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Focus on FCC Fines

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Radio station neighbors hear “voices” – The FCC requires stations to satisfy all complaints of blanketing interference during a one-year period that begins with the station’s commencement of program tests. Neighbors of AM stations in Wyoming and Wisconsin were unaware of the one-year time limit and complained to the FCC about the nearby stations. But since both stations have been operating for more than a year, the rule no longer applied.

A Wyoming woman complained that every phone in her house experienced interference and broadcast the signal of a neighboring AM station. In another case, a veterinary clinic next to a Wisconsin AM claimed that it could not use its phones or send ultrasound or ECG images over its phone lines. In both cases, the FCC pointed out that the stations had been operating for more than a year, the blanketing interference rules no longer applied and the complaints were denied. However, in the Wisconsin case the FCC noted that after the complaint was filed, the station had modified its license; the FCC cautioned the station that the one-year period began again with the modified license. Also in both cases, the Commission included as an appendix to its decision a set of examples and guidelines relative to dealing with blanketing complaints. While the appendix makes clear that a station targeted by a complaint is financially liable only within the one-year period (and only if certain other conditions are met), stations are *still* expected to cooperate with complainants *after* the one-year period. While such cooperation is required by the Commission under some conditions, such cooperation may be prudent even if it is *not* technically required: after all, time and effort spent on solving a potential complainant’s beef may serve to avoid the delay and expense of dealing with the Feds if the complainant takes the matter to the FCC.

Board of directors cause \$5000 fine – Federal law prohibits more than a 20% foreign ownership or voting interest in a broadcast licensee. The import of this law is easily calculated by companies whose “ownership” is based on shares of stock or membership interests. However, some non-profit broadcasters may overlook the restriction because they are non-stock entities governed by a board of directors. In such cases, the entity is technically not “owned” by anybody, but is controlled by the board – and the FCC views the board to be “owners” for purposes of the alien ownership rules. A Texas non-commercial station found out about this the hard way when it turned out that two of its board members were foreign citizens.

The station was governed by a six-person board. One of those board members was a foreign citizen representing one out of six votes (or 16.7% control). However, for a two-year term, another foreign citizen also was elected to the board. The election of the second board member gave foreign nationals two out of the six votes, for an aggregate foreign vote exceeding the 20% control maximum. While the FCC noted that it could revoke a license for such a violation, it fined the non-profit station \$5,000 instead. Each licensee (whether non-profit or for profit) should bear the 20% limitation in mind when reviewing its corporate control structure, and especially when the licensee plans to include a foreign citizen in that structure.

Children’s programming age information must be circulated – The FCC requires television broadcasters to notify publishers of program guides about which shows are designed for kids *and* the age groups that those shows target. When renewing their licenses, television broadcasters must certify that they are complying with this and other children’s programming rules. Several Massachusetts stations admitted to the FCC that, while they *had* been providing programming information to publishers, they had omitted the age group information. The stations also pointed out that the print guides usually do not publish the information anyhow. The FCC was not persuaded by the “nobody is using it” excuse, notwithstanding the compelling logic of that excuse – after all, if it is clear that providing certain information (like target age groups) is a completely meaningless activity because the publishers to whom that information is given simply ignore it, what purpose is served by requiring broadcasters to provide the information in the first place? Fortunately for the stations involved, the Commission ultimately declined to whack them with a fine, choosing instead simply to admonish them (although the FCC did shake its regulatory finger sternly at the licensees and warned them that, if there is a next time, “severe sanctions” would not be ruled out).

On the topic of children’s programming rules, the juggernaut of FCC fines against licenses churns on inexorably. The same renewal applications requiring disclosure of the age group information discussed above also require disclosure if time limits are violated. More than a dozen licensees were fined between \$4,000 and \$15,000 this month after they fessed up about commercial violations during children’s programs. Three licenses were merely admonished when the FCC found that “inadvertence” led to one or two violations.

The homeless run my CB – We close this month with the story of a Texas man who apparently used his CB radio to rebroadcast a local AM station. The man was quickly discovered when, of all the channels he could have used, he chose CB channel 19 to rebroadcast the radio. FCC agents showed up at the man’s home and demanded they be permitted to inspect the CB radio. The man refused to let the G-men into his house, although (discretion being the better part of valor) he did go inside and turn off the CB.

A few months after the incident, the FCC sent the man a letter and proposed a \$7,000 fine. Curiously, the man denied that the CB had been on when the agent arrived. And then, in a textbook illustration of “pleading in the alternative” (a technique occasionally taught in law school – think “I didn’t break your window, and if I did, I didn’t mean to, but in any event, there was a good reason for me to break it”), the man claimed that if the CB had in fact been left on, it

likely was turned on by homeless people who the man supposedly allows to roam about his house. The FCC did not buy the explanations and upheld the \$7,000 fine.