF and, consequently, the FCC issued the fine as proposed. In addition, however, the FCC explained that it would withhold action on the license renewal application until the fine is paid.

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

Scott R. Flick [\(bio\)](#)
Washington DC
+1.202.663.8167
scott.flick@pillsburylaw.com

Jessica Nyman [\(bio\)](#)
Washington DC
+1.202.663.8810
jessica.nyman@pillsburylaw.com

Joseph Cohen [\(bio\)](#)
Washington DC
+1.202.663.8172
joseph.cohen@pillsburylaw.com

About Pillsbury Winthrop Shaw Pittman LLP

Pillsbury is a full-service law firm with an industry focus on energy & natural resources, media, financial services including financial institutions, real estate & construction, and technology. Based in the world's major financial, technology and energy centers, Pillsbury counsels clients on global business, regulatory and litigation matters. We work in multidisciplinary teams that allow us to understand our clients' objectives, anticipate trends, and bring a 360-degree perspective to complex business and legal issues—helping clients to take greater advantage of new opportunities, meet and exceed their objectives, and better mitigate risk. This collaborative work style helps produce the results our clients seek.

This publication is issued periodically to keep Pillsbury Winthrop Shaw Pittman LLP clients and other interested parties informed of current legal developments that may affect or otherwise be of interest to them. The comments contained herein do not constitute legal opinion and should not be regarded as a substitute for legal advice.

© 2015 Pillsbury Winthrop Shaw Pittman LLP. All Rights Reserved.