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Caution, E-Filers: The FCC Knows Who You Are!

Harry F. Cole
cole@fhhlaw.com
703-812-0483

Before you even think about trying to pull the wool over the Commission's eyes by hiding behind the anonymity that CDBS's electronic filing system might seem to provide, think again. The Commission knows all and sees all – well, it certainly can find out a lot, if not all – and any thought of Internet anonymity is largely illusory. Some folks in Michigan recently found that out the hard way.

CDBS, of course, has dramatically changed the dynamic of routine filing with the Commission. Back in the day, when paper ruled, each application (or routine regulatory report, like an Ownership Report) had to bear an original signature. That provided some assurance that the filing had actually been reviewed and approved by the signatory. But with CDBS, the notion of presenting actual signatures to the Commission went out the window. And that, in turn, gave rise to the possibility of less than honest manipulation of the system. After all, if you are able to access CDBS (which merely requires knowing the relevant CDBS account number and FCC Registration Number (FRN) and the passwords associated with each), you can type anybody's name into the signature block and no one would be the wiser, right?

Not really.

In a recent decision (described in the article on page 6 of this issue of the *Memo to Clients*), the Audio Division pulled the curtain back, at least a tad, on the information available to the FCC from the back-end of CDBS.

The case involved a couple of entities (we'll refer to them collectively as "Great Lakes") which had acquired CPs and licenses for a bunch of NCE FM full-power stations and translators in Michigan. Complaints and petitions had raised questions about whether Great Lakes had been honest in many of its applications. In one instance, for example, Great Lakes had filed a license application claiming that the station in question had been constructed and was up and running – even though an Enforcement Bureau inspection of the site three days after the application was filed turned up no station at all.

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The license application in question had not been “signed” by a Great Lakes officer; rather, it had been “signed” by Great Lakes’s engineering consultant. That opened the door for the Division to write to Great Lakes advising it of that particular deficiency. (While the FCC’s decision does not say so, it sure looks like, in so notifying Great Lakes, the Commission was setting a trap by giving Great Lakes yet another opportunity to mess up.) Sure enough, a week later an amendment to the license application was filed, this time bearing an appropriate name in the “signature” block. The Commission then sprung the trap, notifying Great Lakes of the results of the Enforcement Bureau’s inspection and asking for an explanation for why Great Lakes claimed, in its application and amendment, that the station was up and running when it, er, wasn’t.

Not surprisingly, Great Lakes had an explanation. The original license application had been placed in the CDBS queue “to have the information readily available for our internal review”, or maybe “as an internal reminder that this was a priority”. In any event, it had been filed by mistake. Who knew? It could happen to anybody! And when the deficiency letter rolled in, well, the Great Lakes principal merely supplied his “signature” without realizing the application which he was amending should not have been filed in the first place.

This is where things get interesting. After receiving that response, the FCC staff – apparently acting on its own initiative – checked its CDBS logs. It determined that the license application had been started on a particular date at a particular time (down to the minute) from a particular Internet address (*i.e.*, a 12-digit IP address). The Commission then found that that IP address was registered to a company listing a particular street address. (The decision doesn’t say how the staff found that out, but it’s not that hard with, *e.g.*, a simple WHOIS search.) The staff *then* found that that street address was the same as the address listed in the driver’s license *and* voter registration of Great Lakes’s consulting engineer. (Again, the decision sheds no light on exactly how the staff found this out . . . but we can guess.)

Next, the staff reviewed the CDBS logs relative to the amendment in which the corrected “signature” was submitted. While Great Lakes’s response certainly seemed to indicate that the Great Lakes principal had prepared and filed that amendment by himself, the logs seemed to tell a different story. That amendment was started, completed and filed all within a six-minute period from the IP address associated with Great Lakes’s consulting engineer.

The FCC decision indicates that Great Lakes will soon be placed in a hearing to delve into this instance and a series of others, all of which strongly suggest misrepresentation or lack of candor. It’s always possible that some innocent explanation really does exist here,

but it's hard to imagine what that explanation might be. We shall see. For the rest of us, though, it bears noting that the Commission *does* have considerable ability to ferret out information, both from its own internal records and from the same Internet resources we all have. And this case demonstrates that the Audio Division, at least, is not shy about digging for facts when investigation seems warranted. It is always a good policy to be completely honest with the Commission; it's also unwisely short-sighted to think that you might be able to get away with anything less.