ADVISORY

FCC Enforcement Monitor September 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:

- *Massachusetts Man Ordered to Cease Using Interfering Home TV Antenna*
- *Unauthorized Transfers of Arkansas Radio Stations Lead to $8,000 Consent Decree*
- *STIR/SHAKEN Rule Violations End With $1,000,000 Consent Decree*

Interference From Home TV Antenna Moves FCC to Action

The FCC's Enforcement Bureau recently issued a Notification of Harmful Interference (Notification) directing a Massachusetts man to cease using an indoor digital TV antenna in his home.

Over a two-day period in April 2024, an agent of the FCC's Boston field office investigated an interference complaint. The agent determined that unauthorized radio emissions in the 813-817 MHz band were interfering with the Massachusetts State Police public safety communications system. The agent ultimately tracked the interference to an indoor digital TV antenna located in a condominium. His suspicions were confirmed when the interference ceased after the device was unplugged.

The Communications Act of 1934 requires devices operating on certain frequencies, including the 800 MHz band, to be licensed by the FCC. Section 15.5(b) of the FCC's Rules creates a limited exception to this restriction for low power devices where no harmful interference is caused. Section 15.3(m) defines harmful interference as "[a]ny emission, radiation or induction that endangers the functioning of a radio navigation service or of other safety services or seriously degrades, obstructs or repeatedly interrupts a radiocommunications service…."

In September 2024, the Bureau sent a Notification warning to the condominium owner that the TV antenna was causing harmful interference in violation of FCC rules, and should he continue to operate it, he would be subject to severe penalties, including fines, seizure of the equipment, or even imprisonment.

The Notification directed the resident to respond to the FCC within 10 days to describe his operation of the antenna and the steps being taken to ensure no further interference is caused. The FCC indicated it would then determine what enforcement action is warranted to ensure no future violations occur.

Unauthorized Transfers of Control of Arkansas Radio Stations Net $8,000 Consent Decree

The licensee of an AM station and three FM stations in Arkansas failed to obtain required FCC approvals before transferring the licensee's voting stock from one trust to another, and then transferring a 50% controlling interest in the licensee from the second trust to an individual. To resolve the investigation, the licensee entered into a Consent Decree with the FCC's Media Bureau which required, among other things, payment of an $8,000 civil penalty.

In February 2020, the sole trustee of a revocable trust passed away. The trust held 25% of the outstanding voting shares of the four stations' licensee. After the trustee's death, the shares were transferred to a second revocable trust, causing the ownership interest of the second trust to increase from 25% (a minority interest), to 50% (a negative controlling interest) of the licensee. No FCC approval for this change in control was sought.

In October of 2021, the sole trustee of the second trust passed away, and control of that trust passed to another individual. This individual therefore held a 50% voting interest in the licensee through the second trust. Once again, no FCC approval was sought for this transfer, and the individual who now held negative voting control over the stations' licensee had not previously been "passed upon as an individual with an attributable interest in the Licensee."

Under Section 310(d) of the Communications Act and Section 73.3541 of the FCC's transfer of control rules, an involuntary transfer of control application triggered by the death of a shareholder must be filed within 30 days of the controlling shareholder's passing, and an approval of the transfer obtained from the FCC. Section 73.3540 codifies similar requirements for FCC approval of voluntary transfers of control.

Eventually recognizing its errors, the licensee filed applications in April 2024 seeking retroactive FCC approval of the 2020 transfer of control from one revocable trust to the other, and seeking approval of the second transfer of control that gave negative control of the licensee to an individual that had not previously been approved by the FCC.

In response to the belated applications, the Media Bureau launched an investigation. In order to bring the investigation to a conclusion, the licensee agreed to enter into a Consent Decree with the Media Bureau. Under the terms of the Consent Decree, the licensee admitted to violating Section 310(d) of the Communications Act and Sections 73.3540 and 73.3541 of the FCC's transfer of control rules, and must pay a civil penalty of $8,000 within thirty days. Provided that the licensee complies with the terms of the Consent Decree and no additional issues are found, the FCC agreed in the Consent Decree to grant the pending transfer of control applications.

Telecommunications Company Enters Into $1,000,000 Consent Decree Over FCC's STIR/SHAKEN Rules

A telecommunications company entered into a three-year Consent Decree with the FCC's Enforcement Bureau, agreeing to pay a $1,000,000 penalty for violating STIR/SHAKEN rules.

STIR/SHAKEN is a framework through which voice service providers authenticate and verify an originating caller's right to use the telephone number displayed on caller ID. STIR/SHAKEN is meant to protect against spoofed robocalls and restore consumer confidence in caller ID information. To do this, the STIR/SHAKEN framework uses three levels of certifications called "attestations" to convey how much trust can be attributed to the caller ID number. Ascribing the wrong attestation level to a caller ID can erode consumer confidence in Caller ID reliability.

The three attestation levels are known as A-, B- and C-level attestations. An A-level attestation, also known as "Full Attestation," is used when the certifying call provider is "responsible for the origination of the call," has a direct relationship with the customer and can identify the customer, and "has established a verified association with the telephone number used for the call." A B-level attestation, or "Partial Attestation," is used when the provider can meet the first two criteria of the A-level attestation but has not "established a verified association with the telephone number" used in the call. The C-level attestation, or "Gateway Attestation," is used when the certifying provider "has no relationship with the initiator of the call."

In January 2024, just two days before the Democratic New Hampshire presidential primary election, over nine-thousand spoofed robocalls were sent to New Hampshire residents with a message created by artificial intelligence claiming to be from President Biden. The message, which utilized deepfake and voice-cloning technology to sound like the President's voice, encouraged citizens not to vote in the primary election. These calls were made with spoofed Caller ID information, using the phone number of a local political operative who was not involved in the call scheme. The FCC, in coordination with New Hampshire's Department of Justice, the U.S. Department of Justice, USTelecom's Industry Traceback Group, and the Anti-Robocall Multistate Litigation Task Force, carried out an investigation into the calls.

The targeted company cooperated with the investigation, which led to a determination that it was the originating call provider for many of the spoofed calls and that it certified almost 4,000 of the calls with A-level attestations. The company explained its policy to use A-level attestations when it directly assigned Direct Inward Dialing numbers to a customer. The company also allowed customers to receive A-level attestations for calls associated with telephone numbers not associated with the company so long as the customer certified that it would "identify its customer and has a verified association with the telephone number used for the call." Based on certifications from its customer, coupled with past Know-Your-Customer research the company had performed, and a 16-year history with the customer, the company provided A-level attestations for the calls. However, the company took no independent action to determine whether the phone numbers were legitimately allowed to be used by the calling party.

In May 2024, following the investigation, the Enforcement Bureau issued a Notice of Apparent Liability to the company proposing a $2,000,000 fine. To resolve the matter, the company entered into a Consent Decree requiring payment of a $1,000,000 penalty. Under the Consent Decree, the company must also implement a compliance plan overseen by a compliance officer that includes written procedures, a compliance manual, and a training program for employees, all designed to prevent future violations of the STIR/SHAKEN rules. The company must also file compliance reports with the FCC annually for the next three years, and notify the FCC within 15 days of discovering any future violation of the STIR/SHAKEN rules.