



January 2009

Focus on FCC Fines

R.J. Quianzon
quianzon@fhhlaw.com
703-812-0424

\$750,000 AM station comes with \$4,000 fine – The new owner of a Pennsylvania AM station discovered that his acquisition came with an unexpected surprise – a fine from the FCC for the misdeeds of its last owners! In June, 2007, Joseph Green, a buyer who owned no other stations, plopped down \$750,000 and purchased the company that owned an AM station in central Pennsylvania. Perhaps unknown to Mr. Green, FCC agents had visited the station six months earlier and determined that the station’s public file was not in order (since it lacked a required few lists).

Soon after buying the company – while that new station aroma was still lingered in the air – Mr. Green was presumably surprised to receive a letter from the FCC proposing to fine the company \$4,000 for not maintaining its lists. Mr. Green wrote back to the FCC and explained that he had just bought the company and should not be responsible for what the old owners had done. The FCC did not agree and provided Mr. Green with reference to numerous cases where buyers folks have been held responsible for the problems of the companies they have acquired. Mr. Green was given 30 days to pony up the cash.

This case is a reminder to readers that there are significant differences between buying a company that owns a station and buying just the company’s assets. The FCC reasoned that the company that had committed the infractions was still the very same company today. The only thing that had changed was the identity of the owner of the company’s stock, and that difference was not a matter of concern to the Commission in this context. In contrast, if Mr. Green had simply purchased the assets of the station and had asked the FCC to issue a new license in his name, this problem would never have occurred. While there are tax and business reasons that encourage some buyers to purchase a company rather than its assets, if you’re a buyer you must beware that when you buy a company you assume its liabilities as well.

A day late and \$8,000 short – The FCC issued an order fining a California company \$8,000 for an operational violation. Not surprisingly, the company was not pleased with the decision and petitioned the FCC to reconsider the fine. The FCC refused to reconsider the fine and issued a second order. The company pressed on a second time – perhaps

employing a “pretty please” argument – and again asked the FCC to reconsider.

With its second attempt, the company missed a deadline. Under FCC rules, a petition for reconsideration must be received within 30 days of the public notice of the action sought to be reconsidered. The company filed its petition on the 31st day. Oops. In a single short paragraph, the FCC declared that the petition was late and could not be considered. Readers should be aware that the FCC strictly enforces its deadlines and can quickly dispose of its work by summarily rejecting filings that do not meet those deadlines.

Station alleges that electronic filing is unconstitutional – An upset AM licensee in Michigan raised an interesting claim not often seen in FCC proceedings. Back in 2004, the licensee failed to file an application to renew its license but nevertheless continued operating the station. The FCC found the station (whose previous license had long since expired) operating a couple of years later and fined the operator for unauthorized operation. The operator objected to the fine and the expired license by claiming that it did not have a computer and could therefore not file through CDBS. The FCC did not accept that excuse and fined the station. The station then sought reconsideration and raised the claim that mandatory electronic filing was unconstitutional. The FCC dismissed the claim; the license remains expired and the former operator still owes a fine (although it appears that the licensee may have blinked – CDBS indicates that it has lawyered up and recently filed a renewal application).