July 30, 2020

Legal Memorandum

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# Media Bureau Sending Proposed Consent Decrees to Many Radio Stations Just Days After Entering Into Consent Decrees with Six Large Radio Station Groups to Resolve Numerous Political File Violations

We have learned that many radio broadcasters across the country whose recent license renewal applications have yet to be granted (or denied) have begun receiving correspondence from the Media Bureau, which correspondence includes a proposed consent decree (i.e., a settlement agreement) regarding purported political file violations for each licensee to review and consider. Based on the correspondence we have reviewed from the Media Bureau to numerous stations, it appears that the Media Bureau is targeting stations of all sizes that were not able to affirmatively certify in their license renewal applications full complianc with the Commission’s political file recordkeeping rules during the preceding license term—including in cases where the station at issue has very few political advertising orders.

First: To the extent your station has received such correspondence from the Media Bureau, **PLEASE DO NOT RESPOND TO THE FCC AND ACCEPT THE TERMS OF THE PROPOSED CONSENT DECREE WITHOUT FIRST TALKING TO YOUR FCC LAWYER!**  Once you accept the terms of the “consent decree,” you will likely be on the hook for additional obligations, including the development, implementation, and execution of a compliance plan, and the filing of compliance reports with the FCC.

The industry has begun discussing whether there is a way to go back to the FCC on this issue to find another path forward.  Whether those efforts will be successful is unknown at this point, but at this juncture we counsel caution on immediately accepting the initial terms of the FCC’s consent decree proposals without first talking to your FCC counsel.

For more context, please continue reading.

The Media Bureau’s correspondence comes just days after the Commission [announced](https://protect-us.mimecast.com/s/f6j9Co2KPEtrXBmnt11Cgfu?domain=docs.fcc.gov) that six large radio station groups have admitted to a substantial number of political file violations and entered into their own consent decrees (the “Six Consent Decrees”) with the Commission to resolve those violations. More information on the Six Consent Decrees is below.

*The Media Bureau’s Correspondence This Week to Radio Stations*. It appears that the Media Bureau’s correspondence this week is being sent to radio station licensees whose renewal applications have effectively been “on hold” since they were filed (in 2019, and, presumably, early 2020) due to the Commission’s efforts to resolve in a somewhat consistent manner what the Commission seems to consider widespread, industry-wide deficiencies in political file recordkeeping.

Below is an example of the kind of correspondence we have seen from the Media Bureau:

Dear Sir/Madam:

This correspondence concerns the pending license renewal application filed by [LICENSEE], licensee of Station [CALL LETTERS/COMMUNITY OF LICENSE/FACILITY ID].

The Audio Division of the FCC’s Media Bureau has suspended processing of the above-referenced applications due to [LICENSEE]’s failure to affirmatively certify compliance with its public file obligations in section 73.3526 of the Commission’s rules.   *See* Section III, Question 3, of each application.  Audio Division staff determined that the Station(s)’ public file deficiencies relate to noncompliance with the Commission’s political file requirements.

The Media Bureau proposes to resolve this matter by providing [LICENSEE] with the opportunity to voluntarily enter into the attached settlement agreement (also called a Consent Decree), which will allow the Audio Division to resume processing of the license renewal applications.  Pursuant to the proposed Consent Decree, [LICENSEE] must, among other things, demonstrate compliance with the Commission’s political file rules by submitting compliance reports for a specified period of time.  I have enclosed additional information regarding these compliance reports.

Please confirm immediately, by email, your receipt of this correspondence.  Entering into this settlement with the Media Bureau is voluntary.  However, your failure to execute and return the Consent Decree within the time requested may result in the commencement by the Media Bureau of enforcement action including monetary penalties based on the violations noted above.  Moreover, until this enforcement matter is resolved, your license renewal application will not be granted and will remain pending.  Finally, because substantial portions of the proposed Consent Decree are time sensitive, we request that you sign and return it no later than Monday, August 10, 2020.  We do not envision circumstances under which the terms of the attached Consent Decree will be altered.

As noted above, we strongly suggest that you contact your communications counsel immediately in the event you have received similar correspondence to discuss how to proceed.

Even if your station has not recently filed a renewal application, or has recently had a renewal application granted, the Media Bureau’s actions serve to reemphasize the importance of proper adherence to the Commission’s political file recordkeeping rules.

*The Six Consent Decrees*. As mentioned, this week’s activity comes on the heels of the Commission’s [announcement last week](https://docs.fcc.gov/public/attachments/DOC-365684A1.pdf) that six large radio station groups have admitted to a substantial number of political file violations and entered into consent decrees with the Commission to resolve those violations.

Taken together, the radio station groups that are the subject of the Six Consent Decrees are the licensees of, own, and/or operate approximately 1,884 radio stations across the United States. In the case of all but one radio station group, the Six Consent Decrees indicate that the licensees discovered and self-reported to the FCC that “many of [their] stations had not routinely been uploading records of requests for the purchase of political broadcast time in a timely manner.”

According to license renewal applications filed thus far by the groups (which applications require renewal applicants to certify that they have complied with the FCC’s OPIF rules, including the political file rules), political file compliance across the groups fell as low as approximately 6% in the case of three groups’ stations currently seeking license renewal.

After a corresponding FCC investigation, each station group informally agreed to adopt consistent operating procedures pertaining to political file obligations across all their stations and to monitor and report compliance across a five-week period that ran through the end of March 2020. Upon the groups’ successful completion of the reporting period—and marked improvement in compliance, with each group attaining above 90%—the Media Bureau and the station groups negotiated the Six Consent Decrees.

*The terms of the Six Consent Decrees*. To help the station groups prevent future political file violations, the Six Consent Decrees specify that within 90 days each station group must develop and implement a compliance plan designed to ensure compliance with the political file rules. Among other things, the compliance plans must “include internal procedures and policies specifically designed to ensure that . . . Stations upload all required information to their online political files in a timely manner and otherwise maintain full, complete, and up to date information therein.” Additionally, each station group must submit at least two compliance reports, by December of 2020 and 2021, respectively, detailing compliance across the months prior to each year’s general election.

Notably, the Six Consent Decrees decline to impose a monetary fine on any of the station groups. However, the FCC’s self-described “exercise of prosecutorial discretion” primarily rests on “the exceptional circumstances brought about by the COVID-19 coronavirus pandemic,” given that “this period has placed the radio broadcast industry as a whole under significant financial stress from a dramatic reduction in advertising revenues.” Thus, the takeaway for broadcasters should **not** be that the Commission is currently taking a permissive stance toward political file violations—if anything, the wording of the Six Consent Decrees suggests that the Commission will again impose stringent monetary fines once the COVID-19 pandemic subsides and unless similar “exceptional circumstances” are presented by a violation.

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*Tim Nelson, Editor*

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This Legal Review should in no way be construed as legal advice or a legal opinion on any specific set of facts or circumstances. Therefore, you should consult with legal counsel concerning any specific set of facts or circumstances.

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