ADVISORY

FCC Enforcement Monitor May 2018

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HEADLINES

Pillsbury's communications lawyers have published FCC Enforcement Monitor monthly since 1999 to inform our clients of notable FCC enforcement actions against FCC license holders and others. This month's issue includes:

- *Louisiana Class A Station Settles Online Public File Violations for $50,000 Ahead of License Renewal*
- *FCC and Michigan Teenager Enter Into Consent Decree After Misuse of Public Safety Communications System*
- *Missouri Telco Agrees to $16,000 Settlement Over Unauthorized Transfers*

When Violations Accumulate: Online Public File Violations Lead to $50,000 Settlement with the FCC

The FCC recently entered into a Consent Decree with a Louisiana Class A TV station licensee to resolve an investigation into the station's failure to comply with its online Public Inspection File obligations.

Section 73.3526 of the FCC's Rules requires licensees to timely place certain items in their online Public Inspection File relating to a station's programming and operations. For example, Section 73.3526(e)(11)(i) requires stations to place an **issues/programs list** in their Public Inspection File each quarter. That document must list programs aired during the preceding quarter that are responsive to issues identified by the station as important to its community. Section 73.3526(e)(11)(ii) requires broadcasters to quarterly certify their compliance with the **commercial limits on children's television programming**.

Also on a quarterly basis, Section 73.3526(e)(11)(iii) requires stations to file a Children's Television Programming Report detailing their efforts to air programming serving the educational and informational needs of children. Section 73.2526(e)(17) similarly requires Class A TV stations to provide documentation demonstrating continued compliance with the FCC's eligibility and service requirements for maintaining their Class A status.

When the broadcaster filed its license renewal application in February 2013, it disclosed that it had failed to comply with certain Public File requirements during its most recent license term. Over the next year and a half, the FCC sent letters to the broadcaster requesting that it (1) upload the missing and late-filed documents and (2) provide an explanation for its failure to comply with the Rules. The FCC did not receive a response until, in 2015, the broadcaster uploaded the required documents to its online Public File.

The broadcaster subsequently admitted that, since 2005, it had not prepared and would be unable to recreate 16 quarters worth of issues/programs lists. The broadcaster also stated that it had failed to timely file dozens of other issues/programs lists, Class A certifications, Children's Television Programming Reports, and children's programming commercial limits certifications.

Under the terms of the Consent Decree, the broadcaster agreed to (1) admit its violations of the Rules; (2) pay a $50,000 civil penalty to the United States Treasury; and (3) implement and maintain a compliance plan to avoid future violations. The compliance plan must remain in effect until the FCC finalizes its review of the broadcaster's next license renewal application. In return for the station's timely payment, the FCC will end the investigation and grant the station's pending license renewal application for a term ending in June 2021.

The next application cycle for broadcast license renewals begins in June 2019, and the FCC's license renewal application form requires stations to certify that their Public Inspection File has been complete at all times during the license term, in compliance with Section 73.3526 (or Section 73.3527 in the case of noncommercial stations).

As the last radio stations moved their Public Files online in March of this year, missing and late-filed documents now can be easily spotted by the FCC, increasing the likelihood of penalties not just for Public File violations, but for falsely certifying Public File compliance in the license renewal application. With that in mind, **the FCC recently encouraged licensees** to address Public File compliance issues as soon as possible to reduce the impact on upcoming license renewals.

Sounds Like Teen Spirit: Traffic Stop Results in Michigan Teenager's Consent Decree for Misuse of a Public Safety Network

The Enforcement Bureau entered into a Consent Decree with a 19-year old amateur radio licensee who made unauthorized radio transmissions on the Michigan Public Safety Communications System (MPSCS). The agreement concludes an investigation that began when Michigan State Police discovered a cloned radio device during a routine traffic stop.

Section 301 of the Act prohibits the transmission of radio signals without prior FCC authorization, Section 333 of the Act prohibits willful or malicious interference with licensed radio communications, and Section 90.20 of the Rules establishes the requirements to obtain authorization to use frequencies reserved for public safety uses. In addition, Sections 90.403, 90.405, and 90.425 of the Rules set operating requirements for using these public safety frequencies.

The FCC's Enforcement Bureau began its investigation after being contacted by the Michigan State Police. State police had pulled over the individual for a routine traffic stop and noticed that he had a radio capable of transmitting on the MPSCS. The police officer conducting the stop seized the radio after confirming that the man was not authorized to use the MPSCS.

A subsequent police investigation revealed that the device was a clone of an Oscoda County, Michigan public safety radio and was capable of transmitting the identification code of devices authorized to operate on the MPSCS frequency. As a result, the device was able to make and receive transmissions on the public safety network. Further investigation revealed that between July 15, 2015 and April 21, 2017, the cloned device transmitted 989 times on the MPSCS, usually for a period of only a few seconds.

According to the terms of the Consent Decree, the individual will (1) forfeit his amateur radio license and will not seek another license for at least two years; (2) admit to violating Sections 301 and 333 of the Act and Part 90's Public Safety Rules; (3) cease any further harmful interference; and (4) pay a civil penalty of $3,000 to the United States Treasury. As the FCC has often noted, unauthorized transmissions on public safety frequencies pose a threat to first responders and to the public at large, since they adversely impact public safety spectrum that is critical to national and homeland security, emergency management, and disaster response.

Hold the Phone: Unauthorized Transfer Results in $16,000 Settlement

The Enforcement Bureau entered into a Consent Decree with a Missouri telecommunications carrier for violating the FCC's Rules governing transfers of control. The carrier admitted to violating the Rules by selling a portion of its customer base to another carrier without prior FCC approval.

Under Section 214 of the Communications Act, a certificate of public convenience and necessity must be obtained from the FCC before a telecommunications carrier can construct, extend, operate, transmit over, or acquire any communications line. Sections 63.03 and 63.04 of the FCC's Rules require carriers to obtain approval from the FCC prior to the transfer of control of telecommunications lines or authorizations. A transaction involving the sale of a telecommunications provider's customer base is a transfer requiring such approval. In addition, Section 63.24 of the Rules requires obtaining FCC approval before the transfer or assignment of an international authorization.

In June 2017, a Missouri-based provider of local, long-distance, and international services sold customer accounts and other assets to an Iowa carrier without first obtaining Commission approval. The parties did not file the proper applications with the FCC's Wireline Competition Bureau and International Bureau until two months after closing the sale. At the same time that they filed the belated applications, the parties requested special temporary authority from each of the bureaus to permit continued operation while the bureaus considered the late-filed transfer of control applications. The FCC subsequently granted the STAs and the late-filed transfer applications.

Several months after the applications were granted, however, the Enforcement Bureau issued a Letter of Inquiry to the carrier. The FCC and the seller subsequently negotiated a Consent Decree requiring the seller to (1) admit that it violated the Section 214 rules; (2) develop and implement a compliance plan to prevent further violations of the rules applicable to Section 214 authorizations; and (3) pay $16,000 to the United States Treasury.

Though this matter involved telecom carriers, similar transfer restrictions apply to all FCC licensees, including broadcasters. Licensees must therefore be sure to obtain FCC approval before assigning or transferring control of their licenses.

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