New FCC Debt Collection Rules - Delinquent Fees to Delay Application Processing

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The FCC has implemented the Debt Collection Improvement Act of 1996 by adopting tougher procedures for delinquent fees.

The most widespread impact of the new rules, which are to take effect 30 days after publication in the *Federal Register*, will be the withholding of action and possible dismissal of filings for which the applicant is delinquent on any FCC fee or other non-tax payment due the Federal government. However, the rules will not apply to FCC forfeitures following issuance of a notice of apparent liability unless voluntary payment is incomplete or the payment has been ordered by a court.

Under the Commission's new "red light rule," it will not grant any authorization until it uses the applicant's FCC Registration Number (FRN) to determine all delinquent debt attributable to entities using the same Taxpayer Identifying Number (TIN). (Thus, delinquencies by prior licensees should not trigger the rule.) Included within the scope of the rule are applications, petitions and virtually all other requests for any FCC action. Excluded, though, are emergency authorizations, special temporary authority involving national security or safety of life or property, special temporary authority for reinstatement of a cancelled or expired license, and situations in which the applicant has filed for bankruptcy. Also excluded are applications filed prior to December 3, 2001 without an FRN (which only became mandatory after that date). The "debts" covered by the rule include nearly any payment owed to any branch of the United States government, except for taxes.

Once the Commission has determined that an entity covered by the same TIN as the applicant is delinquent in any non-tax US obligation, it will send notification requiring resolution within 30 days. A timely, properly documented challenge to the asserted debt will preclude its consideration for purposes of the red light rule. Otherwise, the debt must be paid in full or, upon appropriate documentation of an inability to pay in a lump sum, a payment plan may be arranged. If the 30 days passes without one of these steps being taken, the Commission will dismiss the filing, report the matter to credit agencies and refer the debt to the Department of Justice for further action. The Commission notes that Federal payments, including tax refunds, salaries and retirement benefits, can be offset in order to collect a delinquent claim. The Commission cautions that all delinquent claims will not only be subject to its 25% late payment penalty, but interest and collection fees as well. The Commission further notes that the new rules are not intended to replace the stricter requirements which currently apply to candidates seeking eligibility for FCC auctions (who are required to certify the absence of any delinquencies as part of the application form).

The bottom line is that the Commission has seized upon the FRN requirement as a means to enforce collection of delinquent fees when any sort of non-emergency relief is requested. However, given the number of inaccurate demands it has made for ostensibly unpaid regulatory fees, it seems quite possible that routine applicants will find themselves confronting substantial delays while discrepancies in the Commission's records are resolved. At this point, the precise procedures to be applied by the Commission are not yet known, and so we are unable to assess the ease with which licensees will be able to rectify inadvertent oversights in payment or lapses in Commission record keeping. FCC staff

assures us, though, that its screening of filings under the "red light rule" will be automatic and should not delay routine processing.

We will keep you advised of further developments in this important area as they become known. In the meantime, if you are aware of any unpaid Commission indebtedness, it would be wise to attend to the matter prior to filing any application or other request for non-emergency relief, so as to avoid delay and significant further expense.

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