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## FCC Enforcement Monitor

By Scott R. Flick, Jessica Nyman and Joseph Cohen\*

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### *Headlines:*

- *FCC Enforcement Bureau and Long-Distance Provider Agree to \$100,000 Settlement for Violations of FCC's Rural Call Completion Rules*
  - *FCC Cancels \$3,000 Fine Against TV Licensee for Untimely Kidvid Filings, Upholds \$10,000 Fine for Missing Issues/Programs Lists*
  - *FM Construction Permit Auction Winner Fined \$3,000 For Late Application*
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### **Dropped Call of the Wild: Investigation of Rural Call Problems Ends With \$100,000 Consent Decree**

The FCC's Enforcement Bureau entered into a Consent Decree with a Utah-based long distance carrier to resolve an investigation into whether the carrier failed to sufficiently respond to a rural customer's complaints of poor call quality and failed to cooperate with the FCC's resulting investigation.

The FCC has adopted several "Rural Call Completion Rules" in recent years to address poor call quality and call completion problems in rural and other high-cost areas. The Commission clarified in a 2012 declaratory ruling that a carrier violates Section 201 of the Communications Act of 1934 when it knows or should know that calls are not being completed to certain areas and fails to correct the problem or fails to ensure that its intermediate providers correct the problem.

The FCC has also determined that practices that allow lower quality service to rural or traditionally high-cost areas to persist constitute unjust or unreasonable discrimination (based on locality) in violation of Section 202 of the Communications Act. Further, the FCC has interpreted Section 208 of the Act and Section 1.717 of the Commission's Rules to require that a carrier satisfy (or adequately explain why it cannot satisfy) any informal rural call completion complaints.

In December 2014, a consumer filed an informal complaint with the FCC detailing ongoing problems with receiving work calls. The calls were sent over the carrier's long distance network to the consumer's home office, which is served by an intermediate rural local exchange carrier. The carrier investigated the matter and explained in its response to the informal complaint that (1) the consumer had not responded to a follow-up email about the complaint, and (2) the consumer was not its customer.

The carrier took action in March 2015—after the FCC reminded the carrier of its obligations to address rural call quality problems—but the problem recurred. The consumer subsequently filed additional complaints alleging continued call problems in May and June of 2015. Finding that the carrier failed to sufficiently address and resolve the call quality problems with its intermediate provider until late July 2015, the FCC issued a Letter of Inquiry to the carrier and opened an investigation.

To settle the matter, the carrier entered into a Consent Decree with the FCC, wherein the carrier: (1) admitted that it failed to ensure call quality from its intermediate providers and that it did not cooperate with the FCC's investigation; (2) agreed to pay a \$100,000 civil penalty; and (3) agreed to implement a compliance plan going forward. As part of the plan, the carrier must establish operating procedures and training on the Rural Call Completion Rules, and file regular compliance reports with the FCC during the three-year compliance period.

### **Island Jam: Guam TV Station Successfully Appeals Proposed Fine for Late Kidvid Reports, But Remains on the Hook for Issues/Programs List Violations**

The FCC's Media Bureau cancelled a proposed \$3,000 fine against a Guam TV licensee for failing to timely file five Children's Television Programming Reports, but upheld a \$10,000 fine against the licensee for failing to place fifteen Quarterly Issues/Programs Lists in the station's public inspection file. The FCC also admonished the licensee for its failure to upload copies of its Quarterly Issues/Programs Lists that were in the station's local file prior to August 2, 2012.

Section 73.3526 of the FCC's Rules requires each commercial broadcast licensee to maintain a public inspection file containing specific information related to station operations. Subsection 73.3526(e)(11)(i) requires each commercial TV licensee to place in its public file, on a quarterly basis, an Issues/Programs List that details programs that have provided the station's most significant treatment of community issues during the preceding quarter. Additionally, Subsection 73.3526(e)(11)(iii) requires each commercial TV licensee to file a quarterly Children's Television Programming Report that includes the "efforts (the Licensee) made . . . to serve the educational and informational needs of children." In 2012, the FCC adopted Subsection 73.3526(b)(2) of the FCC's Rules, which requires TV licensees to upload public file documents, including the Quarterly Issues/Programs Lists, to an FCC-hosted online public file. The rule required TV broadcasters to upload new documents on a going-forward basis beginning August 2, 2012, and established a February 4, 2013 deadline to upload documents that were in the local file prior to August 2, 2012.

On September 29, 2014, the licensee filed its license renewal application, triggering an FCC review of the licensee's other filings with the Commission. Upon inspection, the FCC staff was unable to locate five Children's Television Programming Reports. After conducting an internal investigation, the licensee disclosed that it had also failed to place copies of fifteen Issues/Program Lists in its public file.

In response to the FCC's resulting Notice of Apparent Liability for Forfeiture ("NAL"), the licensee produced evidence showing that the five Children's Programming Reports were either correctly filed or were excused for technical online filing reasons. Accordingly, the FCC cancelled the proposed \$3,000 fine relating to these alleged violations.

With respect to the missing Issues/Programs Lists, the licensee argued that it should not be held liable for Lists that were not placed in the station's file prior to February 12, 2013, contending that ownership of the station changed at that time when the FCC approved a long-form transfer of control of the station followed by a pro forma short-form license assignment application. The licensee argued that because it had not filed

a consummation notice for the long-form transfer of control, the two transactions taken together constituted a long-form assignment of license, severing liability.

Rejecting the licensee's arguments, the FCC first explained that a long-form transfer of control and a pro forma license assignment do not comprise an effective long-form assignment. In addition, the FCC stated that a pro forma assignment of license following a long-form transfer of control does not relieve the licensee of liability for violations during the license term. In any event, the licensee had since filed a consummation notice for the long-form transfer of control, rendering the argument moot. The FCC therefore upheld the \$10,000 fine for the 15 missing Issues/Programs Lists, and also admonished the licensee for its failure to timely upload the Lists to the online file.

### **Time Out of Mind: Late-Filing FM Construction Permit Bidder Avoids Default But Must Pay Fine**

The FCC's Media Bureau fined an Arkansas broadcast construction permit bidder \$3,000 for failing to timely file a post-auction Form 301 long-form application after submitting a winning bid to construct a new FM broadcasting facility.

Subsection 73.3573(f)(5)(i) of the FCC's Rules requires a winning bidder of a new construction permit for an FM broadcast station to submit a long-form application within 30 days of the "release of the public notice announcing the close of the auction." Subsection 73.5005(a) of the Rules requires a winning bidder to electronically submit a completed Form 301. Though failure to timely file can lead to a determination of default and dismissal of a winner's bid, Section 73.5005 provides that the FCC may, for good cause, determine that a late-filed long-form application should be accepted.

Auction winners were required to submit their long-form applications by May 29, 2012. The bidder submitted his application nearly a month late, on June 20. To avoid default and dismissal of his winning bid, the bidder requested a waiver of the filing deadline, explaining that negotiations for the intended construction site fell through.

The FCC subsequently issued a Notice of Apparent Liability for Forfeiture ("NAL") for the late filing. Although the FCC found good cause to grant the deadline waiver request, the FCC ultimately concluded that the bidder violated Subsections 73.3573(f)(5)(i) and 73.5005 of its Rules and could be liable for a civil penalty.

In response to the NAL, the bidder presented several mitigating causes for the delay. First, the bidder reiterated his claim about the failed transmitter site negotiations. He also stated that he was unavailable around the filing deadline because he had accompanied his wife for her out-of-state cancer treatment in late May 2012. Additionally, he said that he confronted technical difficulties when he eventually attempted to file online on June 18, 2012. Finally, the bidder claimed that he was unaware of the penalty for late filing altogether because he lacked legal representation.

The FCC declined to accept any of the excuses. It stated that the bidder should have already submitted the long-form application by the time he found out about the transmitter site problem. The FCC further noted that the bidder did not mention his travel plans in his initial waiver request even though he had likely been aware of them for some time. The FCC also found that the bidder was not able to electronically file on June 18, 2012 because the filing period had closed and the system was no longer accepting applications from the auction in which he participated. The FCC concluded by stating that even if the bidder's statements were taken at face value, the bidder made no attempt to file the application until (at the earliest) three weeks after the deadline.

The Commission levied a \$3,000 fine for the violations, the statutory base amount for failure to file a required form.

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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 below.

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