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## FCC Enforcement Monitor

By Scott R. Flick, Jessica Nyman and Joseph Cohen

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### *Headlines:*

- *Failing to Make Timely Uploads to Online Public File Costs TV Station \$13,500*
  - *FCC Fines Church's Pirate Radio Station \$25,000*
  - *FCC Proposes \$7,000 Fine Against TV Station for Public File Violations*
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### **Slow Upload Speed: TV Licensee Agrees to Pay \$13,500 to Settle FCC Investigation into Online Public File Violations**

The FCC entered into a Consent Decree with an Iowa TV station to resolve an investigation into the licensee's failure to timely upload required documents to its online public inspection file.

Section 73.3526 of the FCC's Rules requires commercial broadcasters to maintain public inspection files containing specific types of information related to station operations, and subsection 73.3526(b)(2) requires TV and non-exempt radio licensees to upload most of that information to the FCC-hosted online public inspection file. For example, subsection 73.3526(e)(7) requires broadcasters to retain records that document compliance with equal employment opportunity rules; subsection 73.3526(e)(10) requires broadcasters to maintain materials relating to FCC investigations or complaints; and subsection 73.3526(e)(11) requires TV stations to place in their public inspection file (i) Quarterly Issues/Programs Lists describing the "programs that have provided the station's most significant treatment of community issues during the preceding three month period" and (ii) certifications of compliance with the commercial limits on children's programming.

In October 2013, the licensee filed its license renewal application, certifying that it timely placed in its public file all required documentation. However, an FCC investigation found that, with the exception of electronically submitted documents that the FCC automatically places in a station's online file, the station's online file was empty, meaning the licensee failed to upload any of the other required documents.

The FCC contacted the licensee in March 2014 to request that the station upload all required documents, and the licensee subsequently complied. However, the FCC discovered in January 2016 that the licensee failed to upload Issues/Program Lists and Commercial Limits Certifications for four quarters in 2014 and 2015. The FCC again contacted the licensee, at which point the licensee uploaded the missing documents.

Still, in April 2016, the FCC found yet again that the licensee had failed to upload a required Issues/Programs List and commercial limits certification.

The licensee subsequently entered into a Consent Decree with the FCC to resolve the investigation into these public inspection file violations. As part of the Consent Decree, the licensee admitted liability, agreed to make a payment of \$13,500 to the U.S. Treasury, and agreed to implement a compliance plan. The compliance plan must, among other things, designate a compliance officer responsible for ensuring compliance with the FCC's Rules. The compliance officer must conduct training for all station employees and management at least once every 12 months. The compliance plan will remain in effect until FCC action on the station's next license renewal application (which will be filed in 2021) is complete. Ultimately, the FCC decided to grant the station's pending license renewal application, provided that the licensee makes the \$13,500 payment on time and in full.

### **Praying with Fire: Church's Pirate Radio Station Fined \$25,000**

After repeated warnings, the FCC fined the operators of an unlicensed radio station in California \$25,000. Section 301 of the Communications Act prohibits any person from operating any apparatus for the transmission of energy, communications, or signals by radio within the United States without FCC authorization.

In July 2013, the FCC received a complaint that an unauthorized station was causing co-channel interference. FCC agents verified the complaint and issued a Field Notice to the individual occupying the single family home where an unlicensed church radio station was operating. One week later, the FCC issued a Notice of Unlicensed Operation ("NOUO") to the individual.

The adult children of the individual subsequently contacted the FCC and acknowledged that their father operated the unlicensed station. The FCC advised that continued operation of the unlicensed station could result in significant monetary penalties. In September 2013, the individual temporarily ceased the unauthorized broadcast.

The FCC subsequently found that on at least five separate occasions the individual resumed unauthorized operations:

- January-April 2015 (the FCC issued an additional NOUO to the individual in his capacity as pastor of the church he ran. The individual did not respond to this NOUO, but nevertheless stopped broadcasting a few days later.)
- June-July 2015 (the FCC noted more broadcasts, but did not issue an NOUO or Field Notice.)
- February 2016 (the FCC issued another NOUO, and when it failed to receive a response, mailed an additional copy of the NOUO to the individual. The individual again did not respond.)
- July 2016 (FCC agents spoke with the individual and issued another Field Notice. In the individual's conversation with the FCC agents, he "committed to cease operating the unlicensed station.")
- August 2016 (the FCC noted more broadcasts, but did not issue an additional NOUO or Field Notice.)

The FCC issued a Notice of Apparent Liability for Forfeiture ("NAL") against the individual and the church in December 2016, proposing a \$25,000 fine. FCC guidelines set a base fine amount of \$10,000 for unauthorized operation for each violation or each day of a continuing violation. The FCC may adjust a fine upward or downward after taking into account the particular facts of each case. Here, the FCC found that the individual and the church deliberately disregarded the FCC's authority and requirements. As a result, the FCC proposed a \$20,000 base fine — \$10,000 for the unauthorized operations in February 2016 and

another \$10,000 for the unauthorized operations in August 2016 — and applied a \$5,000 upward adjustment for the multiple Field Notices and NOUOs that were ignored, for a total proposed fine of \$25,000. The FCC subsequently issued the \$25,000 fine in a Forfeiture Order after the individual and church did not respond to the NAL.

### **FCC Proposes \$7,000 Fine for Numerous Public File Violations**

The FCC proposed a \$7,000 fine against a Nevada TV station for various public inspection file violations. As noted above, Section 73.3526 of the FCC's Rules requires commercial broadcasters to maintain public inspection files containing specific types of information related to station operations, and subsection 73.3526(b)(2) requires TV and non-exempt radio licensees to upload most of that information to an online public file.

The station filed its license renewal application in June 2014. The application disclosed several public file violations, including failure to timely prepare or place in the inspection file Issues/Programs Lists and children's commercial limit certifications. After conversations between the FCC and the licensee's attorney, the station filed an amended application in January 2017. The amended application disclosed the following public file violations: (1) untimely preparation of commercial limit certifications prior to the fourth quarter of 2012; (2) untimely placement of commercial limit certifications in the station's online public file for seven quarters between the fourth quarter of 2012 and the second quarter of 2016; (3) untimely upload of Issues/Programs Lists to the station's online public file prior to and including the second quarter of 2012, as well as for the second quarter of 2014; (4) failure to have a copy of the station's Issues/Programs List for the first quarter of 2012; and (5) untimely filing of the station's Children's Television Programming Reports for the first quarter of 2012.

FCC guidelines set a base forfeiture amount of \$10,000 for failure to maintain a station's public file, and as discussed above, the FCC may adjust a fine upward or downward after taking into account the particular facts of each case. Here, based on its "review of the facts and circumstances," (and without additional elaboration) the FCC found that a proposed fine of \$7,000 was appropriate.

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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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