ADVISORY

FCC Enforcement Monitor January 2019

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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:

- *Alabama FM Licensee Admits to On-Air Contest and Unauthorized Transfer of Control Violations*
- *Silicon Valley Start-Up Agrees to Pay $900,000 Penalty for Unauthorized Satellite Launches*
- *Michigan AM Licensee Faces Proposed $18,000 Fine and Reduced License Term for a Variety of Violations*

No-Win Situation: FM Licensee Settles with FCC Over On-Air Contest and Unauthorized Transfer of Control Violations

The FCC's Enforcement Bureau entered into a Consent Decree with the licensee of an Alabama FM radio station for violating the FCC's rules governing on-air contests and transfers of control.

The FCC regulates licensee-conducted contests in order to protect the public against deceptive and misleading practices. Section 508 of the Communications Act ("Act") prohibits a licensee from knowingly deceiving the public by manipulating or predetermining the results of a contest. Section 73.1216(a) of the FCC's Rules requires a licensee to "fully and accurately disclose the material terms of the contest" and the contest must be conducted in accordance with those announced terms.

Section 310 of the Act and Section 73.3540 of the FCC's Rules prohibit the transfer of control of a broadcast license without prior FCC approval. A *de facto* transfer occurs when a licensee no longer retains ultimate control over vital aspects of a station's operations, including its programming, personnel, and finances.

In August 2016, the FCC received a complaint alleging that the licensee "prematurely ended" an on-air contest and failed to award the advertised prizes. According to the complaint, the station instead kept the prizes and provided them to its own employee.

The Enforcement Bureau responded nearly a year later by issuing a Letter of Inquiry ("LOI") to the licensee seeking information about the contest. In its response, the licensee denied any knowledge of the contest nor was it was able to find any records related to the contest. According to the Consent Decree, the licensee's professed lack of knowledge about the contest "raised questions about the Licensee's control over the Station." As a result, in July 2018, the Enforcement

Bureau issued a supplemental LOI to the licensee investigating the apparent *de facto* unauthorized transfer of control to the third party that conducted the contest, who had a time brokerage agreement with the station. According to the FCC, it had not approved, nor had the licensee applied for, a transfer of control of the license.

To resolve the FCC's investigation, the licensee entered into a Consent Decree with the Enforcement Bureau. Under the terms of the Consent Decree, the licensee agreed to (1) admit liability for violations of the FCC's contest and unauthorized transfer of control rules; (2) pay a $12,000 civil penalty; and (3) develop and implement a compliance plan to prevent further violations of the FCC's Rules.

Space Oddity: Start-Up Agrees to Pay $900,000 to Settle Investigation into Unauthorized Satellite Operations

After a bizarre string of events involving unauthorized communications satellites, space launches from India, and experimental weather balloons over California, the FCC entered into a Consent Decree with a Silicon Valley satellite start-up.

Section 301 of the Act and Section 25.102 of the FCC's Rules prohibit the operation of any device for the transmission of energy, communications, or signals by space or earth stations unless in accordance with an FCC authorization. Section 25.113 of the FCC's Rules requires FCC authorization before deployment and operation of a space satellite.

Section 302(a) of the Act restricts the manufacture, import, sale, or shipment of devices **capable of causing harmful interference to radio communications**, and Section 2.805 of the FCC's Rules prohibits the operation of a radio frequency device prior to undergoing FCC equipment authorization, with limited exceptions.

Further, Section 5.53 of the FCC's Rules prohibits the operation of a radio transmission device in the FCC's Experimental Radio Service without prior FCC authorization. This licensing framework allows researchers, experimental users, and other innovators with an outlet to conduct experiments within a broad range of frequencies and power levels under an FCC license.

According to the Consent Decree, the start-up specializes in developing and deploying small communications satellites for space-based connectivity anywhere in the world, and has produced card deck-sized satellites capable of communicating with ground-based earth stations.

In April 2017, the company filed for an experimental license that would allow it to deploy and operate four of these small satellites with two earth stations. The FCC denied the application in December 2017 due to concerns that the devices would be difficult to track while in orbit. On January 8, 2018, the company filed a second application for a different set of small satellites, which the FCC granted the following month.

Unbeknownst to the FCC, however, the company had already deployed the original four satellites. In a scenario befitting a science-fiction novel, the company ignored the FCC's initial license denial and shot the devices into space from a launch facility in India. The satellites subsequently began communicating with the company's Georgia-based earth stations. When the FCC later learned of the unauthorized launch, it immediately set aside the grant of the second application and forwarded the matter to the Enforcement Bureau for investigation.

In its investigation, the Enforcement Bureau uncovered additional unauthorized operations, such as "weather balloon-to-ground station tests, including on cars driving around Palo Alto, California" in 2017. The company also admitted to performing unauthorized tests of unlaunched satellite and earth station equipment ahead of the unauthorized launch.

To resolve the investigation, the parties agreed to enter into a Consent Decree whereby the company agreed to: (1) admit liability for violations of the FCC's satellite and radio frequency device rules; (2) pay a $900,000 civil penalty; and (3) develop and implement a compliance plan to prevent further violations of the FCC's Rules.

In a Silent Way: Media Bureau Hits AM Licensee With Proposed $18,000 Fine for Unauthorized Operations and Other Violations

The FCC's Media Bureau issued a Notice of Apparent Liability ("NAL") to the licensee of a Michigan AM radio station for unauthorized operations, failure to timely file a required form, and for omitting material information in a written statement to the FCC. The Media Bureau also imposed a rare shortened license term of one year, rather than the normal eight-year term.

Section 301 of the Act and Section 73.1745(a) of the FCC's Rules prohibit the operation of a broadcast station except under, and in accordance with, an FCC authorization. A station that expects to operate at variance from the terms of its license must request and be granted Special Temporary Authority ("STA") from the FCC to do so. The FCC may grant STA extensions dependent upon a showing from the licensee that such extensions are necessary and that the licensee is taking all reasonable steps to return the station to normal operations "in an expeditious and timely fashion." In addition, Section 1.17(a) of the FCC's Rules prohibits individuals from intentionally providing incorrect "material factual information" or intentionally omitting "material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading."

In April 2005, the licensee was granted an STA to operate at its licensed site at reduced power for the 180-day period between April 2005 and October 2005. Despite continuing to operate at reduced power for the next several years, the licensee waited until June 2010 to request that the 2005 STA be extended. Even then, the licensee failed to state in its request that it had been operating at reduced power without authority since October 2005. The Media Bureau responded at the time by treating the request as a new STA request, and granted it with the caveat that it was effective starting June 2010 and did not provide retroactive authority for the intervening years.

The licensee later filed its license renewal application in April 2012. In February 2018, the Media Bureau sent the licensee an "operational status inquiry" requesting that the licensee provide documented evidence of the station's operations between October 2005 and February 2018. The licensee responded by providing utility bills, engineering reports, and other information.

The Media Bureau found that the licensee engaged in unauthorized operations by operating at reduced power without authorization from October 2005 to June 2010. It also found that the licensee failed to timely file an STA extension request, and "made no attempt to address this issue" until June 2010. In addition, the Media Bureau found that the licensee's failure to disclose in its 2010 STA that it had been operating at reduced power without authority since October 2005 was a misleading omission of material information.

The Media Bureau determined that during the station's eight-year license term ending in October 2012, the station had been silent for a total of two years, operated at reduced power with authority for nine months, and operated at reduced power without authority for the rest of the term. Since then, the station has been silent for all but six months.

The Media Bureau proposed to fine the licensee $10,000 for its unauthorized operations, $3,000 for its failure to timely file the required STA in 2005, and $5,000 for the station's failure to disclose a material fact in its 2010 STA application, for a total of $18,000. In addition, the Media Bureau indicated it would only grant the licensee a short-term license renewal of one year due to the licensee's extended periods of non-operation, which the Bureau noted falls "far short of that which would warrant routine license renewal."