
FCC Enforcement Monitor

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Headlines:

- *Former Broadcast Licensee Faces \$144,344 Fine for Operating Kentucky LPTV Station Without a License for 18 Years*
 - *FCC Proposes \$20,000 Fine Against California Noncommercial TV Station for Public File and Related Violations*
 - *FCC Agrees to Reduce Fines for Untimely Children’s Television Programming Reports Based on Inability to Pay*
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A “Harmless Chihuahua” No More: FCC Proposes Maximum Fine for Operating Low Power TV Station Without a License

Two individuals are facing a \$144,344 proposed fine for operating a Kentucky low power TV (“LPTV”) station without a license for the last 18 years. 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. Additionally, Section 74.765 of the FCC’s Rules requires licensees to ensure that a copy of the license is placed in the station’s records and is available for public inspection.

The FCC initially authorized construction of the station in 1987, and the station’s license application was granted in 1990. In April 1993, the FCC granted an application to renew the station’s license for a term expiring August 1, 1998. However, no subsequent license renewal application was ever filed for the station. In April 2004, the FCC sent a letter to the station stating it had not received a license renewal application, and set a 30 day deadline to prove that a renewal application had been filed before the FCC would update its CDBS database to reflect that the license had been cancelled. After receiving no response, the FCC updated CDBS to list the station’s license as “cancelled”.

The FCC later came to learn through an unrelated Experimental STA application that the station was still operating. As a result, in August 2016, FCC agents traveled to the station’s formerly authorized antenna site, where a technician confirmed that the station was, in fact, still operating. The agents then traveled to the station’s studio and spoke with an individual who identified himself as the “operations manager”. The operations manager was unable to provide the agents with evidence of a valid license to operate the

station, but asserted that the station's license renewal application had been filed in 1993, implied that the FCC lost the 1993 filing, and that, as a result, the license remained in effect. The agents informed the operations manager that a current, valid license was necessary to operate the station and that, without one, the station's transmissions must immediately stop. The agents also issued a Notice of Unlicensed Radio Operation ("NOURO") stating in bold, capital letters: "**UNLICENSED OPERATION OF THIS RADIO STATION MUST BE DISCONTINUED IMMEDIATELY.**"

In response to the NOURO, the operations manager reiterated the argument he made to the FCC agents at the station. In addition to asserting that the station never received confirmation of grant of the 1993 renewal, the response stated the station operators had never received any other communication from the FCC about the station, and CDBS showed "that the [1993] renewal was granted on 7/27/1993 without an expiration." The response argued that the failure to file a renewal application in 1998 should therefore be excused. Further, the response indicated that despite the NOURO's "request" to cease operations, the station remained on air so as to not deprive its viewers of "their only source of news and other events." FCC agents returned to the station's antenna site in September and confirmed that the station was still transmitting.

Consequently, the FCC determined that the station operators had willfully and repeatedly violated Section 301 of the Act. According to FCC records, the Media Bureau mailed the 1993 license renewal to the station's address of record. The FCC emphasized, however, that regardless of whether the license renewal was actually received, licensees are responsible for knowing their obligations, including their duty to seek timely license renewals. In this regard, the FCC noted that license renewal reminders are "merely provided as a courtesy." The FCC also rejected the operators' CDBS argument because (1) CDBS did not exist in 1998, so the station could not have relied on it at the time the license renewal was due, and (2) both CDBS and the 1993 renewal authorization state that the license expired August 1, 1998.

The FCC's base fine for operation of a station without authorization is \$10,000 for each violation or each day of a continuing violation. Citing the "egregious" and "longstanding" nature of the apparent violations, the FCC proposed to fine the station operators \$10,000 for each of the 22 days between the day FCC agents spoke to the station's operations manager in August 2016, and when agents confirmed that the station was still transmitting in September 2016, for a total proposed fine of \$220,000. However, because the Communications Act sets the maximum fine amount for continuing violations arising from a single act or failure to act at \$144,344, the FCC capped the proposed fine at \$144,344. The FCC noted that, absent the statutory maximum, an upward adjustment would have been warranted because the station was operated for more than 18 years after its license expired, and more than 12 years after the FCC declared the station's license cancelled.

In a separate statement, FCC Commissioner Michael O'Rielly supported the proposed fine, but was appalled that the station "[got] away with operating a pirate TV station for almost *twenty years*." He lamented that under past leadership the FCC had "been reduced to a sometimes annoying, sometimes sleepy, but ultimately harmless Chihuahua when it came to protecting broadcast spectrum licenses," but hoped that pirate operators were now on notice that the FCC "can and will turn that situation around."

California Noncommercial TV Station Licensee Faces \$20,000 Proposed Fine for Public Inspection File and Related Violations

The FCC proposed a \$20,000 fine against a California noncommercial educational ("NCE") TV station licensee for public inspection file and related violations.

Section 73.3527 of the FCC's Rules requires NCE licensees to maintain a public inspection file containing specific types of information related to station operations, and subsection 73.3527(b)(2) requires NCE stations to upload most of that information to the FCC-hosted online public inspection file. Among the materials required to be in the file are a station's Quarterly Issues/Programs Lists, which must be retained until final FCC action on the station's next license renewal application. Issues/Programs Lists detail programs that have provided the station's most significant treatment of community issues during the preceding quarter. Section 73.3527 also requires stations to keep in their public file for two years from the date of broadcast a list of donors that have supported specific programs.

In addition, Section 73.3514(a) of the FCC's Rules requires stations to include all information requested by an application form when filing it with the FCC. With respect to license renewal applications, this requires licensees to certify that they have complied with Section 73.3527's public file requirements. Furthermore, Section 1.65(a) of the FCC's Rules states that an "applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application."

In January 2014, the licensee filed its station license renewal application. Upon review of the station's online public file, FCC staff found that the licensee had not uploaded copies of its donor lists for the entire prior license term, and Issues/Programs Lists from the first quarter of 2007 through the first quarter of 2016. The licensee uploaded the missing documents after being contacted by FCC staff.

In May 2016, FCC staff found that the station had failed to upload its most recent Issues/Programs and donor lists. FCC staff again called the licensee and directed it to upload the missing documents. Staff also requested that the licensee file an amendment to the pending license renewal application disclosing the public file violations. The licensee uploaded the requested documents in May 2016, and amended its application in June 2016, noting that all documents had been timely placed in the station's physical public file.

The FCC subsequently found that the licensee failed to upload copies of the station's Issues/Programs Lists for the second, third, and fourth quarters of 2016. The licensee had not updated its pending license renewal application to explain the repeated violations.

The FCC's base fine for a public inspection file violation is \$10,000, and the base fine for failing to provide required information in an application is \$3,000. The FCC can adjust the amount upwards or downwards depending on the circumstances of the violation. Using this discretion, the FCC proposed to fine the station \$14,000 for public file violations, \$3,000 for failure to disclose the violations in its license renewal application until requested by FCC staff, and \$3,000 for the station's failure to maintain the accuracy of its license renewal application, for a total proposed fine of \$20,000.

FCC Reduces Fines Based on California Class A TV Licensee's Financial Disclosures

The FCC reduced a series of proposed fines against the licensee of three California Class A TV stations after the licensee submitted financial information showing it was operating at a loss.

Section 73.3526 of the FCC's Rules requires each commercial broadcast station to maintain a public inspection file containing specific information related to station operations. Subsection 73.3526(e)(11)(iii) of the rule requires licensees to prepare and place in their public inspection files a Children's Television Programming Report for each calendar quarter showing, among other things, the efforts made during that three-month period to serve the educational and informational needs of children.

In April 2015, the licensee filed license renewal applications for its three Class A TV stations. In the applications, the licensee disclosed that it had filed after the respective deadlines twelve Children's Programming Reports for one station, and eight Reports for each of the other two stations, for a total of 28 late-filed Reports.

The FCC subsequently issued three Notices of Apparent Liability for Forfeiture ("NAL") against the licensee. The NALs proposed fines of \$9,000 for the station with 12 late-filed Reports, and \$6,000 for each of the stations with eight late-filed Reports, for a total proposed fine of \$21,000.

In response to the NALs, the licensee admitted to the violations, but asserted that the fines should be cancelled because, over the three years preceding the NALs, the stations operated at a loss that "significantly" exceeded their gross revenue. In the alternative, the licensee argued that the fines were excessive and should be reduced, and provided financial information that included its prior three years of tax returns and information regarding the sources of income that support the stations' operations.

Noting that it uses gross revenue as the "primary measuring stick by which to evaluate a licensee's ability to pay," the FCC concluded that the average gross revenue of the stations, as well as other financial information submitted by the licensee about the stations' operations, warranted a reduction in the fines. Accordingly, the FCC reduced the two \$6,000 proposed fines to \$1,500 each, and the \$12,000 proposed fine to \$2,250, for a total proposed fine of \$5,250.

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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