



Virginia Association of Broadcasters Legal Review



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Legal Memorandum

*** Eye on FCC Enforcement Edition ***

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In this memo, we highlight a number of recent high-profile FCC enforcement actions, each of which serves as a reminder to licensees of the importance of regulatory compliance—and of the costly consequences that can result when broadcasters fail to follow the Commission's rules.

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Broadcaster Agrees to Pay Seven-Figure Penalty to Settle Allegations of Violations of FCC's Antenna Safety Rules

A broadcaster agreed to pay more than a million dollars as part of a [Consent Decree](#) (the "Consent Decree") entered into earlier this month to resolve multiple alleged violations of the Commission's various antenna safety rules. The Consent Decree deals with eleven antenna

structures located across the United States (in Kentucky, Louisiana, Texas, and California). According to the Enforcement Bureau, the prior owners of these antenna structures failed to: conduct required daily inspections of the lighting systems of ten of the antenna structures; completely log twelve lighting failures at seven of the antenna structures; and timely notify the Commission of its acquisition of two antenna structures. (Note that the broadcaster that agreed to pay the penalty of \$1.13 million was not the owner of the antenna structures at the time of the alleged violations; that broadcaster, however, is the owner/licensee of the structures now.)

Language in the Consent Decree reminds broadcasters of how seriously the Commission, as well as the FAA, take antenna safety requirements (lighting and otherwise); the Consent Decree notes that consistently monitoring these requirements are “potentially life-saving measure[s] critical to” both air traffic and public safety.

The Enforcement Bureau in the Consent Decree takes the opportunity to remind broadcasters of the requirements in the Communications Act that licensees “maintain the painting and/or illumination” of their tower(s) as provided by the Commission’s rules. More specifically, the Consent Decree reminds owners of certain antenna structures (e.g., those structures more than 200 feet above ground level and/or otherwise subject to the lighting specifications referenced in Part 17 of the Commission’s Rules) that they are required:

- To monitor the status of a structure’s lighting system by either:
 - observing the antenna structure’s lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights; or
 - providing and properly maintaining an automatic alarm system designed to detect any failure of such lights and to provide indication of such failure to the owner.
- To maintain for two years a record of any observed or otherwise known extinguishment or improper function of a structure light, including
 - the nature of the extinguishment or improper functioning,
 - the date and time the extinguishment or improper operation was observed or otherwise noted,
 - the date and time of FAA notification, if applicable, and
 - the date, time, and nature of adjustments, repairs, or replacements made.
- For owners of an antenna structure for which an Antenna Structure Registration Number has been obtained, to notify the Commission within 5 days of any change in structure height or change of ownership information.

In addition to paying the hefty penalty, the broadcaster that now owns the antenna structures at issue agreed to develop and implement a compliance plan designed to ensure future compliance with the Commission’s rules regarding each antenna. The Enforcement Bureau states in the Consent Decree that it believes the penalty and compliance plan will “help promote aviation safety near antenna structures.” Broadcasters would be well-advised to take the Commission’s words and actions to heart by reviewing and continuing to implement required antenna safety protocols.

Station Loses License Over Failure to Pay Regulatory Fees

As broadcasters know, holding an FCC license is a privilege, not a right. It's a reminder made plain thanks to a recent Commission [Revocation Order](#) (the "Order"), in which a Georgia broadcaster had its license to operate an AM radio station revoked for failing to timely pay regulatory fees across five fiscal years—FY 2010, FY 2013, FY 2016, FY 2017, and FY 2018.

The FCC's rules and the Communications Act make clear that a licensee's "failure to pay *any* regulatory fee, related interest or penalties, or any portion thereof is grounds" for the Commission to revoke a station's license. In the Order, the Commission decided to exercise that authority to revoke the Georgia broadcaster's license, in part, because the licensee failed to pay *any* of its delinquent regulatory fees despite multiple demand letters, letter notifications from the FCC's Media Bureau, and a recent Order to Show Cause issued by the Media Bureau. Indeed, the licensee did not even respond to the recent Order to Show Cause (maintaining "radio silence," as it were).

The FCC rarely exercises this sort of "death penalty." The Order, however, serves as a reminder of the extent of the Commission's authority over licensees.

NCE Licensee Admits Violating FCC's Underwriting Rules; Agrees to Pay \$76,000

Commercial broadcasters aren't the only ones who the Enforcement Bureau has targeted lately. A licensee of two noncommercial educational broadcast stations ("NCEs") in Arkansas recently agreed to pay \$76,000 and to put in place a five-year compliance plan as part of an [Order and Consent Decree](#) (the "Consent Decree") in which the broadcaster admitted that its stations had broadcast announcements that violated the Commission's underwriting rules by promoting products, services, or business of the stations' financial contributors.

As broadcasters are well aware, NCE's cannot air commercial advertising. They can, however, identify on-air entities that donate to the station. NCEs must at times make difficult decisions as to whether the on-air copy identifying a particular donor crosses the line from mere identification into impermissible, commercial promotion. The Commission has articulated several general principles to help NCEs identify the lines set by the underwriting rules. Announcements may not: (1) promote an entity's businesses, products, or services; or (2) contain comparative or qualitative descriptions; price information (sales or discounts); calls to action; inducements to buy, sell, rent, or lease; or excessively detailed "menu listings" of services offered by the entity.

The NCE stations targeted by the Consent Decree crossed those lines. Although the Consent Decree provides little factual context for the alleged violations committed by the Arkansas stations, a copy of the complaint that sparked the enforcement action reveals multiple potential violations of the Commission's underwriting rules. Across the eighteen on-air announcements cataloged in the complaint, several announcements expressly mentioned local vendors' specific product (i.e., model) inventory, the length of several products' warranties, and statements that the

products were designed to help consumers “all year long,” were “the most award winning” amongst peer products, or were “the most customizable . . . on the planet.” Other announcements explained that the donor’s services were “here for [the consumer’s] needs” or “famous” for being great, with a “97 percent satisfaction rating.” Under the terms of the Consent Decree, the Arkansas licensee has now formally admitted that those announcements violated the Commission’s underwriting rules.

The Consent Decree serves as a good reminder to NCEs regarding their obligation to merely identify—rather than promote—any donors. And, for all broadcasters, the case proves that the Enforcement Bureau will not shy away from investigating what it perceives as genuine complaints alleging violations of the Commission’s rules.

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