Advisory

Communications

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FCC Enforcement Monitor

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Headlines:

▪*FCC Issues "Lighting Fixture" Citation*

▪*Consent Decree Adopted for Sponsorship ID Violation*

FCC Issues Citation to Credit Union for Operating Lighting Fixtures Causing Harmful Interference to Licensed Communications

On July 17, 2013, the FCC issued a citation to the Caribe Federal Credit Union ("CFCU") in San Juan, Puerto Rico for operating incidental radiators and causing harmful interference to licensed communications in violation of the FCC's rules. The FCC's investigation into this matter arose after receiving complaints of interference from an FCC licensee.

On June 12, 2013, an agent of the FCC's San Juan Office of the Enforcement Bureau used direction finding techniques to determine that the interference, which was transmitting on 712.5 MHz, originated from the CFCU building at 193-195 O'Neill Street, San Juan, Puerto Rico. After further testing, the FCC agent determined that the particular source of the transmission was the interior lighting on the highest ceiling in the building (fifteen light fixtures about 40 feet above the floor).

The following day, the FCC agent informed the CFCU's operations manager about the interference and directed the CFCU to cease operation of the lighting fixtures, pending resolution of the interference. The agent reiterated the warning in an email to the CFCU over a week later on June 24, 2013. On June 25, 2013, after receiving renewed complaints, the agent conducted another site visit and again observed interfering transmissions from the CFCU building.

On June 28, 2013, the CFCU acknowledged receipt of the email warning and indicated it would turn off the interfering light fixtures the next day. Because the FCC's rules require that an operator of an incidental radiator cease operating the device upon notification by an FCC representative that the device is causing harmful interference (47 C.F.R. 15.5(c)) and the CFCU failed to do so after both the oral and written warning, the FCC issued a citation.

Pursuant to the citation, any further use of the lighting fixtures causing harmful interference would subject the CFCU to potential civil penalties, including seizure of the equipment and monetary fines up to **$112,500**. This decision serves as a reminder that one does not have to be an FCC licensee to be subject to FCC jurisdiction and that failure to pay attention to communications received from the FCC could lead to substantial penalties.

The Sins of the Prior Licensee Can Visit Themselves Upon the Successor

On July 29, 2013, the FCC released an order adopting a Consent Decree between the FCC's Enforcement Bureau and a Texas licensee. In 2010, the licensee purchased two radio stations in El Paso. Prior to the consummation of the purchase transaction, the FCC had initiated an investigation into whether the prior licensee had violated the sponsorship ID laws by failing to identify the sponsor or the product of an advertisement (47 C.F.R. § 73.1212(f) and 47 U.S.C. § 317(a)(1)). The complaints alleged that the advertisement was for cigarettes and that the prior licensee intentionally circumvented the FCC's sponsorship ID requirements in order to avoid violating the laws prohibiting the broadcast of cigarette advertisements (47 C.F.R. § 73.4055 and 15 U.S.C. § 1335).

Subsequent to the purchase of the stations, the prior licensee was no longer an FCC licensee, and the complaints and potential violations were "inherited" by the new station licensee. The new licensee resolved the investigation by executing a Consent Decree with the Enforcement Bureau.

Under the Consent Decree, the new licensee agreed to remit a voluntary contribution of **$15,000** to the U.S. Treasury and to adopt a compliance plan, which would include developing and distributing a compliance manual, establishing and implementing a compliance training program, and filing related annual reports with the FCC.

While here the "son" appeared to have been aware of the "sins of the father" and actually agreed to accept liability for those potential violations, this case provides a reminder to a prospective buyer of a licensed station to conduct a thorough due diligence of the FCC licenses prior to purchase and to ensure that the purchase agreement properly addresses the seller's liability for its prior actions as a licensee.

If you have any questions about the content of this Advisory, please contact the Pillsbury attorney with whom you regularly work, or the authors of this Advisory.

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