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FCC Enforcement Monitor April 2022

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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:

- *Felony Fraud Conviction Results in AM Station License Revocation Hearing*
- *Dash Camera Retailer Enters $75,000 Consent Decree for Marketing Unauthorized Devices*
- *Broadcaster Agrees to $9,000 Consent Decree for Violations Relating to Silent STA Rule, Translator Rebroadcasting Rule, and the Truthful and Accurate Statements Rule*

Up in Smoke: Lying to IRS Leads FCC to Question AM Licensee's Character Qualifications

The FCC recently issued a Hearing Designation Order and Order to Show Cause to determine whether the license of a Tennessee AM station should be revoked. The licensee's sole member, a former representative in the Tennessee legislature, purchased cigarette tax stamps in 2007 and sold them for a substantial profit following the legislature's increase in the state's cigarette tax. He failed to include this profit in his 2008 individual income tax return and was convicted in 2016 of fraud and making false statements to the government. The licensee reported the conviction to the FCC on April 14, 2017 – two weeks after the deadline set forth in Section 1.65(c) of the FCC's Rules (which requires licensees to report adverse court and administrative findings bearing on character qualifications by the anniversary of their state's renewal filing deadline). The licensee also disclosed the conviction in the station's March 18, 2020 license renewal application, along with failures to file Ownership Reports and to timely upload quarterly Issues/Programs lists.

Section 312 of the Communications Act of 1934 (the "Act") permits the FCC to revoke a license if it determines that the licensee lacks the requisite character qualifications to remain a Commission licensee. Key to the FCC's character inquiry is the question of whether the licensee "is likely to be forthright in its dealings with the Commission and to operate its station consistent with the requirements of the Communications Act and the Commission's Rules and policies." The FCC has previously explained that any violation of the Act or FCC's Rules may be relevant to a licensee's character qualifications. With respect to non-FCC misconduct, the FCC has found that felonies and adjudicated fraudulent representations to other governmental units are relevant to a licensee's character qualifications because they are indicative of the licensee's propensity to obey the law or to engage in similar, non-truthful behavior before the FCC. The FCC relies heavily on the candor of licensees, and therefore deems full and clear disclosure of all material facts as essential to its processes.

In this case, the individual's felony conviction resulted from dishonest conduct: omission of material financial information resulting in a consequential inaccuracy in the information provided to the IRS. The FCC concluded that the individual's willingness to unlawfully conceal information from another federal agency, together with the licensee's admitted failures to comply with certain FCC reporting requirements, called into question the licensee's ability to provide complete and accurate information to the FCC. Accordingly, the FCC commenced a hearing to determine whether the individual (and, by extension, the licensee) possesses the necessary character qualifications to remain a Commission licensee.

Dash Camera Retailer Settles Equipment Marketing Investigation for $75,000

The FCC entered into a consent decree with a Connecticut-based dash camera retailer, resolving an investigation into whether the company unlawfully marketed unauthorized vehicle dash cameras in the United States. The investigation found, and the company admitted, that the retailer marketed several unauthorized camera models, failed to test its equipment's radiofrequency ("RF") emissions, and failed to retain measurement records in violation of the Act and the FCC's Rules.

Section 302(b) of the Act prohibits, among other things, the sale or offering for sale of devices that fail to comply with the FCC's RF equipment authorization regulations. Similarly, Section 2.803(b) of the Commission's Rules prohibits, with limited exceptions, the marketing of an RF device unless the device has first been properly authorized, identified, and labeled in accordance with the FCC's Rules.

As detailed in Pillsbury's **Primer on FCC Radio Frequency Device Equipment Authorization Rules**, equipment authorization procedures differ depending on whether the device is an "unintentional radiator" (a device that emits signals to other parts of the device or to an attendant device, such as a universal remote control") or an "intentional radiator" (a device that intentionally emits RF energy outside of the device). Section 2.906 of the Rules sets forth the relatively simple Supplier's Declaration of Conformity ("SDoC") procedures that apply to unintentional radiators. Section 2.907 of the FCC's Rules sets forth the more stringent Certification process required for intentional radiators. Section 2.938 of the Rules requires that manufacturers or other responsible parties retain test measurement records and other data demonstrating that each RF device has been properly tested and authorized under the appropriate equipment authorization procedures prior to marketing.

The FCC's Enforcement Bureau, Spectrum Enforcement Division (Division), issued a Letter of Inquiry ("LOI") and several follow-up inquiries to the company following a complaint alleging that certain dash cameras interfered with consumers' car satellite radio reception. The investigation revealed that the company did not begin to seek the FCC authorizations required for several dash camera models until July 2020 – approximately four years after it began marketing the devices. The company obtained three equipment Certifications by the end of September 2020 that purported to authorize most of its dash camera inventory and later obtained SDoC authorizations for several additional models.

However, the company was unable to produce documentation showing the trade models were in fact identical to the tested model, indicating a violation of Section 2.938's requirement to retain relevant testing records for equipment subject to Certification and SDoC procedures. Further, the Division found that some of the models subject to the Certification requirement were in fact not electrically identical to the tested model, and therefore were never authorized for sale in the U.S. under the September 2020 Certifications. The Division therefore concluded that the company marketed unauthorized RF equipment in violation of Section 302(b) of the Act and Sections 2.803(b), 2.906, and 2.907 of the FCC's Rules.

The company and the FCC settled the investigation with a consent decree. The consent decree requires the company to, among other things, designate a compliance officer, implement a multi-part compliance plan, file annual compliance reports for the next three years, and pay a $75,000 civil penalty.

Licensee of Illinois FM Translator Enters $9000 Consent Decree with FCC to Resolve Investigation of Various Violations and Secure License Renewal

The licensee of an Illinois FM translator entered into a Consent Decree with the FCC to resolve station identification and translator operation issues raised by an informal objection against the translator's August 2020 license renewal application.

The informal objection argued that the application should be denied because the translator had never been constructed at its original authorized site. In subsequent pleadings, the objector also alleged that (1) the licensee failed to timely request and obtain Special Temporary Authority ("STA") from the FCC for the translator to be silent for an extended period of time, (2) the license automatically expired under Section 312(g) of the Act because it was silent for more than 12 consecutive months, (3) the translator did not comply with the station identification requirements set forth in Section 74.1283(c)(2) of the Rules, and (4) the translator operated when its primary station was not broadcasting, in violation of Section 74.1263(b) of the Rules.

The FCC's Media Bureau (the "Bureau") denied the objector's allegations regarding construction of the translator because that issue was based on a previously filed complaint that had already been investigated and resolved in the licensee's favor. The Bureau also dismissed the claim that the translator failed to resume operations prior to one year of silence, finding that the station went silent on March 6, 2020 and resumed operations on March 5, 2021 pursuant to an STA to operate at low power and noting that the objector had no evidence to the contrary. However, the Bureau agreed that the licensee violated Section 74.1263(c) of the Commission's Rules by failing to promptly notify the FCC when the translator went silent, and by failing to timely file a request for an STA.

The Bureau issued a LOI to the licensee to investigate the allegations relating to station identification and whether the station unlawfully operated the translator while the primary station was off the air. In its LOI response, the licensee confirmed under penalty of perjury that it complies with the station identification requirements under section 73.1283(c)(2)(i), which permits identification by International Morse Code. As such, the FCC concluded that the licensee was not required to adhere to the alternative over-the-air identification requirements of 73.1283(c)(1).

The Bureau did, however, conclude that the translator operated during extended periods of time when the primary station was off the air in violation of Section 74.1263(b) of the FCC's Rules. It also found that the licensee provided materially false information regarding the translator's operation in violation of Section 1.17(a)(2) of the FCC's Rules requiring truthful and accurate statements because the licensee initially denied allegations that the translator was broadcasting or originating programming while its primary station was off the air. The licensee subsequently conceded, after being presented with a recording of the improper transmissions, that the translator inadvertently transmitted an unmodulated carrier and that during periods of storm activity, the translator would unmute or remain on the air due to bursts of static. When the licensee was later presented with additional evidence showing that programming, not static, was observed coming from the translator while the primary station was off the air, the licensee explained that the translator received the primary station's programming via an Internet feed, and admitted that the translator aired the primary station's Internet-only content from March 5, 2021 through April 9, 2021 when the primary station was dark.

In light of the Commission's findings, the licensee elected to enter into a Consent Decree with the FCC to resolve issues relating to the licensee's failure to timely notify the FCC that it was silent, failure to timely seek an STA to remain silent, broadcasting for extended periods while its primary station was off the air, and the licensee's failure to make truthful and accurate statements to the FCC. Pursuant to the Consent Decree, the licensee admitted the violations and agreed to pay a civil penalty of $9,000. In return, the FCC terminated the investigation and granted the translator's license renewal application, conditioned on the licensee fully and timely paying the civil penalty.