ADVISORY

pillsbury

FCC Enforcement Monitor August 2018

By Scott Flick, Jessica Nyman and Warren Kessler

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:

- *International Hotel Company Agrees to $504,000 Settlement for Overlooked Wireless License Transfers*
- *Media Bureau Fines AM Licensee for Years-Old Unauthorized Transfers*
- *Suburban Elementary School Busted as Pirate Radio Operator*

Approval Needed: International Hotel Chain Settles with the FCC for $504,000 Over Unauthorized Transfers

The FCC recently entered into a Consent Decree with a global hotel company for violating the FCC's rules governing transfers of control. The company admitted to transferring dozens of private wireless licenses without prior FCC approval in the midst of its multi-billion dollar acquisition of another international hotel group.

In addition to regulating the transfer of broadcast licenses, Section 310 of the Communications Act ("Act") prohibits the transfer of control of a private wireless license holder without prior FCC approval. Under Section 1.948 of the FCC's Rules, parties seeking consent to a transfer of control of such a license must first file FCC Form 603 and await Commission approval before completing the transfer.

At issue in this case were the transfers of 65 wireless licenses controlled by entities owned or operated by the acquired company. Unlike commercial wireless services such as wireless broadband, private wireless licenses are generally used for internal communications, like those associated with company operations or security. According to the late-filed transfer applications, these wireless licenses were used for "operational efficiency and safety of employees and guests" at the company's various properties. Prior to the transaction, the acquired company's employees controlled the use of the licenses as part of their regular operational duties. Though the day-to-day use of the licenses did not change as a result of the company's acquisition, ultimate control of the licenses did.

In February 2017, several months after the deal was completed, the hotel company voluntarily disclosed the violations to the FCC, chalking up the missing applications to "administrative oversight … during a larger transaction." By January 2018, applications for transfer of control of all 65 licenses were submitted to the FCC's Wireless Bureau. Those applications remain pending.

To resolve the FCC's investigation of the violations, the acquiring company entered into a Consent Decree with the Commission. Under the terms of the Consent Decree, the hotel company agreed to (1) admit liability for violations of the FCC's unauthorized transfer rules; (2) develop and implement a compliance plan to prevent further violations of the FCC's Rules; and (3) pay $504,000 to the United States Treasury.

Trust Issues: "Ridiculously Complicated" Estate Planning Leads to $8,000 Fine

The Media Bureau entered into a Consent Decree with the licensee of three Georgia AM radio stations to resolve an investigation into an unauthorized transfer of control of the station licenses.

Section 310 of the Act and Section 73.3540 of the FCC's Rules prohibit transfers of control of broadcast licensees from one individual, entity, or group to another without prior FCC approval. In the case of full-power broadcast stations, parties must file FCC Form 315 applications and receive FCC consent before a transfer of control can be consummated.

The applications ultimately leading to the Consent Decree were filed with the FCC in March 2018, but the licensee's problems began nearly two decades earlier when the licensee's sole owner created an irrevocable trust and named two of his sons as co-trustees. That same day, the FCC approved the licensee's acquisition of the Georgia stations. The following day, the licensee's owner, functioning as *de facto* trustee of the irrevocable trust (and without his sons' knowledge), transferred 90% of his equity in the licensee to the trust in the form of non-voting shares. When the station acquisition was consummated a few days later, the licensee failed to report the existence of the trust to the FCC and did not subsequently report it until earlier this year.

In 2010, the trust was divided into sub-trusts for each of the father's six children—each of whom was then unaware that they were to serve as trustee of their respective sub-trust. Shortly before their father's passing in 2013, the children assumed control of the overall trust (as trustees of the individual sub-trusts). They converted the trust's stock in the licensee to voting shares and cancelled all other shares of licensee stock, resulting in a transfer of control of the licensee to the children as trustees of the trust.

In 2018, the licensee filed applications seeking retroactive FCC consent to the unauthorized transfer of control and disclosed the existence of the trust. The transfer applications state that, until recently, the family believed that all of the stations' filings had been complete and accurate. The trustees ascribed the reporting failures, in part, to "ridiculously complicated" estate matters.

The late-filed applications triggered a Media Bureau investigation into the licensee's compliance with Section 310 of the Act and Section 73.3540 of the FCC's Rules. While the Media Bureau states that it "anticipate[s] the future grant" of the applications, it refused to do so on a retroactive basis. Rather than go through time-consuming and expensive proceedings, the parties agreed to enter into the Consent Decree whereby the licensee agreed to (i) admit liability; (ii) pay an $8,000 civil penalty to the U.S. Treasury; and (iii) institute a three-year compliance plan to ensure future compliance with the FCC's Rules.

Back to School: FCC Puts Elementary School on Notice of Unauthorized Radio Operation

The FCC's Enforcement Bureau issued a Notice of Unlicensed Operation ("NOUO") to a Tennessee elementary school for operating an FM broadcast station without authorization.

Section 301 of the Communications Act prohibits the transmission of radio signals without prior FCC authorization. The FCC has prioritized the prosecution of "pirate radio" operators, often issuing dozens of NOUOs per month against alleged violators. The FCC has explained that unlicensed operations do not adhere to the numerous regulatory requirements imposed on authorized stations, and, as a result, present real risks to the public. Pirate stations do not participate in the Emergency Alert System, and unauthorized transmissions can interfere with licensed operations, including those used for aviation and public safety communications. Further, broadcasters correctly complain that pirate stations can siphon advertising revenue from legitimate operators.

In April of this year, FCC field agents tracked radio signals on 96.9 MHz to a small suburban public school. Upon arrival, the agents determined that the school did not have a license to transmit on that frequency, and that the transmitter being operated at the school did not fall under any exemption from the licensing requirement.

The NOUO reminded the elementary school that unauthorized radio transmissions can lead to severe consequences, including heavy fines, equipment seizure, and imprisonment. The school was instructed to discontinue transmissions immediately and to respond to the NOUO within 10 days with any evidence that the school is authorized to transmit on that frequency. Upon receiving a response, the FCC will determine what, if any, enforcement action it deems necessary to ensure no future violations will occur. In past cases involving pirate radio operations, the FCC has issued fines as high as $144,344.