ADVISORY

FCC Enforcement Monitor May 2019

By Scott R. Flick, Joseph A. Cohen 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:

- *FCC Settles With Golf Club Operator Over Unauthorized Transfer of 108 Private Wireless Licenses*
- *FCC Warns Traffic Management Company Over Unlicensed Radio Operations*
- *Months-Long Tower Lighting Outage Leads to Warning*

Par for the Course: FCC Settles With Golf Club Operator Over Unauthorized Transfers

The FCC recently entered into a Consent Decree with a holding company for violating the FCC's Rules governing transfers of control. The company admitted to transferring 108 private wireless licenses without prior approval from the FCC in connection with its acquisition of a company that owned or operated over 200 golf clubs, country clubs, and business and alumni clubs.

Section 310 of the Communications Act ("Act") prohibits the transfer of control of a private wireless license 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 consummating the transfer.

In September 2017, the holding company acquired the golf club operator. It subsequently realized that the transaction included 108 private wireless licenses for which prior FCC approval had been needed. As a result, in February 2018, the holding company filed transfer of control applications seeking *nunc pro tunc* (retroactive) approval. The Wireless Bureau subsequently referred the matter to the Enforcement Bureau, which opened an investigation.

The clubs in question utilize wireless licenses to control day-to-day operations on their properties. According to the Consent Decree, the licenses at issue are used to coordinate maintenance, golf shop personnel, and security, among other things. And while the clubs' operations and management have not significantly changed since the company's acquisition, the change in ultimate ownership required prior FCC approval.

To resolve the Enforcement Bureau's investigation of the transaction, the acquiring holding company entered into a Consent Decree with the FCC. Under the terms of the Consent Decree, the company agreed to: (1) admit liability for violations of the FCC's unauthorized transfer rules; (2) implement and adhere to a three-year compliance plan to prevent future violations of the FCC's Rules; and (3) pay a $24,975 civil penalty to the United States Treasury.

Mean Streets: Traffic Control Company Pulled Over for Unlicensed Radio Operations

A Pennsylvania-based traffic management company received a Warning of Unlicensed Operation ("Warning") from the FCC for operating radio transmission equipment on various frequencies in the Land Mobile Radio Service, General Mobile Radio Service, and Family Radio Service bands without authorization.

The FCC allocates various frequency bands for particular operations and with different licensing requirements. For example, users of Land Mobile Radio Service ("LMRS") frequencies are typically companies, government entities or similar organizations who use these channels to communicate with fleet vehicles and personnel spread out over a wide area. In contrast, the General Mobile Radio Service ("GMRS") is available only to individuals (and their families) for short-distance two-way communications. Both LMRS and GMRS require an FCC license.

A third type of private voice radio service is the Family Radio Service ("FRS"). Like GMRS, this service is intended for use by individuals, but unlike GMRS, does not require an FCC license. However, devices used for FRS transmissions must still be approved by the FCC for that use.

The FCC began an investigation when it received information that the company, which dispatches personnel to monitor and control traffic at construction and emergency sites, was operating radio equipment across all three services in the mid-Atlantic region. According to the Warning, the company did not have licenses to operate LMRS or GMRS equipment, and apparently did not have radios approved for FRS use.

The Warning notes that unauthorized operations subject the responsible party to monetary fines, equipment seizure, and criminal sanctions, including imprisonment. The company was given ten days to respond with evidence that it was in fact authorized to operate on the various frequencies. The FCC will then assess that response and any other relevant information to determine what enforcement action it will pursue against the company.

Shine a Light: FCC Warns Florida Tower Owner Over Unlit Structure

Any modification of a tower's coordinates of one second or more in longitude or latitude requires the tower owner to update its information in the FCC's Antenna Structure Registration ("ASR") system, and also requires prior approval from the FAA. Any change in ownership contact information for the ASR must be reported to the FCC within five days of the change.

In addition, Part 17 of the FCC's Rules requires a tower owner to comply with various registration, lighting and painting requirements. Towers must be painted and lit in compliance with FAA requirements, and the tower owner is responsible for observing the tower at least once every day for any lighting failures or to have in place an automatic monitoring system to detect such failures. Any extinguished or improperly functioning lights must be reported to the FAA if the problem is not corrected within 30 minutes. The FCC's Rules require lighting repairs to be made "as soon as practicable."

This past month, FCC Enforcement Bureau agents responded to a complaint that a tower had been dark for several months. During their investigation, the agents discovered numerous violations relating to the tower's lighting, location and operations. According to the Notice, the tower is located over 300 feet away from its FCC-registered location. When the agents contacted the company's CEO about the violations, he stated that not only did the company know that the tower had been dark since January 2019, but he had in fact turned off electrical power to the tower. The CEO also confirmed that, despite the company's knowledge of the tower's problems, it had not reported the matter to any authorities, nor had it taken any proactive steps to relight the tower. The company also had no system in place to monitor the tower's lighting status.

On top of these technical problems, the agents also determined that the tower owner had failed to update basic ownership information about the tower in the ASR system.

As a result, the Enforcement Bureau issued a Notice of Violation ("Notice") to the tower owner for violating the FCC's antenna structure registration and lighting rules. The company has just 20 days to respond to the Notice. In its response, it must provide under penalty of perjury: (1) a complete explanation of each violation; (2) a description of its corrective actions; and (3) a timeline for completion of these actions. The FCC will then consider the licensee's responses and all other relevant information to determine what enforcement action it will take in response to the violations.