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FCC Enforcement Monitor September 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:

- *Faith-Based Station Settles With FCC After Preempting KidVid Programming With Fundraising*
- *Arizona LPFM Gets License Reinstated in Consent Decree*
- *Christmas Tree's Harmful Interference Results in Consent Decree With LED Company*

Gotta Have Faith: Washington TV Station That Preempted Children's Programming With Fundraising Settles With FCC

The FCC recently entered into a Consent Decree with the licensee of a faith-based Washington TV station for inaccurate Children's Television Programming Reports and for failing to provide a sufficient amount of "core" children's educational programming.

Pursuant to the Children's Television Act of 1990, the FCC's children's television programming ("KidVid") rules require TV stations to provide programming that "serve[s] the educational and informational needs of children." Under the KidVid guidelines in place at the time of the alleged violations, stations were expected to air an average of at least three hours per week of "core" educational children's programming per program stream. To count as "core" programming, the programs had to be regularly-scheduled, at least 30 minutes in length, and broadcast between the hours of 7:00 a.m. and 10 p.m. A station that aired somewhat less than the averaged three hours per week of core programming could still satisfy its children's programming obligations by airing other types of programs demonstrating "a level of commitment" to educating children that is "at least equivalent" to airing three hours per week of core programming. The FCC has since acknowledged that this alternative approach resulted in so much uncertainty that stations rarely invoked it.

Stations must file a Children's Television Programming Report (currently quarterly, soon to be annually) with the FCC demonstrating compliance with these guidelines. The reports are then placed in the station's online Public Inspection File. Upon a station's application for license renewal, the Media Bureau reviews these reports to assess the station's performance over the previous license term. If the Media Bureau determines that the station failed to comply with the KidVid guidelines, it must refer the application to the full Commission for review of the licensee's compliance with the Children's Television Act of 1990. As we have **previously discussed**, the FCC recently made significant changes to its KidVid core programming and reporting obligations, much of it having gone into effect earlier this month.

During its review of the station's 2014 license renewal application, the Media Bureau noticed shortfalls in the station's core programming scheduling and inaccuracies in the station's quarterly KidVid reports over the previous term. It therefore issued a Letter of Inquiry to the station to obtain additional information. In response, the station acknowledged that it had in fact preempted core programming with live fundraising, but asserted that it still met its obligations through other "supplemental" programming, albeit outside of the 7 a.m. to 10 p.m. window for core programming. Inaccuracies in its reports were blamed on "clerical errors."

The Media Bureau concluded that the station's supplemental programming did not count toward the station's core programming requirements. Without getting into the merits of the programming itself, the Media Bureau found the programming insufficient because it was aired outside of the core programming hours. The Media Bureau also concluded that the station had provided inaccurate information on several of the quarterly reports.

In response, the FCC and the station negotiated a Consent Decree under which the station agreed to pay a $30,700 penalty to the U.S. Treasury and implement a three-year compliance plan. In return, the FCC agreed to terminate its investigation and grant the station's pending 2014 license renewal application upon timely payment of the penalty, assuming the FCC did not subsequently discover any other "impediments" to license renewal.

Radio Reset: LPFM License Reinstated (for Now) in Consent Decree Over Various Licensing and Underwriting Violations

In response to years of ownership, construction, and other problems that culminated in its license being revoked in 2018, the licensee of an Arizona low power FM ("LPFM") station entered into a Consent Decree with the Media Bureau and the Enforcement Bureau.

Section 310 of the Communications Act prohibits the transfer of control of a broadcast station license without prior FCC approval. Further, LPFM licensees are subject to a three-year "holding period" before they can seek approval for a majority change in the makeup of their governing board occurring within a brief period of time. This limitation was created to discourage speculation by applicants applying for LPFM authorizations with the intent of selling them shortly after grant. Because LPFM licensees are often non-profit organizations that experience regular turnover in leadership, the FCC does not require LPFM stations to obtain prior approval for gradual changes in their governing board. However, after expiration of the holding period, LPFM licensees may seek prior approval for major board changes by filing an application with the FCC.

Due to their unique status, LPFM stations, like noncommercial educational FM broadcast stations, are prohibited from airing promotional announcements on behalf of for-profit entities in exchange for any benefit or payment. However, LPFM stations may broadcast "underwriting announcements" that identify but do not "promote" station benefactors. Such identifications may not, among other things, include product descriptions, price comparisons, or calls to action on behalf of a for-profit donor.

The licensee's woes began shortly after the station's 2015 initial authorization grant. In February 2017, the licensee was granted a construction permit to relocate its facilities, and shortly thereafter filed for and was granted a license to operate at its new site. Two months later, however, a petition for reconsideration was filed by a company with ties to a nearby FM translator station licensed to operate on the same channel as the LPFM. A further objection was filed the following year by the owner of the LPFM station's licensed transmitter site, who by then had evicted the station from the site. The petition (which the LPFM licensee asserted was retaliation for a previous contested application), included several claims against the LPFM licensee, including that the licensee had transferred control of the station without prior FCC consent within months of receiving the authorization, and had operated the LPFM with unauthorized facilities. In the meantime, the station, unable to secure approval for a new site, went silent and obtained authority to temporarily remain off-air.

Addressing the claim of an unauthorized transfer, the licensee acknowledged that it had replaced its entire governing board within the first year of operation without prior approval, but claimed that the circumstances amounted to an "honest transfer mistake" because, while a majority of the original board members departed, the remaining volunteers erroneously determined that their continued presence meant that a major transfer of control had not occurred. After being made aware of the petition, the licensee filed a transfer of control application seeking retroactive approval for the transfer.

In a Letter Order published in June 2018, the Media Bureau determined that the licensee failed to abide by the three-year holding period and failed to seek prior approval for the change in its board. Because of this, the Bureau concluded that the station failed to meet a basic condition of its authorization, and declared the station's authorization null and void. As a result, the Bureau deleted the station's call sign, and dismissed the station's remaining applications as moot (thereby not addressing the remaining allegations).

The licensee responded with a petition for reconsideration, in which it argued that while it should have sought prior approval of its board turnover, the FCC should reinstate its license because the change did not affect the organization or its mission to provide "experience and training to individuals who wish to get into broadcasting."

In addition to the licensee's problems with its unauthorized transfer of control, around the same time as the Media Bureau's investigation, the Enforcement Bureau began looking into an underwriting complaint against the station. The complaint alleged that the station had broadcast announcements that had impermissibly promoted donors' businesses or services.

To resolve both investigations, the licensee agreed to enter into a Consent Decree with the Media Bureau and Enforcement Bureau. In it, the licensee admitted to undergoing an unauthorized 100% transfer of control (while avoiding any admission of liability relating to the FCC's holding period rule). The licensee further admitted that it had constructed both its tower and antenna at heights lower than authorized by the FCC, and operated these facilities in that condition for several months without prior FCC approval. The licensee also admitted to falsely certifying that it had constructed the tower in accordance with its construction permit (and under the signature of an individual who was no longer associated with the licensee). It also admitted to broadcasting impermissible promotional announcements multiple times on the station.

The licensee agreed to pay a $1,500 civil penalty and implement two separate compliance plans – a 3-year plan to address ownership and licensing issues, and a 5-year plan to ensure compliance with the underwriting rules. In return, the Media Bureau agreed to restore the station's license as well as grant authority for the station to remain silent for exactly four months and eighteen days. In that time, the station must locate a new transmitter site, obtain FCC and local permits to construct new facilities at that site, construct those facilities, and commence operation. Should the station remain off-air after that time has elapsed, it will trigger a provision of the Communications Act that automatically terminates a station's license for failure to broadcast for any 12-month period.

Seasons' Greetings: FCC Settles With Christmas Tree Light Company Over Equipment Authorization Violations

A Virginia-based LED company wound up with coal in its stocking when its Christmas lights triggered an Enforcement Bureau investigation during the 2017 holiday season.

The Communications Act restricts the manufacture, import, sale, or shipment of devices capable of **causing harmful interference to radio communications**. The FCC strictly enforces technical and marketing rules for devices that emit radio frequency energy ("RF device"), as such devices can generate signals which interfere with other spectrum users.

In the winter of 2017, the Enforcement Bureau's Spectrum Enforcement Division began investigating a complaint of harmful interference to wireless communications near a large midwestern zoo. The complaint specifically alleged that the interference was caused by the zoo's lighted Christmas tree exhibit. The Division narrowed its investigation to the

Virginia company responsible for the display's LED lights. According to the Consent Decree, the company had failed to: (1) obtain FCC authorization for multiple models of lights that it had marketed; (2) properly label and provide sufficient disclosures in the lights' user manuals; and (3) produce relevant equipment testing records to demonstrate compliance with RF device interference restrictions.

To resolve the matter, the company and the Enforcement Bureau entered into a Consent Decree in which the company agreed to (1) pay a $25,000 civil penalty; (2) admit to violating the FCC's equipment authorization and marketing rules; and (3) implement a three-year compliance plan to ensure there will be no future violations.