
FCC Enforcement Monitor

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- *Michigan Class A TV Station Agrees to Pay \$45,000 for Numerous Children’s Programming and Public Inspection File Violations*
 - *New York TV Station Agrees to \$10,000 Consent Decree to End FCC Investigation into Indecency Allegations*
 - *California Radio Licensee Agrees to \$8,000 Consent Decree for Unauthorized Transfer of Control*
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Michigan Class A TV Station Acknowledges Children’s Programming and Public Inspection File Problems

The FCC entered into a Consent Decree with a Class A TV station in Michigan to resolve an investigation into violations of the Children’s Television Act (“CTA”) and the FCC’s public inspection file rule.

The CTA, as implemented by Section 73.671 of the FCC’s Rules, requires full power TV stations to provide sufficient programming designed to serve the educational and informational needs of children, known as “Core Programming”, and Section 73.6026 extends this requirement to Class A stations. The FCC’s license renewal application processing guidelines direct Media Bureau staff to approve the CTA portion of any license renewal application where the licensee shows that it has aired an average of 3 hours per week of Core Programming per program stream. Staff can also approve the CTA portion of a license renewal application where the licensee demonstrates that it has aired a package of different types of educational and informational programming that, even if less than 3 hours of Core Programming per week, shows a level of commitment to educating and informing children equivalent to airing 3 hours per week of Core Programming. Applications that do not satisfy the processing guidelines are referred to the full Commission, where the licensee will have a chance to demonstrate its compliance with the CTA.

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 stations to upload most of that information to the FCC-hosted online public inspection file. For example, 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 addition, subsection 73.3526(e)(17) requires Class A stations to place in their public files documentation demonstrating compliance with Class A eligibility requirements.

In May 2013, the station filed its license renewal application. Upon review of the station’s public file, the FCC found that the station had failed to timely file Children’s TV Programming Reports for 35 quarters, and failed to place in its public file numerous required documents, such as Issues/Programs Lists, Commercial Limit Certifications, and Class A Eligibility Certifications. In May 2016, upon request of the FCC, the station amended its renewal application to acknowledge and describe the violations. The station made additional clarifications to the application in November 2016.

The Media Bureau’s audit of the station’s children’s programming revealed that the station failed to meet the three hour Core Programming processing guideline for ten quarters, for an aggregate shortfall of 110 hours, with quarterly deficiencies ranging from one hour to 22 hours. As a result, the station’s application was referred to the full Commission for consideration.

The station subsequently entered into a Consent Decree with the FCC to resolve the investigation into public file and children’s programming violations. As part of the Consent Decree, the station admitted liability, agreed to make a \$45,000 settlement payment to the government, and agreed to implement a compliance plan. In turn, the FCC agreed to grant the station’s license renewal application for a short-term period of two years instead of the regular eight-year term.

Under the compliance plan, the station must, among other things, designate a compliance officer responsible for compliance with the FCC’s Rules, air at least four hours of Core Programming per week (as averaged over a six-month period), provide training to staff on compliance with the FCC’s Rules, and work with outside legal counsel to obtain guidance on FCC compliance issues. The compliance plan will stay in effect until final FCC action is taken on the station’s next license renewal application.

New York TV Station Agrees to \$10,000 Consent Decree to End FCC Investigation into Indecency Allegations

The FCC entered into a Consent Decree with a New York TV station to resolve an investigation into whether the station aired indecent programming.

Section 73.3999 of the FCC’s Rules restricts the broadcast of indecent material between 6:00 a.m. and 10:00 p.m. In addition, Section 73.1217 (the “broadcast hoax rule”) forbids the broadcast of “false information concerning a crime or catastrophe if: (a) The [station] knows the information is false; (b) It is foreseeable that broadcast of the information will cause substantial public harm; and (3) Broadcast of the information does in fact cause substantial public harm.”

In response to the station’s 2006 license renewal application, an individual filed a Petition to Deny alleging that the station violated the FCC’s indecency and broadcast hoax rules. With regard to the indecent programming allegation, the individual provided “excerpts of the station’s Spanish language broadcasts from two days in March 2005 and two days in June 2005, along with English language translations” that included explicit words. In response, the station stated that the translations were incorrect, and provided its own “less explicit” translations.

Regarding the hoax allegation, the individual alleged that the station had aired several “hoax broadcasts,” and provided as support a newspaper article that briefly described how the hosts of the station’s morning

show had claimed that the Lincoln Tunnel (which connects Manhattan to New Jersey), was flooding. For its part, the station responded that the Lincoln Tunnel hoax did not meet the “public harm” requirement of the FCC’s hoax rule.

The individual repeated these allegations in a Renewal of Petition to Deny after the station filed its 2014 license renewal application. The station again denied the allegations.

In a March 2016 Letter Decision that granted the station’s license renewal applications, the FCC rejected the hoax allegation as “based on hearsay, lacking specificity,” stating that no date of the broadcast had been specified. The FCC did not rule on the indecency allegations, prompting the individual to file a Petition for Reconsideration.

The station subsequently entered into a Consent Decree with the FCC to resolve the investigation into the indecency allegations. The FCC’s Rules, as of the date of the broadcast excerpts provided by the petitioner, specified a base fine of \$7,000 for broadcasting indecent material between 6 a.m. and 10 p.m. As part of the Consent Decree, however, the station agreed to pay a \$10,000 civil penalty. In addition, stating that its investigation raises no questions that would warrant denial of the station’s license renewal applications, the FCC agreed not to reconsider the Letter Decision’s grant of the license renewal applications provided that (1) the station pays the full \$10,000 in a timely manner and (2) “there are no issues other than the [indecency allegations] that would support reconsideration.”

California Radio Licensee Admits Time Brokerage Agreement Improperly Surrendered Control of Station

The FCC entered into a Consent Decree with the licensee of three California radio stations to resolve 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 prior consent of the FCC. The Consent Decree noted that Time Brokerage Agreements are not precluded by any FCC rule or policy as long as the licensee remains in compliance with the ownership rules and maintains ultimate control over station facilities. The Consent Decree added that a licensee maintains such control when it holds ultimate responsibility for essential station matters such as programming, personnel, and finances.

In addition, as discussed above, full-power broadcast stations are required to maintain a public inspection file containing specific information related to station operations. Section 73.3526(c) of the Commission’s Rules directs stations to make the file available for public inspection at all times during regular business hours.

The licensee and a third party entered into a TBA in November 2010. In July 2013, an organization filed a complaint with the FCC alleging that the licensee had engaged in an unauthorized transfer of control, and that an individual was forced to wait two hours before obtaining access to the stations’ public inspection files. The FCC subsequently opened an investigation into both allegations.

The FCC determined that the TBA “effected an unauthorized transfer of control of the Stations [because] . . . the Licensee failed to maintain ultimate control over the Stations with regard to personnel. Specifically, while Licensee maintained a management presence at the Stations’ main studio, Licensee did not maintain a staff presence.”

The FCC also determined that the licensee violated Section 73.3526(c) because it made an individual wait two hours before providing access to the stations' public files. However, the FCC only admonished the licensee for this violation "because the individual obtained access to the public files within hours and because there are no allegations of additional violations related to public file access." The FCC also warned the licensee to make its public file more readily available in the future.

The licensee entered into a Consent Decree with the FCC to resolve the investigation into the unauthorized transfer of control allegation. As part of the Consent Decree, the licensee admitted to the violation, and agreed to pay an \$8,000 civil penalty. In addition, the licensee agreed to "ensure the full-time presence at the Stations of both management and staff employed by Licensee" and to provide a certification to the FCC regarding compliance with this obligation.

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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