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## **Focus on FCC Fines**

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***Checking box on FCC form costs \$10,000*** -- When it comes to filling out renewal applications and standard FCC forms, there may be a temptation to let your eyes glaze over when staring at lengthy questions followed by either a “Yes” or “No” box. *Don’t succumb to that temptation!!!* Pay attention, make sure that you understand the question and, perhaps most importantly, make sure that you are 100% that your answer (whether it’s “Yes”, “No” or “N/A”) is absolutely correct. Failure to do so – even if your failure is innocent – can cost you \$10,000 or more. Cumulus and a New York religious broadcaster were hit with the fines this month for checking the wrong box.

Cumulus was stung with a \$20,000 fine for two stations. In its 2003 renewal applications for two stations in Florida and Georgia, it checked the box claiming that the stations’ public files contained all required materials. Objections were filed in 2003-2004 claiming that the public files were not complete; Cumulus denied the charge. In 2006, an FCC inspector from the Enforcement Bureau determined that the public files were not complete and fined Cumulus \$4,000 a piece for each station. Cumulus objected, claiming that its files were complete and, at most, it had innocently misinterpreted the public file rule. Nevertheless, the Enforcement Bureau hung tough with the \$4,000 fines, and Cumulus paid them.

However, the fines did not end there. The Media Bureau turned around and whacked Cumulus with two \$10,000 fines for checking the “Yes” box on each renewal application. The Media Bureau reasoned that, since the public files had apparently not been complete (at least that’s what it concluded from the Enforcement Bureau action), then Cumulus’s “Yes” answers constituted “false certification”. The FCC chose to renew the Cumulus applications (likely disappointing the person who filed the initial objection to renewal) because it could find no evidence of an intent to deceive – but the fact that the answers were wrong was enough to justify a \$20,000 spanking. (More detailed discussion of the Cumulus case may be found on our blog at [www.CommLawBlog.com](http://www.CommLawBlog.com) – see “\$20,000 Fine for False Certification”.)

A New York City religious broadcaster faced a similar circumstance. A September, 2005, FCC inspection of the station turned up problems with the station’s public file. The station contested the inspection, arguing that its public file was complete. During the drawn-out debate between

the FCC and the station, the station submitted its renewal application in January, 2006, and checked the “Yes” box claiming that its public file had been in order. Eventually, in July, 2006, the FCC insisted that its inspection was correct and fined the station \$4,000. This month the FCC got around to renewing the station’s license but, because the station had marked “Yes” relative to the completeness of its public file when the licensee knew that at least somebody at the FCC disagreed with that answer, the Commission fined the station an additional \$10,000.

These cases appear to reflect a shift in Commission policy. Historically, the FCC was most concerned about misrepresentation, *i.e.*, efforts by applicants to intentionally deceive the Commission. Occasional, non-deceitful mistakes might warrant a “tut, tut”, but seldom was significant punishment meted out. These recent actions, however, suggest that mistakes may be penalized even if they were made innocently. This underscores the need for extreme care in the preparation of anything (including seemingly simple “yes/no” forms filed electronically) that is to be submitted to the Commission.

***FCC goes after former licensees*** – Selling or shutting down a station does not stop the FCC’s efforts at collecting fines from licensees. Former licensees in Virginia and California discovered this after they ceased operation but ended up with bills from the FCC.

In May, 2006, an AM licensee in rural Virginia agreed to sell his station for \$25,000. The very next month, the FCC inspected the station and found problems with the EAS equipment and public file. The licensee filed an application to sell the station and the application made its way through the FCC, eventually getting granted on October 12, 2006. Eight days later, after the licensee already had consummated the \$25,000 sale and no longer was a licensee, the FCC presented the now former licensee with an \$18,000 bill for the EAS and public file violations. The FCC was not receptive to the former licensee’s claim that the fine would pose a financial hardship; the FCC knew that the station had just been sold for \$25,000. Net gain to the seller – \$7,000; gain to the FCC - \$18,000. (Note that it is not clear that the FCC had the statutory authority to go after the former licensee in the manner that it did – the fine/forfeiture provisions of the Communications Act are somewhat arcane on this point. However, it does not appear that Mr. Former Licensee raised this potential objection.)

A community organization that held a low power TV license in California forgot to renew its license but nonetheless continued to operate its station for several months after expiration. The FCC sent the organization a letter advising it of the lapsed license. In response, the station wrote back to tell the FCC that while it did operate for a while after the license had expired, its transmitter failed. After that failure, the organization chose to shut down rather than replace the broken equipment. The FCC was not swayed by the organization’s community purpose or the fact that it decided to cease operations. Instead, the FCC fined the station \$3,000 for not renewing the license (that it was no longer using) and \$5,000 for broadcasting after its license had expired.

On the flip side of the FCC’s strict enforcement, a Georgia licensee avoided fines when it pointed out that it had just bought the stations. The FCC swept into the station’s studios in May and demanded issues/programs lists. The station staff produced only a few months worth of issues/programs lists. The FCC proposed fining the three stations \$4,000 apiece for not having

all necessary lists in their respective public files. In response, the licensee pointed out that when the FCC inspected the files, the owners had been in control of the station for less than four months. The FCC accepted that explanation and erased the \$12,000 fine.