

FCC Enforcement Monitor

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HEADLINES

Pillsbury's communications lawyers have published the 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:

- *CB Radio Operator's Transmission of Indecipherable Sound Effects Leads to \$25,000 Fine*
- *Low Power FM Radio Licensee Enters Consent Decree Over Airing of Commercials*
- *Interfering Bluetooth Speaker Leads FCC Field Agents to Florida Spa*

Unauthorized CB Radio Use Results in \$25,000 Fine

An Illinois Citizens Band Radio Service (CB) operator was fined \$25,000 for engaging in unauthorized operation of a CB radio and willfully or maliciously causing interference. Operating a CB radio no longer requires an FCC license, but its operation must still comply with all FCC rules. Among the activities that are generally prohibited are transmission of one-way verbal communications, music and sound effects, and conversations longer than five minutes.

Section 95.933 of the FCC's Rules also prohibits CB transmissions that include advertising for political candidates or for goods or services, and also prohibits transmitting live radio or TV broadcasts. In this case, the violator transmitted nonverbal, indecipherable sound effects for long periods of time. The resulting Forfeiture Order noted that unauthorized CB operations disrupt proper CB uses like "travelers' assistance, warnings of hazardous road conditions, reporting accidents, etc."

In the Notice of Apparent Liability (NAL) that preceded the Forfeiture Order, the FCC detailed the relevant facts, including complaints of transmissions of comedy routines, air raid siren sounds, and digital noises. A visit to the area by an FCC field agent determined that unintelligible, data-like noises were coming from an antenna on the violator's home. The individual failed to respond to an on-scene Notice of Interference to Authorized Radio Stations left by the agent. After subsequently receiving a Notice of Unlicensed Operation, the individual spoke with the regional office of the FCC's Enforcement Bureau and claimed that a battery-operated transmitter inside a milk crate had been placed at a corner near his house. He failed, however, to submit any documentation corroborating the existence of such a device. On a second visit to the area, the field agent observed a data-like transmission similar to what was observed during the initial site visit but did not observe a transmitting milk crate.

The 2023 NAL described the individual's history of non-compliance with FCC rules dating back to 1999, including his failure to pay a previous \$14,000 fine. The individual did not respond to the NAL, so the FCC proceeded to issuing a fine.

The FCC's base fine for each day of unauthorized operation is \$10,000, and for each day of interference is \$7,000. The Enforcement Bureau determined that the violations occurred on two days and assessed a fine of \$25,000, the highest total fine the Enforcement Bureau is allowed to fine a non-common carrier under its delegated authority. The individual has 30 days to pay the \$25,000 fine, which will be made slightly more difficult by the fact that the FCC limits credit card payments to the agency to \$24,999.99.

Low Power FM Station Signs Consent Decree Over Underwriting Violations

A Virginia low power FM (LPFM) radio licensee entered into a Consent Decree with the FCC to resolve issues related to airing commercial advertising. The LPFM station's license renewal application drew a Petition to Deny and informal objection making a number of allegations, including that the station participated in a prohibited operating agreement with other parties in violation of Section 73.860(e) of the FCC's Rules, deviated from the educational purpose stated in the station's initial construction permit (CP) application, made false certifications in the CP application, and regularly aired commercial announcements in violation of Section 399B of the Communications Act and Sections 73.503(d) and 73.801 of the FCC's Rules.

When a petition to deny or informal objection is filed against a license renewal application, the FCC reviews it to determine if the objector has provided specific facts showing that grant of the license renewal application would not be in the public interest. If such facts are provided, the FCC then assesses whether they raise substantial and material questions requiring a hearing. If no substantial issues are raised and the applicant otherwise qualifies for renewal of its license, the FCC will grant the license renewal application. The FCC may also grant license renewals with conditions, such as a shorter license term.

The petitioner alleged that the licensee and other area LPFM licensees had formed a collective that amounted to common ownership or control of the station, in violation of the FCC rule that prohibits an LPFM station from entering into an operating agreement, including a time brokerage or management agreement, with any full-power broadcast station or other LPFM station. The petitioner asserted that the collective was formed for the members to share a transmitter site, antenna, studio, and office facilities. Finally, the petitioner asserted that the collective had engaged an outside sales entity to sell announcements that would air on the LPFM stations.

While noting that the various arrangements were "highly unusual in the context of the LPFM service," the FCC ultimately determined that the arrangements did not violate any FCC rules. It first noted that the collective's operating agreement did not include any provision allowing the collective to control a member station's programming, personnel, or finances. With regard to the agreement with the outside sales entity, the FCC scrutinized the arrangement, and found that, while unconventional and a bit troubling, the licensee had demonstrated its independence from the sales entity by rejecting some of the announcements the entity had sold. Still, the FCC cautioned the licensee to ensure that any future marketing materials do not imply or state that the station is commonly owned, managed, or marketed with any other station.

The FCC also rejected an allegation by the petitioner that the station's programming was not educational, pointing to a lack of any specific evidence offered by the petitioner for that claim. The FCC reiterated that licensees are given broad discretion in their programming decisions and that licensees can modify their programming as long as the programming continues to advance the educational objectives of the licensee. In this case, the licensee offered evidence that it trains community volunteers to work in radio and supports local civic and social events.

Similarly, the FCC found that the petitioner failed to support its allegation that the licensee made false statements or certifications in its CP application. Among the allegations the petitioner made were that the licensee may have falsely certified that it complied with the FCC's policies regarding investor insulation and the non-participation of non-party investors or creditors and that the licensee made a misrepresentation in its CP application because it failed to live up to its pledge to air at least eight hours of locally-originated programming per day, which the petitioner claimed was pledged to gain a comparative advantage against mutually exclusive applications. On the false certification claim, the FCC stated that the petitioner offered no evidence to support its claim, and on the misrepresentation allegation, the FCC noted that the application was granted as a singleton (there were no mutually exclusive application to compete against), so the licensee was not required to honor its earlier pledge.

While mostly exonerating the licensee with regard to the petitioner's other claims, the FCC did conclude that the LPFM licensee had violated the Communications Act and the FCC's rules prohibiting LPFM stations from airing commercial advertisements. LPFM stations are prohibited from airing material intended to promote any service, facility, or product of a for-profit entity in return for anything of value. LPFM stations may identify donors on air via an underwriting announcement, but cannot promote those donors' products, services, or businesses and cannot include in an announcement comparative or qualitative descriptions, price information, calls to action or inducements to buy, sell, rent, or lease a donor's commercial product or service.

To resolve the underwriting investigation and address the violations, the licensee entered into a Consent Decree with the Media Bureau. Under the terms of the Consent Decree, the licensee must appoint a compliance officer, develop and implement a compliance plan that includes consultation with counsel, employee training, operating procedures designed to prevent future violations, and appointment of a compliance officer. In addition, the licensee must report any future violations to the FCC within fifteen days of discovering them, and include a description of the steps that will be taken to cure the violation and prevent any more violations. Finally, the licensee must file compliance reports with the FCC 90 days, 12 months, and 24 months after adoption of the Consent Decree.

Spa's Bluetooth Speaker Interferes with Public Safety Network

A West Palm Beach spa must permanently discontinue its use of a Bluetooth speaker that interfered with FirstNet, a cellular network developed for emergency responders. The FirstNet network operates in a spectrum band spanning 788-798 MHz.

Following a complaint, FCC field agents visited the spa and determined that the interference to FirstNet was a signal centered on 795 MHz, which they found was transmitting from a Bluetooth speaker in the spa. Turning off the speaker resolved the interference.

Transmitters must be licensed by the FCC unless an exception applies. Certain transmitters may operate on an unlicensed basis if they comply with Part 15 of the FCC's Rules, which governs the use of low power transmitters. To qualify for use under Part 15, a device that uses a transmitter to wirelessly relay a signal must be authorized for use as a Part 15 device. The field investigation determined that the speaker in use did not appear to have an FCC equipment authorization and the spa (unsurprisingly) did not have a license to operate in the 788-798 MHz band.

As a result, the FCC issued to the spa a "Notice of Unlicensed Operation and Notification of Harmful Interference." Pursuant to the Notice, the spa must immediately stop operating the Bluetooth speaker and respond to the FCC within 10 days with a description of "the steps you are taking to avoid operating on unauthorized frequencies and preventing future interference." The FCC will then decide whether further enforcement action is needed to ensure future compliance.