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## **Licensee Exorcises Enforcement Hold Based on Phantom Broadcast**

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When the FCC (prodded by complaints) raises questions about the content of your programming, it helps to have a solid handle on what you're broadcasting. And at times it also comes in handy if you've been listening to your station so that you can know what you're not broadcasting, even if it sounds like you are, or vice versa. Confused? That's what happened recently to a New Jersey licensee.

Equity Communications, L.P. is the licensee of WAYV(FM) in Atlantic City, New Jersey. It filed an application to renew WAYV's license in January, 2006. But as they sailed through 2009 with 2010 fast approaching, WAYV's license still hadn't been renewed (of course, the Communications Act and the Commission's rules allow the station to continue operation as long as they have a timely renewal application pending).

Why was the renewal being held up? After asking around at the Commission, the licensee got the word: the staff had placed a hold on the renewal application because the station was the subject of one or more complaints alleging that it had broadcast indecent material at times when children were likely to be in the audience. Digging a little deeper, the licensee learned that the complaints were filed in response to two broadcasts of "The Hal Turner Show", one in October, 2006 and the other in December, 2006 (of course these were after the expiration of the prior license period, but could still be considered against the renewal application).

There's just one catch: *Neither WAYV nor any other station licensed to Equity broadcasts anything called "The Hal Turner Show"*. *Au contraire*, according to WAYV, at the times of the alleged indecent broadcasts its programming was controlled by an automatic music selection system that pre-screened content. The likelihood that something akin to the Hal Turner Show might have made its way onto WAYV was nil.

Hal Turner, by the way, is a controversial figure who espouses a number of, um, extreme views. To get some idea of his history, Google his name. One example: according to Wikipedia, Mr. Turner may have been the source of a report, widely circulated on the

Internet earlier this year and denied by the State Department, that the U.S. has given China eminent domain rights to U.S. property as collateral for debts owed to China. Suffice it to say that the notion that a Hal Turner radio show might attract indecency complaints is not at all far-fetched.

But Equity was 100% confident that the notion that WAYV broadcast Mr. Turner was totally far-fetched.

So, to quote Mike LaFonaine (Fred Willard's character in "A Mighty Wind"): "Wha' happened?" That's where Equity's listening to its own station came in handy. It appears Mr. Turner, or maybe one of his fans, might have been engaged in a little bit of pirate radio on WAYV's 95.1 MHz frequency in northern New Jersey, a fact brought to light by Equity's own President, Gary Fisher.

According to an affidavit from Mr. Fisher, while driving through northern New Jersey from Atlantic City to New York City in November, 2007, he tuned into his station's 95.1 MHz frequency. We'll let him tell his own story from there:

At a point approximately 60 miles north of the Station's protected service contour, my radio revealed a signal other than that transmitted by the Station, carrying a program called "The Hal Turner Show." I listened to this program continuously for some time, including through the top of the hour, but never heard any station identification. As such, it appears likely that the signal carrying "The Hal Turner Show" was an unlicensed "pirate" signal not authorized under the FCC's rules.

So it looks like we're dealing with a simple matter of misidentification, coupled with some apparent piracy. WAYV is the only licensed full power FM radio station operating on 95.1 MHz in New Jersey. Some reports (where would we be without Wikipedia?) indicate that Mr. Turner lives in an area of New Jersey no more than six miles from the spot where Mr. Fisher heard "The Hal Turner Show", a location which is outside of WAYV's protected service contour – WAY outside, if Mr. Fisher's affidavit is to be believed. (Note that the affidavit indicates that he was listening to the station some 60 miles outside the protected contour.)

Equity's conclusion: "[A] complainant could have identified the Station as a possible culprit through a search of the FCC's Consolidated Data Base System ('CDBS'), without hearing any station identification during the program material in question."

Equity submitted Mr. Fisher's affidavit – along with a similar statement from the station's Program Director describing the programming the station *does* air – to the FCC, urging it to lift the hold on the station's renewal application. And that appears to have

done the trick, because within a matter of weeks the hold was lifted and the station's renewal application had been granted.

Equity was fortunate in a number of respects. It was, of course, a stroke of good luck that its executive happened to have personally experienced the phenomenon which apparently triggered the complaints. That is, while seemingly listening to WAYV, he heard the very programming apparently mentioned in the complaints. And it was good luck – actually, it was not luck, but good solid broadcast practice – that the station's PD was able to describe the station's programming system. It's often difficult, if not impossible to prove a negative. How, after all, can you conclusively demonstrate that your station did *not* broadcast any particular show? Having a well-established system and a station official personally familiar with that system is a good way to start.

But it may have been even luckier that Equity was able to obtain information about the complaints from the Commission's staff. While there are ways to wrest such information from the staff, there tends to be some reluctance on the part of the Commission to give up the information easily. So Equity was extremely fortunate to be able to learn that the complaints involved alleged broadcasts of the Hal Turner Show.

Of course, the WAYV situation was likely an exception. Many renewal applications are currently pending subject to "enforcement holds" because of complaints that have rolled in the door, many alleging some form of indecency. How many of those involve demonstrably inaccurate claims (as was the case in WAYV)? We have no way of knowing – but then, neither does the FCC.