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BROADCAST LAW REVIEW

'Four Years? I've Got Plenty of Time!'

Actually, The Time to Start Preparing For the 2011 Renewal Cycle Is Now

by David H. Solomon

The next radio license renewal cycle doesn't begin until 2011. So there's plenty of time for stations to get their compliance act together to avoid renewal delays or penalties, right? Wrong.

During the most recent renewal cycle, the FCC has been fining stations for violations left and right. During the last two years alone, more than 300 radio and television stations have been subject to a combined total of about \$2 million in penalties. In addition, numerous renewals have been held due to commission consideration of indecency and sponsorship identification issues.

The time for stations to take action to prevent such problems in the next renewal cycle is now. By taking some fairly simple and inexpensive steps, stations can avoid more costly penalties or delays at the time of their next renewal.

By 2011, when stations begin filing renewal applications, it will be too late.

Based on FCC actions during the most recent renewal round, here are some key areas on which stations should focus their compliance attention.

File Renewal Applications on Time — This seems straightforward but a number of stations filed their renewal applications late and got fines as a result.

The fines were generally \$1,500 if the

stations filed before the license term ended and \$7,000 if they filed after the license term ended, in which case the commission found they engaged in unauthorized operation as well.

This can be avoided by putting an effective tickler system in place for license renewal applications, which must be filed four months prior to expiration of the station license.

Taking some simple steps now can avoid bigger problems later.

Also, stations should not forget to renew any FM translator stations, which are not automatically renewed as part of their full-service station renewal applications.

Stations should also keep in mind that FM translator stations located in different states than the underlying full-service station may be on a different renewal cycle.

Avoid Delay in Renewal Processing — While ultimately the commission con-



trols how quickly to process renewal applications, licensees can increase their odds of prompt renewal by paying particular attention to compliance in "hot" areas being given special attention by the FCC.

During the current renewal cycle, indecency and sponsorship identification issues (including payola for radio stations and video news releases for television stations) have resulted in many license renewals being delayed.

The reason for this is that the commission moves extremely slowly in deciding cases in these sensitive areas and wants to keep the applications pending in order to stay within the statute of limitations for any fines it may issue. (The problems from delay can often be addressed through a statute of limitations tolling agreement.)

Given that indecency and sponsorship identification issues have caused renewal delays, and have also resulted in large enforcement actions, licensees should pay particular attention to avoiding violations in these areas. Compliance plans, combined with training and management oversight, can play a big role in this regard.

The more difficult issue in avoiding such renewal delays is to identify in advance what the “hot” issues might be during the 2011 renewal cycle.

There’s no magic to this, but, as 2011 draws nearer, paying close attention to what enforcement actions the commission is taking, and what the chairman and commissioners (and members of Congress) are saying about their enforcement priorities, is a good start.

Keep Public Inspection Files in Order — Renewal applicants must certify that they placed all documents in their public inspection files at the appropriate times.

Many stations start checking right before they file their renewal applications, discover mistakes and report them as required, which often leads to fines (generally ranging from \$4,000 to \$10,000 per station). Late-filed or missing quarterly issues-programs are particularly common.

To avoid these problems, stations should make sure they have a system in place to ensure compliance — identify who is responsible (and who is the back-up), what they are supposed to do and when they are supposed to do it.

Stations should also have someone checking to make sure these procedures are being followed and that the required materials are in fact being placed in the public inspection file in a timely fashion so problems don’t pile up. The commission will not excuse a licensee based on

employee turnover or lack of knowledge of the violations.

Following the EEO Rules. Licensees must file a Broadcast EEO Program Report, along with their last two EEO public file reports, with their renewal applications.

Many stations start checking right before they file their renewal applications, discover mistakes and report them as required, which often leads to fines — generally ranging from \$4,000 to \$10,000 per station.

These reports give the FCC staff an easy opportunity to identify any problems in design and implementation of a station’s EEO program. Fines of up to \$20,000 have been issued in the current renewal round.

Stations should thus focus on their EEO efforts in advance. They should make sure they have clear procedures in place to comply with the outreach, recruitment and record-keeping rules.

TV Stations: Complying With Children’s TV Rules. Numerous television stations have received fines (of up to

\$20,000) at renewal for various children’s television-related violations that must be reported on the renewal form.

These have most commonly involved violations of the children’s television commercial limits and failure to publicize the existence and location of children’s programming records. Here, too,

developing and implementing compliance procedures in advance can help avoid problems at renewal time.

In sum, now is the time for broadcasters to be thinking about what they can do to protect themselves against fines and delays when the next renewal cycle begins in 2011. Taking some simple steps now can avoid bigger problems later.

The author is a partner in the Washington law firm of Wilkinson Barker Knauer LLP and a regular contributor to Radio World. From 1999 to 2005, he was chief of the FCC Enforcement Bureau. 