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## FCC Enforcement Monitor

By Scott R. Flick and Carly A. Deckelboim

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### *Headlines:*

- *FCC Limits License Renewal to Two Years and Assesses \$4,000 Fine*
  - *\$24,000 Consent Decree for Incomplete Public Inspection File*
  - *Hotels Cited for Exceeding Signal Leakage Limits in Aeronautical Bands*
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### **Station Assessed Fine for Public File Violations and Granted Short-Term License Renewal**

In reviewing the license renewal application for a Meridian, Texas radio station, the FCC's Media Bureau proposed a \$4,000 fine for public inspection file violations. It also granted the station's license renewal application, but only for a period of two years (rather than the normal eight), based upon the station's extended periods of silence during the prior license term.

Section 73.3526 of the FCC's Rules requires licensees to maintain information about station operations in the station's public inspection file so the public can obtain "timely information about the station at regular intervals." In its license renewal application, the station indicated that it could not locate a number of its quarterly issues-programs lists. The base forfeiture amount for public inspection file violations is \$10,000, but the FCC has authority to adjust that amount up or down based on a licensee's circumstances. Here, the FCC noted that "the violations were extensive, occurring over a period of nearly two years and involving at least 6 issues/programs lists." Despite this, the FCC ultimately imposed a forfeiture amount of only \$4,000 since the violations were not "evidence of a pattern of abuse."

The station was also dark for lengthy periods during the prior license term. Section 312(g) of the Communications Act prohibits long periods of silence by licensed stations because licensees have an obligation to provide service to the public by broadcasting on their allocated spectrum. When the FCC reviews a station's renewal application, it considers whether the licensee has adequately served its community of license. Section 309(k) of the Communications Act provides that the renewal application should be granted if "(1) the station has served the public interest, convenience and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse." In this case, the FCC pointed out that the licensee had two periods of silence, each lasting nearly a year, and that the station had been dark for almost half of the license term. Since the licensee had failed to provide "public service programming such as news, public

affairs, weather information, and Emergency Alert System notifications” during these long periods of inactivity, the FCC determined that granting a renewal of only two years would be the most effective sanction because it would incentivize the licensee to maintain its broadcast operations and not go silent in the future.

### **License Agrees to Pay \$24,000 Under Terms of Consent Decree for Missing Public File Documents**

The FCC has entered into a consent decree with an Atlanta LPTV licensee after conducting a lengthy investigation. Almost two years ago, in March of 2012, the FCC sent a letter to the licensee asking for specific information to determine the station’s eligibility for Class A television status. The requested information included the location of the main studio, a description of production equipment, names of employees, the location of the public inspection file, a copy of the quarterly issues/programs lists, and a copy of the public inspection file documentation. In its response, submitted in June of 2012, the licensee informed the FCC that the station had been vandalized and provided police reports and other documentation to account for its failure to produce a public inspection file. In another letter dated almost one year after the licensee’s explanatory letter, the FCC asked for further clarification from the licensee regarding the location of the station’s public inspection file and why the police report did not mention vandalism of the public inspection file. The licensee replied one month later in July of 2013 and provided another police report to explain the theft of equipment.

Ultimately, the FCC and the licensee entered into a consent decree terminating the investigation. Under the terms of the consent decree, the FCC agreed to renew the license of the station and terminate its investigation, and the licensee agreed to make a voluntary contribution of \$24,000 to the United States Treasury. The consent decree requires that the first \$1,000 be paid within 30 days of the effective date, \$11,000 be paid within 1 year of the effective date, and the remaining \$12,000 be paid within 2 years of the Effective Date.

### **Hotels Ordered to Respond in Writing to Citations for Cable Leakage and Improper MVPD Operation**

Last month, the FCC issued essentially identical Citations and Orders against two Michigan hotels for operating multichannel video programming distribution (“MVPD”) systems in an aeronautical radio frequency band and for exceeding cable signal leakage limits.

Section 76.610 of the FCC’s Rules requires that all MVPDs transmitting a carrier at an average power level equal to or greater than  $10^{-4}$  watts across a 5 kHz bandwidth in any 160 microsecond period and which uses signals in the 108-137 MHz band must comply with Section 76.605(a)(12), which restricts signal leakage. In addition, Section 76.1804 of the FCC’s Rules requires that an MVPD notify the FCC of operations in this frequency band by filing FCC Form 321 before any transmissions are made.

In October of last year, an agent from an Enforcement Bureau field office investigated both hotels and found that they were using a non-cable MVPD system at their buildings and that the system was emanating a radio carrier signal at higher levels than permitted by the FCC in the aeronautical frequency bands. In addition, the agent found that while the hotels were using aeronautical frequencies, they had not filed an FCC Form 321 to notify the Commission of their operations in that band.

The Citations and Orders require the hotels to immediately comply with the FCC’s Rules and reduce excessive signal leakage. The FCC is also requiring that the hotels each register as an MVPD, file FCC Form 321, and respond in writing with a description of what they have done to bring their operations into compliance, including a timeline for completion of corrective action. The FCC also warned the hotels that if they violate Section 76.1804 or 76.605(a)(12) again, the Commission has authority to impose fines of up to

\$16,000 for each subsequent violation or each day of a continuing violation, up to \$122,500 for any single act or failure to act. Finally, the FCC reminded the hotels that seizure of property or criminal penalties such as imprisonment are also possible for continued violations of these rules.

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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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