

FCC Enforcement Monitor

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By Scott R. Flick, Joseph A. Cohen and Warren Kessler

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:

- *FCC Revokes Licenses After Alleged Failure to Report Felony Drug Conviction*
- *Car Dealership Receives Citation for Interference-Creating Outdoor Lighting*
- *License Renewal Hearing Ordered for Near-Silent Virginia Stations*
- *FCC Commissioner Criticizes Local Colorado News Site Over Pirate Radio Station Article*

LA Business Stripped of Licenses for Alleged Misrepresentations About Drug Conviction

In a rare Order of Revocation, the FCC revoked all of a Los Angeles communication equipment provider's licenses after the licensee failed to respond to an inquiry into whether its manager lied about a 1992 felony drug conviction in dozens of Commission filings.

The Order rescinds the licensee's eleven Private Land Mobile Radio ("PLMR") and microwave station licenses and dismisses all of the licensee's pending modification and license renewal applications.

Section 312(a) of the Communications Act authorizes the FCC to revoke a license "for false statements knowingly made ... in the application" or when it finds that conditions "warrant it in refusing to grant a license[.]" Pursuant to Section 1.17(a)(1) of the FCC's Rules, no person may "intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading." The FCC heavily weighs any misrepresentation or lack of candor when it determines whether a party is fit to become or remain a licensee.

The FCC began looking into the licensee's fitness in 2015, when a different Los Angeles business alleged that the licensee had knowingly lied on an at least one FCC application when it replied "No" to a question that asked whether any of the licensee's controlling parties had ever been convicted of a felony. As it turns out, the manager (who is also the licensee's sole shareholder) had been convicted of possession for sale of cocaine and sentenced to serve two years in California State Prison over two decades ago. The FCC would later learn that the licensee had misrepresented the manager's criminal history in at least 50 separate FCC filings.

In response, the FCC sent the licensee a Letter of Inquiry (“LOI”) seeking information about the manager’s role with the company and any criminal history. When the licensee did not respond to the LOI, the FCC commenced a proceeding with an Administrative Law Judge (“ALJ”) to determine whether the licensee had engaged in misrepresentation before the Commission, whether it was qualified to remain a licensee, and what the FCC should do with the licensee’s various outstanding applications. When the licensee failed to respond to the ALJ’s request to file a written appearance, and failed to appear for a status conference, the ALJ ordered a hearing, which the licensee also ignored.

The FCC determined that the company was unqualified to remain a Commission licensee, revoked all of its licenses, and denied with prejudice all of the licensee’s pending applications.

Light’s Out: FCC Issues Citation to Car Dealership That Fails to Address Harmful Interference

The FCC issued a citation to a North Dakota car dealership for its continued use of outdoor lighting that interferes with a wireless service provider’s nearby cell site.

Pursuant to Section 302(a) of the Communications Act, the FCC regulates all radio frequency energy-emitting devices (“RF devices”) that are capable of causing “harmful interference to radio communications.” Section 15 of the FCC’s Rules regulates intentional and unintentional radiators of RF emissions, ranging from garage door openers to sophisticated computer components. Section 18 regulates equipment that generates or uses RF energy for industrial, scientific, and medical (“ISM”) purposes. If ISM equipment causes harmful interference with an authorized radio service, Section 18.111(b) of the Rules requires its operator to take “whatever steps may be necessary to eliminate the interference.” Similarly, Section 18.115(a) requires the operator to “promptly take appropriate measures to correct the problem.”

In 2016, the wireless carrier noticed that one of its North Dakota cell sites would experience interference in the evening but not during daytime hours. After the carrier connected its problems to a local car dealership’s outdoor lighting schedule, the two companies performed basic on/off tests. When the dealership agreed to leave its lights off one night, the carrier noticed a significant drop in interference. However, the dealership failed to follow up with corrective action, and the carrier subsequently complained to the FCC.

The FCC eventually responded to the carrier’s ongoing complaints and tested the facility itself. When it confirmed that the dealership’s lighting was the source of the interference, it issued the dealership an on-scene warning. However, after several months, the dealership allegedly had failed to cure the harmful interference. The FCC subsequently issued the dealership a citation.

In the citation, the FCC found the dealership to be in violation of its Section 18 requirements by failing to eliminate the radio interference. The citation requires the dealership to provide information about how it intends to address the interference, and threatens “severe penalties” for noncompliance. The maximum fine for each violation or each day of a violation is \$16,000, up to a total of \$122,500 for any single act or failure to act. More information about the regulation of RF devices can be found [in our recent advisory on the subject](#).

With Great Power Comes Great Responsibility: FCC Designates License Renewals for a Hearing After Extended Silence

In another uncommon action affecting a licensee’s status, the FCC commenced a hearing proceeding to determine the fate of two Virginia licenses that are up for renewal.

While critics of the FCC often assert that license renewals have become near-automatic, Section 309(k)(1) of the Communications Act states that the Commission should grant a license renewal after considering whether, in the previous license term, the licensee: (1) served the public interest; (2) has not committed serious violations of the

Communications Act or of the FCC's Rules; and (3) has not committed other violations that would constitute a pattern of abuse. If the licensee has fallen short, the FCC can either grant the renewal application with conditions or deny it after a hearing.

In the past, the FCC has cautioned that a station which is almost always silent does not serve the public interest because it is not an efficient use of the country's limited spectrum, and because broadcasters are responsible for, among other things, transmitting emergency messages to the public.

In the Hearing Designation Order, the FCC recounted lackluster broadcast transmission records for both of the stations in question, which are co-located Class C AM stations. According to the Order, the 1 kW station only operated on an authorized basis for 120 days between April 2008 and November 2017, and only at 30 Watts. The other station, licensed to operate at 5 kW, did only slightly better, operating for 357 days but at only 6 watts.

In 2013, the licensee filed for and received a construction permit for a new tower at a new site but did not build anything, claiming that it was unable to get zoning approval.

Though the proceeding will be a "paper" hearing, the FCC is requiring that the licensee produce all station records and has placed the burden of proof on the licensee to show that the stations have served the public interest over the license term.

Local Online Newspaper Catches Ire of FCC Commissioner

As discussed in [past issues of the FCC Enforcement Monitor](#), the FCC has recently prioritized the prosecution and eradication of pirate radio operations around the country. Commissioner O'Rielly has now taken it a step further, giving an earful to a small digital news outlet in Northern Colorado for what the Commissioner called its "tacit support" of a local pirate radio station.

In December 2017, the website published a review of a new Colorado pirate radio station. Though the article discusses how the FCC tries to prevent the spread of such unlicensed stations, it suggests that the FCC will probably not notice this new station for a while and that readers should "enjoy [it] while it lasts."

The following month, the site published a letter it received from Commissioner O'Rielly, deriding the outlet for the article's tone. In the letter, Commissioner O'Rielly argued that rather than glorify such operations, the website or its readers should have alerted the FCC of the illegal operation. The site responded to what it called the Commissioner's "odd" and "unprecedented" behavior in sending the letter, quoting a portion of the FCC's website that states the Communications Act prohibits the FCC from interfering with the freedom of speech. The interaction has since been picked up by several state and national publications. While broadcasters have been pleasantly surprised by the FCC's crackdown on pirates after years of official inaction, it looks like the pursuit of pirates has finally become more than a priority—this time it's personal.