

FCC Enforcement Monitor

June 2020

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HEADLINES

Pillsbury's communications lawyers have published FCC Enforcement Monitor monthly since 1999 to inform our clients of notable FCC enforcement actions against FCC license holders and others. This month's issue includes:

- *Time Off the Air Leads to License Termination for North Dakota Radio Station*
- *FCC Enters Into Consent Decree With Tech Company Imposing \$250,000 Civil Penalty for Unlawful License Transfers and Failure to Disclose a Felony*
- *Virginia Radio Station Faces Proposed \$7,000 Fine and Reduced License Term Over Failure to Timely File its Renewal Application*

The Sound of Silence: North Dakota Radio Station Faces License Termination After Prolonged Period Off-Air

After going off the air and remaining silent due to financial concerns, an FM station's license was revoked for failure to timely resume operations.

Section 73.1740(a)(4) of the FCC's Rules permits a licensee to temporarily discontinue operations for up to 30 days provided that the licensee: (1) notifies the FCC by the tenth day of discontinued operations, and (2) requests authorization from the Commission to remain silent for any period beyond 30 days. However, Section 312(g) of the Communications Act of 1934 provides that a broadcast station's license automatically expires if it does not transmit a broadcast signal for 12 consecutive months. The FCC may extend or reinstate a license terminated by virtue of this provision if doing so would "promote equity and fairness."

On August 15, 2018, the North Dakota licensee took the station off the air due to financial concerns. After several months of radio silence, the station finally requested special temporary authority ("STA") to remain silent on October 30. Despite the delay, the FCC granted the STA for a period of 180 days, cautioning that the station's license would expire as a matter of law if operations did not resume by 12:01 a.m. on August 16, 2019, when the station would reach 12 months of silent status. The Commission also noted that the STA request had failed to meet both the 10-day notification requirement and the 30-day deadline for seeking authorization for discontinued operations. At the end of the authorized 180 days, the licensee sought an extension of the STA, which the FCC granted, again reminding the licensee of the August 16, 2019 deadline to resume operations.

On August 15, 2019, the licensee filed a resumption of operations notice and a related application requesting a license to cover a pending construction permit. Both indicated that the station had resumed operations that day (ahead of the 12:01 a.m. August 16 deadline). A competing broadcaster opposed the application, challenging the licensee's characterization of its operating status. The competitor alleged that the station did not actually go back on air until later on August 18, and therefore the license had expired. In response, the licensee acknowledged that the station did not resume operations on August 15 as previously indicated, citing circumstances beyond its control related to tower crew shortages and weather delays, and requested reinstatement of the station's license.

In deciding whether to extend or reinstate a license that has been automatically terminated under Section 312(g), the Commission considers the facts on a case-by-case basis to determine the "fair and equitable" outcome. However, the Commission has generally refused to reinstate a terminated license when the failure to resume operations resulted from the licensee's own actions, as opposed to a natural disaster or other circumstance outside the licensee's control.

Here, the Commission concluded that the licensee's failure to timely resume operations was more a function of poor planning than circumstances beyond its control. Despite being aware of the looming August 16 deadline, the licensee did not secure a tower crew to perform needed work on its tower and antenna until August 12, among other issues. As a result, the FCC rejected the licensee's attempt to elevate its poor planning to "circumstances beyond its control." The FCC also rejected the licensee's claim that reinstatement was justified due to the station's service to an underserved community. The FCC noted that after the termination, the community was still served by an AM station and two FM translators, along with at least four other AM stations that reached the area. As a result, the FCC declined to reinstate the license.

Lastly, the FCC noted that the broadcaster opposing the license application provided evidence that the licensee had made several false statements to the Commission, including the date on which station operations had resumed. While the FCC declined to further investigate these allegations now, it required that if the licensee or its principals submit any broadcast application within the next five years, they must attach a copy of the decision rejecting reinstatement, at which point the FCC may further assess the allegations.

Unlawful License Transfers Lead to \$250,000 Civil Penalty

The FCC entered into a Consent Decree requiring payment of a \$250,000 civil penalty to resolve an investigation into a technology company's corporate transactions. The investigation concerned the unauthorized transfer of wireless licenses, the use of a wireless license by the transferee without FCC authorization, and the failure to provide accurate information regarding the prospective licensee's qualifications to hold an FCC license.

Section 1.948 of the FCC's Rules requires Commission approval prior to the transfer of control or assignment of a Commission license. In conjunction with this requirement, under Section 1.903 of the FCC's Rules, wireless licensees must operate in accordance with the rules particular to their service and only with valid FCC authorization. In addition, Section 308(b) of the Communications Act of 1934 and Section 1.17 of the FCC's Rules require parties seeking Commission licenses to provide accurate and truthful statements in their applications, including information regarding the prospective owner's qualifications to hold an FCC license. Notably, the application for transfer of control specifically asks whether any parties to the application have been convicted of a felony.

Between 2008 and 2012, the company acquired several FCC license holders, which became subsidiaries of the company. As a result, these acquisitions led to the transfer of control of 28 wireless radio licenses used to support a host of business operations. However, no applications were filed to obtain FCC approval for the transfers until November 2018, when the company notified the FCC by filing remedial applications and waiver requests. These applications were referred to the FCC's Enforcement Bureau for further investigation. In a supplementary filing, the company informed the FCC that its remedial applications had failed to disclose a 2010 felony conviction involving violations of the Foreign Corrupt Practices Act for which the company had paid more than \$19 million in penalties.

To resolve the FCC's investigation, the company entered into a Consent Decree in which it admitted to violations regarding the unauthorized transfer of Commission licenses and the inaccuracy of statements made in the transfer applications. Under the terms of the Consent Decree, in addition to the \$250,000 civil penalty, the company must also implement a three-year compliance plan to prevent future violations.

Failure to Timely File License Renewal Application Leads to Proposed \$7,000 Fine and Reduced License Term for Virginia AM Station

In a recent Memorandum Opinion and Order and Notice of Apparent Liability, the FCC proposed a \$7,000 fine and a reduced two-year license term against a Virginia AM station for (1) failing to timely file its license renewal application, and (2) continuing to operate after its license had expired.

Section 301 of the Communications Act of 1934 prohibits the transmission of radio signals without proper authorization. With respect to broadcast station licenses, Section 73.3539(a) of the FCC's Rules requires that license renewal applications be filed four months before the station's license expiration date. A failure to file results in expiration of the license without renewal.

Because the license was originally set to expire on October 1, 2019, the licensee was required to file its application for renewal on June 3, 2019. Because no renewal application was filed, on October 2, 2019, the FCC notified the licensee that its license had expired, that all authority to operate the station had been terminated, and that the station's call letters had been deleted from the Commission's database.

Following receipt of this notice, on October 30, 2019, the licensee filed a license renewal application and a Petition for Reconsideration seeking reconsideration of the license cancellation. It also submitted a request for special temporary authority ("STA") to continue operating pending review of the renewal application. On November 7, 2019, the STA request was granted, providing temporary authority to operate through May 7, 2020. In seeking to justify the late filing of the license renewal application, the station stated that around the time of the June 2019 filing deadline, its sole shareholder suffered a stroke. He subsequently died in August 2019.

Upon its review of the license renewal application, the FCC determined that the licensee failed to timely file its renewal application and violated Section 301 of the Communications Act by operating the station for several weeks after its license expired before filing the STA request. While the FCC's rules establish a base fine amount of \$3,000 for failure to file a required form, and \$10,000 for unauthorized operation, ultimately the Commission may adjust a fine upward or downward based on the facts of a particular case. The FCC proposed a downward adjustment to \$4,000 for the unauthorized operations, noting that because the station had previously been licensed, the violation was not comparable to "pirate" radio operations, which have garnered fines of \$10,000 and higher.

In addition to the \$7,000 proposed fine (\$4,000 for unauthorized operation and \$3,000 for failure to file a timely renewal request), the FCC concluded that a short-term license renewal term of two years, rather than the full eight years, was appropriate, explaining that while the station's actions did not quite amount to "serious violations", additional measures were needed to ensure the licensee's future compliance with its legal obligations.