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Focus on FCC Fines

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Texas FM operator stripped of license . . . again – Back in 2006, the FCC cranked up a hearing to determine if it should revoke an FM license held by a Texas man who had been convicted of a felony. The licensee didn't show up at the hearing and, because of that default, the presiding judge dismissed the licensee's then-pending renewal application. Following up on the Judge's decision in early 2007, the Media Bureau, noting that the station's license had obviously expired, terminated the station's authorization to operate and deleted its call sign.

Here's a quick summary of the licensee's felonious background. In 2002, the company which owned the station (an FM in Shamrock, Texas) was facing financial difficulties and was on the verge of shutting down. Along came the station's general manager, who offered to take over the station and pay its bills. The station agreed, the FCC approved the assignment, and the station manager became the owner of the new station.

However, it later came to light that part of the reason for the station's financial problems was the fact that the general manager himself had been stealing from the station. The manager stole from the station and then offered to take the station off of the old owners' hands in light of the financial problems (including the undiscovered thefts). When the thefts came to light, in 2004, the manager was sentenced to do time in the Texas big house for his earlier thefts. Despite the thefts, though, the manager kept the station license and did not have to return the station to his former boss (and victim).

After serving his time, the man left prison and continued to operate the station. In 2005, he filed a routine license renewal application, but – oops – forgot to mention anything about that whole felony conviction thing. Someone (perhaps a very unhappy former owner) filed a complaint with the FCC, disclosing the felony conviction. The FCC looked into the matter and figured it was time to put the guy into a hearing to see if he was qualified – which is what happened in 2006.

While you might think that the dismissal of the station's renewal application (in 2006) and the cancellation of its license (in 2007) might have put the wraps on this story, you

have at least one more think coming.

This month the Enforcement Bureau released a decision that effectively digs up the license's dead corpse so that the Bureau can pound a stake into its possibly undead heart. Unusual begins to describe the Bureau's decision.

Apparently, the Bureau was moved to act because there had never been a formal determination that the licensee's felony record did, indeed, disqualify him from being a licensee. As noted above, the 2006 hearing never got off the ground (because the licensee failed to show up), so the issue of his qualifications was never reached. Instead, the renewal application was dismissed (for failure to prosecute). The judge did certify the matter to the full Commission, as required by the rules, but the full Commission has so far failed to take any action in response to the certification. So the Enforcement Bureau rolled up its bureaucratic sleeves and decided to clean house.

After briefly reviewing the available facts – culled largely from the records of the Texas courts – the Bureau concluded that the (former) licensee's criminal conduct reflected a “propensity to evade, rather than comply with laws and regulations that would include the Communications Act and the Commission's rules and policies.” From there it was but a short hop, skip and jump to a finding that the guy is not qualified “to be or remain a licensee”. Going further, the Bureau next concluded that revocation of the guy's license “is mandated but for the prior dismissal” of its license renewal application.

In other words, recognizing that the station's license renewal had already been dismissed and its authorizations terminated (more than two years ago!), the Bureau appears nevertheless to have felt it necessary to conclude that the non-renewed-and-long-since-terminated license should be revoked anyway – even though it probably can't be, because the license went away two years ago.

Precisely why the Bureau chose to attempt this gambit at this particular time is not clear from the decision. Possibly the Bureau just wanted to tie up a loose end or two resulting from the inconclusive conclusion of the hearing in 2006. The problem with that, though, is that, once the Bureau designated the matter for hearing in 2006, the Bureau relinquished jurisdiction. That is, upon designation the matter was out of the Bureau's hands and in the hands of the judge and, ultimately, the full Commission. Because of that, it's far from clear how the Bureau could yank the matter back into the Bureau's control for purposes of beating up on the licensee some more. Even more surprisingly, the Bureau's order now declares the hearing proceeding to be “dismissed”, even though the hearing is technically still before the full Commission as a result of the judge's 2006 certification.

The procedural and jurisdictional questions that this order presents are intriguing, but for our purposes, it suffices to observe that the Commission (or at least the Enforcement Bureau) obviously frowns upon felonious conduct as well as the failure to report felonious conduct when disclosure is sought by the Commission. Licensees should do their best to keep their noses clean, and if they do run into any trouble, they should also be sure to be up front about it with the Commission.

FCC increases fines for profitable broadcasters – If you’re a “highly profitable” company, heads up – if you get cross-wise with the Commission’s enforcement machine, the FCC may be inclined to whack you harder than less successful folks. Recently, the Enforcement Bureau went after a Fox station in New Jersey which had renewed all of its broadcast and auxiliary licenses but had forgotten about one single license — it forgot to renew a satellite earth station license (the satellite dish sitting in most station parking lots or on their rooftops).

Upon finding that its satellite license had lapsed, Fox filed for a replacement license and asked for special authority to operate while the replacement license was being issued. The Bureau granted the new license, but still chose (as it often does) to exact a financial penalty from the licensee. Although the fine for the expired license would ordinarily have amounted to \$8,000, the Bureau doubled the fine to \$16,000 because the fine was being paid by Fox and the Bureau determined that Fox was a “highly profitable” company and should therefore pay more. The rationale: the Commission wants to be sure that the fine is “a deterrent, and not simply a cost of doing business”. (Since, according to the Bureau, Fox’s revenues for the second quarter of 2008 alone reached \$18 million, it’s a bit of a stretch to think that an extra eight grand will have much deterrent effect, but what do we know?) So “highly profitable” companies, take note: violations may cost more for you than they might for your less successful competitors.

Group files a complaint and gets fined \$9,000 – A hobby club in Texas was fed up with all of the interference that it was receiving on its radios from a nearby airport. The club contacted their attorney, who duly penned a complaint to the FCC about the airport operations. The complaint provided detailed information about the club, the frequencies which it used and a description of the interference.

The FCC dutifully looked into the complaint to determine who was causing the interference. Although the club had identified their operations and frequencies, they had forgotten to check one thing before reporting the issue to the FCC: the club’s radio license had expired five years earlier. The FCC looked no further because the real cause of the problem – the club – unknowingly had turned itself into the FCC.

Not only had the club identified the frequencies that were creating the problems, it had

provided a written statement to the FCC that it had been operating illegally. The FCC was able to issue a \$9,000 fine to the club without even leaving the comfort of its office.