ADVISORY

FCC Enforcement Monitor July 2024

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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:

- *Failure to Pay Annual Regulatory Fees Trips Up Texas AM Radio Licensee*
- *Communications Provider for Deaf and Hard of Hearing Consumers Resolves Investigation with Multimillion Dollar Consent Decree*
- *Investigation into Unauthorized Transfer of Control of Colorado Radio Stations Leads to $3,400 Fine*

License of Texas AM Station Could Be Revoked If Regulatory Fees Remain Unpaid

The licensee of a Texas AM station must either pay its overdue regulatory fees or demonstrate why the fees are inapplicable or should be waived or deferred. According to the Federal Communications Commission's records, the radio station currently owes unpaid regulatory fees exceeding $3,000. The fees were originally due on September 30, 2022, and the outstanding amount continues to accrue interest and other charges until it is paid in full.

Under Section 9 of the Communications Act of 1934 and Section 1.1151 of the FCC's Rules, the FCC has the authority to assess annual fees to cover its operational costs. These fees are typically due in late September to ensure the agency is fully funded at the start of the federal government's fiscal year in October. Late payment of these fees incurs a 25% penalty plus interest. If licensees fail to pay regulatory fees and any penalties or interest, the FCC may revoke their affected licenses and other authorizations.

Prior to issuing an *Order to Pay or to Show Cause*, the FCC sent a demand letter to the licensee. When payment was not received, the Commission transferred the debt to the U.S. Department of Treasury. Subsequently, the FCC requested the return of the matter from the Treasury Department in order to pursue further collection efforts.

The *Order* demands that within 60 days the licensee either pay the full outstanding debt or demonstrate why the fee is inapplicable or should be waived or deferred. The Media Bureau noted in the *Order* that failing to provide evidence of payment or to demonstrate why the fee isn't applicable by the 60-day deadline could result in revocation of the station's license.

While the FCC will consider waiving, reducing, or deferring a fee debt for good cause consistent with the public interest, the Commission interprets this provision narrowly. For this type of relief, the FCC requires proof of extraordinary circumstances or financial hardship that outweighs the public interest in recovering the cost of the FCC's regulatory services.

License revocation requires a hearing only if the licensee disputes the charges with a substantial and material question of fact regarding the owed fees. If a hearing is granted, the licensee carries the burden to introduce written evidence and proof of its claims. Importantly, the FCC can require the licensee to pay for the hearing costs if the licensee does not ultimately prevail, making it a very time-consuming and potentially expensive prospect.

With 2024 regulatory fees due in September, this enforcement action serves as a reminder to all broadcast stations and other regulated entities of the need to pay regulatory fees by the deadline. Failing to do so adds the expense of penalties and interest, and as shown in this case, could ultimately result in license revocation.

Service Provider to Deaf and Hard of Hearing Enters Into $35 Million Consent Decree

The FCC's Enforcement Bureau and a global communications company that provides services to those who are deaf or hard of hearing entered into a Consent Decree to resolve an investigation regarding the company's provision of Internet Protocol Captioned Telephone Service (IP CTS) and the submission of inaccurate information to the Telecommunications Relay Service (TRS) Fund Administrator. Under the Consent Decree, the company admitted to violating the FCC's rules, and among other things, agreed to implement a comprehensive compliance program and a financial settlement with the government of nearly $35 million, including payment of a $5 million civil penalty, a $12 million set off against future reimbursements from the TRS Fund, relinquishment of $13.6 million in TRS Fund claims, and a commitment to spend at least $4 million on privacy and data protection efforts and consumer education.

The FCC's TRS rules are designed to enable persons who are deaf, hard of hearing, deaf-blind, or have speech disabilities to use the telecommunications system to make and receive calls through technology and/or a Communications Assistant (CA). IP CTS is used by hard-of-hearing users who use their voice to speak but need the service to communicate more effectively on a call with another party. With IP CTS, users can read captions of the communications of the other party to the call using an IP-enabled device, captioned telephone, existing phone tied to a computer, or application connected to the Internet.

The FCC is required by the Communications Act of 1934, as amended, to ensure that TRS services are functionally equivalent to voice communication services used by persons without disabilities, including the privacy and confidentiality of call content. The agency has long emphasized that when a TRS caller reaches a CA, it is the equivalent of reaching a dial tone. Under Section 225 of the Act, the FCC is directed to adopt regulations that prohibit providers from disclosing or keeping records of the content of any relayed conversation beyond the duration of the call, or intentionally altering a relayed conversation. These prohibitions also apply to CAs. Beyond these measures, the FCC has also adopted rules to protect TRS users' privacy, user data, and the integrity of the TRS Fund that pays providers for these services.

An Enforcement Bureau investigation into the company led to a 2021 Consent Decree that required compliance monitoring and reporting of instances of noncompliance with the TRS rules. These reports identified and reported various violations, including among other things, (1) the improper retention of call content beyond the duration of the call, (2) failing to send required account change notifications to some customers in a timely manner, (3) actions taken by the company's marketing partners deemed to constitute noncompliance, and (4) seeking and receiving compensation from the TRS Fund for calling minutes that were ineligible for compensation.

To resolve the investigation, the company entered into a Consent Decree under which it is required to, among other things, establish a compliance plan, train certain employees on compliance with relevant laws and the terms of the

Consent Decree, submit two compliance reports within 16 months, conduct a data inventory, implement a data retention schedule, and invest in measures such as privacy enhancing technologies and educational resources for customers. The $5 million civil penalty is due in installments and the terms of the Consent Decree expire after 18 months.

Unauthorized Transfer of Control of Colorado Radio Stations Results in $3,400 Fine

The licensee of a Colorado AM/FM combo agreed to a Consent Decree with the FCC's Media Bureau to resolve an investigation into an unauthorized transfer of control of the company.

Before September 2023, the licensee was controlled by a limited liability company (LLC) with two members, each with a 50% interest. In September, one of the LLC members agreed to sell his 50% interest to a third party, pursuant to an LLC Membership Purchase Agreement. That same day, the seller and buyer executed a document transferring the 50% interest to the buyer. Under FCC rules, the transfer of a 50% voting interest (negative control) constitutes a transfer of control. An application for voluntary transfer of control of the licensee was filed with the FCC three weeks later.

Under Section 310(d) of the Communications Act and Section 73.3540 of the FCC's Rules, voluntary transfers of control of a broadcast license require prior approval by the FCC. In this case, the parties transferred control of the licensee company three weeks before filing the necessary application. In response to the late-filed transfer application, the FCC suspended processing of the application and launched an investigation. To resolve the investigation, the licensee entered into the Consent Decree, admitting an unauthorized transfer of control had occurred and agreeing to pay a $3,400 fine. The Consent Decree contained no ongoing regulatory obligations.