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FCC Enforcement Monitor February 2021

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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:

- *Imprisoned Former Alabama House Speaker's Felony Convictions Lead to FCC Hearing on Character Issues*
- *California Retirement Home Receives Notice of Violation Over Signal Booster Interference*
- *Georgia LPFM Station Hit with $10,000 Penalty for Underwriting Violations*

Imprisoned Former Alabama House Speaker's Felony Convictions Raise Questions About FCC Qualifications

The FCC has designated for hearing the question of whether an Alabama radio broadcaster remains qualified to hold Commission licenses. The licensee's president and sole shareholder was convicted of six felony charges involving conduct during his time as Speaker of the Alabama House of Representatives.

Section 309 of the Communications Act of 1934 requires the FCC to designate an application for hearing before an Administrative Law Judge (ALJ) if a "substantial and material question of fact is presented" as to whether grant of an application would serve the public interest, convenience, and necessity.

The character of an applicant is one of several factors examined by the FCC in determining whether a party has the requisite qualifications to become or remain a Commission licensee. Moreover, an FCC policy (referred to as the *Jefferson Radio* policy, after a 1964 case) generally prohibits the FCC from granting assignment applications where character questions have been raised regarding the seller. The theory behind this policy is that a party unqualified to hold an FCC license should not be allowed to profit by selling it.

After a June 2016 trial and multiple appeals, the Alabama Supreme Court upheld six felony convictions against the former Speaker for: (1) soliciting or receiving something of value from a principal; (2) using an official position for personal gain; and (3) representing a business entity before an executive department or agency in exchange for compensation. Following the court's decision, and facing a potential four-year prison sentence, the licensee filed an application in September 2020 for consent to assign its FCC authorizations, including AM and FM station licenses, three FM translator licenses, and a construction permit for a new FM translator station.

Prior to filing the assignment application, the licensee had also filed applications for renewal of the AM, FM, and translator station licenses. In these applications, the licensee disclosed the status of the legal proceedings against the former Speaker. The FCC considers a felony conviction or misconduct constituting a felony as relevant to its character assessment and ultimately to its determination of whether to grant an application. The FCC concluded that the former Speaker's six felony convictions and the actions behind them established a substantial and material question of fact as to whether the licensee, by virtue of the former Speaker's position as president and sole shareholder, possesses the requisite qualities to hold a Commission license. As a result, the FCC designated for hearing the questions of whether (1) the licensee has the character to remain a Commission licensee; (2) the licensee's authorizations should be revoked altogether; and (3) the pending construction permit application should be granted, denied, or dismissed.

Regarding the assignment application, the licensee requested that the FCC apply an exception to its *Jefferson Radio* policy and grant the application despite the pending character qualification issues. While the FCC has in limited circumstances found an exception to be warranted, the Commission has generally applied the policy to deter stations from committing violations and then simply selling their assets when faced with potential disqualification. The FCC found that in the present case, numerous factors weighed against an exception, including the fact that the market is not underserved, as listeners have access to several other broadcast stations, and the lack of any physical or mental disability or other circumstance that would prevent the licensee from fully participating in the hearing.

In light of the pending character concerns, the FCC temporarily set aside consideration of the license renewal and assignment applications until such time as the character questions can be resolved through an administrative hearing before an ALJ.

FCC Investigates California Retirement Community Over Unauthorized Operation of Signal Booster Devices

The FCC's Enforcement Bureau issued a Notice of Violation to a Bay Area retirement community for interference complaints related to its Private Land Mobile Radio (PLMR) operations.

PLMR operations are wireless communications systems used by many local governments and private companies to meet a variety of organizational communications needs. These systems have been used to support everything from public safety and utilities to manufacturing and certain internal business communications, and often operate on shared frequencies with other PLMR licensees.

Section 90.219 of the FCC's Rules governs PLMR licensees' use of devices, known as signal boosters, that improve wireless communications signals. Section 90.219(b)(1) allows a PLMR licensee to consent to the operation of signal boosters by other parties seeking to amplify the licensee's signal. Under these arrangements, the licensee must provide its express consent and the non-licensee must maintain a record of the consent in a recordable format that can be presented upon request from either the FCC or another party seeking to resolve interference. A PLMR licensee operating a signal booster must ensure its proper operation, and is responsible for any harmful interference caused to other licensed services.

An Enforcement Bureau investigator began tracking the retirement community's radio emissions in response to a complaint of harmful interference from a nearby local government entity. The investigation revealed that the retirement community was using a signal booster to amplify the government entity's signals but could not show that it obtained the necessary consent to "boost" those signals. The investigator also discovered that the signal booster was causing interference to the local government entity's communications.

The FCC issued a Notice of Violation to the retirement community seeking additional information on the violations and any remedial actions taken. The facility must respond to the FCC with a written statement within 20 days that explains the facts and circumstances surrounding each violation and the corrective actions taken, including a timeline for any pending corrective actions.

Georgia LPFM Station Receives $10,000 Penalty for Underwriting Violations

The FCC's Enforcement Bureau entered into a Consent Decree with the licensee of a Georgia LPFM station to resolve an investigation into violations of the Communications Act and the FCC's rules regarding underwriting practices.

Section 399B of the Communications Act of 1934 and Section 73.503(d) of the FCC's Rules prohibit LPFM stations from airing promotional announcements on behalf of for-profit entities in exchange for compensation. Such prohibited promotional announcements include, among other things, descriptions of products or services, calls to action, or inducements to buy, sell, or rent a product. The FCC adopted these restrictions to preserve the locally-focused nature of LPFM stations' programming. Recognizing the unique, local programming noncommercial stations provide their listeners, the FCC exempts these stations from annual regulatory fees, reserves spectrum for their operations, and generally imposes fewer regulatory requirements on them.

In October 2019, the FCC received a complaint, with audio samples included, alleging that in May of that year, the station broadcast an advertisement on behalf of a for-profit entity in violation of the FCC's underwriting rules. On April 27, 2020, the Bureau followed up by issuing an LOI seeking additional information on the announcement. The licensee responded the following month acknowledging that it had broadcast announcements on behalf of for-profit entities in exchange for compensation. Specifically, the licensee admitted that between May 2019 and April 2020, the station aired nine announcements with prohibited promotional material, such as comparative or qualitative language to describe products or services, calls to action, pricing language, and overly detailed listings of products or services.

To resolve the investigation, the licensee entered into a Consent Decree with the Enforcement Bureau under which it must pay a $10,000 penalty. According to the Consent Decree, the FCC reduced the amount of the penalty after reviewing financial documentation submitted by the licensee demonstrating its limited ability to pay. In addition to the monetary penalty, the licensee must also designate a compliance officer and develop a compliance plan to prevent future violations.