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Legal Memorandum

*“Eye on FCC Enforcement” Edition*

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FCC Limits Several Recent Radio Station License Renewal Grants to One‑Year Terms Due to Lengthy Periods of Station Silence

Two recent FCC Orders and Consent Decrees (the “[First Order](https://protect-us.mimecast.com/s/XLJ-Cn5XPDHGKOPqI9Pbp8P?domain=docs.fcc.gov)” and “[Second Order](https://docs.fcc.gov/public/attachments/DA-22-772A1.pdf)”, and collectively the “Orders”) highlight the importance of broadcast licensees’ adherence to regular station operating schedules. Specifically, the several stations subject to the Orders suddenly find themselves with truncated, one-year license renewal grants due to significant periods of station silence throughout the preceding license term.

*Background*. Generally, the FCC grants radio and television station license renewals for 8-year terms. As each license term ends, licensees must apply to the FCC for license renewal. The Commission then reviews filed license renewal applications to determine, among other things, whether: (1) the station has served the public interest; (2) the licensee has committed any serious violations of the FCC’s Rules or the Communications Act of 1934, as amended; and (3) there have been other violations sufficient to constitute a “pattern of abuse.” A station’s continuous broadcast operation is an important part of this standard—the FCC has made clear that significant periods of station silence throughout a license term place “a very heavy burden” on the licensee to successfully demonstrate that the station has served the public interest. Put succinctly: a silent station typically cannot be serving the public interest because, while silent, the station offers no over-the-air public service programming to its listening or viewing community; moreover, short periods of operation between times of silence are of little value because the station’s local audience generally will not be accustomed to regularly tuning in. (*Note:* Extended periods of silence are also discouraged—and may raise significant problems—under other provisions of the Communications Act of 1934, as amended, including Section 312(g). Under that provision, a station’s license **automatically expires by operation of law** in the event the station is silent for any consecutive 12-month period.)

Where the Commission determines that a licensee fails to meet the renewal standard set forth above, the FCC may take several different actions in place of the customary 8-year renewal grant. For instance, in severe cases the FCC may deny the renewal application (after notice and opportunity for a hearing). The FCC may also grant the renewal application on terms and conditions that are “appropriate,” including renewal for a shortened license term and/or subject to additional compliance obligations.

*The Orders.* The Orders demonstrate the FCC’s continued vigilance and adherence to its policy against granting full-term license renewals for stations with extended periods of silence or minimal operation throughout the license term, even when periods of silence have otherwise been approved by the Commission in the form of grants for special temporary authority to remain silent (i.e., silent STAs). The First Order addresses a single Oklahoma AM station that was silent for approximately 50% of its prior license term (split across four periods of silence, three of which were nearly twelve months long). The Second Order addresses the licensee of seven Texas FM stations, each of which was silent for approximately 25% of the prior license term, with many of the seven stations silent for significant portions of the time between when the renewal applications were filed and the Order was released. In most cases, the periods of silence were pursuant to silent STAs at the time.

Citing these long periods of silence, and invoking the FCC’s authority to grant license renewals for less than the customary 8-year term, the Orders grant each station a limited 1-year renewal term. The shorter terms are designed to allow the Commission to review each station’s public interest performance and compliance over the shortened renewal term and, thereafter, for the FCC to take any necessary corrective actions. (The Orders also indicate that each station failed to timely upload various quarterly issues/programs lists to the online public inspection file during the preceding license term. Accordingly, the licensees entered in to Consent Decrees with the FCC imposing additional online public inspection file compliance and reporting obligations over the coming year.)

*The Takeaway*. Broadcasters should be mindful of their station’s operating history and any extended periods of station silence throughout the license term. Although there are a number of reasons why a station may need (or simply elect) to go silent for a period of time (change of format, technical issues, moving to a modified site location, etc.), licensees should consider carefully that a long silence, even with requisite FCC approval, could impact the eventual license renewal process.

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Failed Station Sale Draws $1,500 Penalty Due to

Unauthorized Transfer of Control

A recent [Memorandum Opinion and Order and Consent Decree](https://docs.fcc.gov/public/attachments/DA-22-645A1.pdf) (the “Opinion and Order”) serves as a cautionary reminder of the requirement to apply for and receive FCC consent prior to selling, buying, or otherwise altering a controlling ownership interest of the licensee of a broadcast station.

*Background.* Subject to extremely limited exceptions (such as the death or legal disability of a licensee), the Communications Act of 1934, as amended, as well as FCC Rules prohibit the transfer or disposal, by any means, of an FCC construction permit or license unless the current licensee first applies for permission to do so from the Commission.

In the case targeted by the Opinion and Order, in July 2017, the licensee of a New Mexico FM station entered into an agreement to sell the station subject to various payment terms and schedules. According to relevant FCC filings made by the licensee, the licensee allegedly relied on the buyer’s representations that he was knowledgeable of FCC Rules regarding station sales and transfers of control and would handle the necessary FCC filings for the sale. The buyer moved the station assets to his facility and began operating the station despite the fact that neither party had applied for FCC consent to the change in station control. Ultimately, the station sale fell apart, prompting ongoing litigation between the buyer and seller regarding ownership of the station and return of the station assets. However, from mid-2017 until March 2018 (when the licensee filed for special temporary authority to remain silent until ownership issues could be resolved), the buyer apparently operated the station without licensee oversight, and without required FCC consent to the transfer of control.

*The Opinion and Order’s Decision.* The circumstances underlying the Opinion and Order were brought to the FCC’s attention due to a procedurally defective Petition to Deny filed by the would‑be buyer against the station’s license renewal application. (In his filing, the buyer asserted multiple alleged reasons why the FCC should deny the station’s renewal application, including the mid-2017 unauthorized transfer of control.) Although the Order and Opinion determines that the buyer’s claims lack merit in most regards, it nonetheless assesses a $1,500 penalty against the licensee for violation of the FCC Rule requiring prior Commission consent to any transfer of station control.

*The Takeaway.* It is vitally important that FCC consent is received prior to any sale or transfer of station assets. If the parties to a sale want the buyer to undertake certain of the station’s operations before a sale is final there are, of course, ways to facilitate such an arrangement while the current owner maintains control. However, the current station licensee must at all times retain ultimate operational control over the station. Moreover, the current station licensee is ultimately responsible for adhering to all FCC Rules regarding operation and transfer of the station and cannot rely on another’s representations to alleviate the licensee’s independent duties to the Commission. Given the foregoing areas of concern, consultation with legal counsel is advisable in the event of any station sale or transfer.

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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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