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## FCC Enforcement Monitor

By Scott R. Flick and Paul A. Cicelski

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### *Headlines:*

- *Multiple Indecency Complaints Result in \$110,000 Payment*
  - *\$42,000 in Fines for Excessive Power, Wrong Directional Patterns and Incomplete Public Inspection Files*
  - *Cable Operator Fined \$25,000 for Children's Programming Reports*
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### **Broadcaster Enters Into \$110,000 Consent Decree Involving Allegations of Indecent Material**

The FCC recently approved a consent decree involving a broadcaster with TV stations in California, Utah and Texas accused of airing indecent and profane content.

Section 73.3999 of the FCC's Rules prohibits radio and television stations from broadcasting obscene material at all times and prohibits indecent material aired between 6:00 a.m. and 10:00 p.m.

The FCC received multiple complaints about the television show in question and sent Letters of Inquiry to the broadcaster asking it to provide a copy of the program and to answer questions about possible violations of the FCC's indecency rule. The licensee complied with the requests but maintained that the program did not contain indecent content.

Earlier this month, the FCC entered into a consent decree with the broadcaster and agreed to terminate its investigation and dismiss the pending indecency complaints. Under the terms of the consent decree, the broadcaster is required to (a) designate a Compliance Officer within 30 days, and (b) create and implement a company-wide Compliance Plan within 60 days, which must include: (i) creating operating procedures to ensure compliance with the FCC's restrictions on indecency, (ii) drafting a Compliance Manual, (iii) training employees about what constitutes indecent content, and (iv) reporting noncompliance to the FCC within 30 days of discovering any violations. The consent decree also requires the filing of a compliance report with the FCC in 90 days and annually thereafter for a period of 3 years. The requirements imposed under the consent decree expire after three years.

In addition to the compliance program, the licensee agreed to make a voluntary contribution of \$110,000 to the United States Treasury. The licensee also admitted for purposes of the consent decree that its television show “inadvertently violated the Commission’s interpretation of its indecency regulations . . . .”

While the FCC did not go into detail about the “indecent” content of the program, the consumer complaints asserted it involved “pornographic film performers and exotic dancers.” In April of 2013, the FCC released a request for comments on its indecency enforcement that indicated the Chairman of the FCC at the time had instructed FCC staff to focus only on the most “egregious” examples of alleged indecency violations. In pursuing the consent decree, it appears the FCC believed that the program at issue fell into that category.

### **Licensee Assessed \$42,000 in Fines for a Variety of Violations**

Last month, the FCC issued two Notices of Apparent Liability (“NAL”) for Forfeiture against a Kansas licensee of two AM radio stations for exceeding authorized power limits, failing to maintain authorized directional patterns, and failing to have a complete public inspection file.

The FCC received an anonymous tip alleging that the stations were not operating in compliance with their authorizations. Under the FCC’s rules, “[n]o broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license, unless otherwise provided.” AM stations must keep their input power between 90% and 105% of their authorized power. The FCC also requires that AM stations using a directional antenna “maintain the relative amplitudes of the antenna currents . . . within 5% of the values specified on the instrument of authorization” and the “antenna relative phases must be maintained within 3 degrees of the values specified on the instrument of authorization.”

After an agent took signal strength readings and inspected the stations, the FCC determined that the stations violated all of the above rules, and further noted that the stations’ public inspection file contained incomplete quarterly programs/issues lists that failed to list any programs aimed at addressing local issues, and that one quarterly programs/issues list was missing entirely.

The base amount of FCC fines depends on the nature of the violation. \$4,000 is the base amount for exceeding power limits, \$7,000 is the base amount for failing to maintain directional pattern, and \$10,000 is the base amount for violating the public file rule. In this case, the FCC found that the base fine was appropriate for each of the violations, resulting in \$21,000 in fines for each station, adding up to \$42,000 overall for the licensee. In addition, the FCC required that each station submit a written statement within 30 days signed by an officer or director affirming that the station was operating “within authorized power levels and directional parameters.”

### **Cable Operator Fined \$25,000 for Failure to Provide Kidvid Records and Other Data**

The FCC recently issued a Forfeiture Order imposing a \$25,000 fine on the owner of a Missouri cable system for failing to make available required records and data.

Under the FCC’s Rules, cable operators that provide children’s programming are required to place records in their “public file[s] no later than the tenth day of the quarter following the quarter in which the covered programming aired” demonstrating compliance with the FCC’s commercial time limits for children’s programming. The information must also be available for inspection upon request. During an inspection by FCC agents, the cable system was unable to produce all of the required children’s programming documentation, and was also missing two years of proof of performance test data regarding the technical operation of the system.

The FCC had issued an NAL for the violations in July of 2012, in response to which the cable system argued that the proposed fine should be reduced because: (1) it could not provide the information at the time it was requested due to scheduled employee absences, (2) it located the missing records and data and consolidated it at a single location within three days of the inspection, and (3) it had since undertaken “comprehensive voluntary efforts to create an internal web-based public file system.”

Although the base forfeiture for such a violation is \$10,000, the FCC had previously increased the proposed fine to \$25,000 in the original NAL based on the cable operator’s ability to pay and its past violations of the same rules. When the cable operator asked that the fine be reduced, the FCC rejected the request, noting that this was the cable operator’s third violation, and that the FCC wanted the fine to be “an effective deterrent and not simply a cost of doing business.” The FCC also noted that the station’s subsequent corrective actions did not mitigate the seriousness of the violations, and did not merit a reduction in the fine.

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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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