

FCC Enforcement Monitor October 2018

By Scott Flick, Joseph 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:

- *Ownership Questions Lead to Hearing Designation Order for LPFM Licensee*
 - *NC Man Hit with \$40,000 Fine for Unauthorized Transmissions Over Public Safety Radio*
 - *FCC Issues Notice to Hospital Paging System Licensee for Harmful Interference*
- Headlines
Bullet List Final*

FCC Launches Hearing in Response to LPFM's Undisclosed Foreign Ownership

The FCC has designated for hearing a Low Power FM ("LPFM") licensee's modification application after an investigation into whether the licensee misrepresented the makeup and citizenship of its ownership in various Commission filings.

Under Section 309 of the Communications Act ("Act"), the FCC must first determine that the public interest will be served before it can grant a station license or modification application. If there is a substantial question that prevents the Commission from making that determination, it must designate the application for a hearing before an Administrative Law Judge ("ALJ"). The FCC can revoke the license if an ALJ determines that the applicant lacks the "requisite qualifications" to be a licensee, taking into consideration the applicant's record, character, and truthfulness in dealings with the FCC.

The Act also prohibits entities with greater than 20% alien ownership or voting control from holding a broadcast license where the FCC finds such foreign ownership is not in the public interest. Many FCC filings require the licensee to identify all officers, directors, and entities with attributable ownership interests in the licensee, including their citizenship.

According to the Hearing Designation Order ("HDO"), the Missouri-based licensee initially applied for a construction permit for a new LPFM station in 2013. In that application, the licensee listed five individuals as board members and identified all of them as U.S. citizens. In two separate modification applications in January and November 2017, the licensee identified the same board members as U.S. citizens.

The Enforcement Bureau began its investigation after another licensee alleged that four of the five listed board members were not actually U.S. citizens. The Bureau discovered that one of the board members had, only weeks before the licensee's January application, lost an appeal before a federal court to reopen his deportation order to Guatemala. The court decision referred to him as a Guatemalan citizen. His wife, another board member, had already been deported to Guatemala. These revelations indicated that foreign ownership and control of the licensee not only exceeded 20 percent, but that the licensee had also falsely certified the U.S. citizenship of the two board members.

In addition to questions of citizenship, the Bureau also found evidence that the licensee may not have even identified all individuals with attributable interests in the licensee. Specifically, in documents filed with the Missouri Secretary of State, the licensee listed several officers and board members that it had not disclosed to the FCC.

According to the FCC, these discoveries raised a "substantial and material question of fact" as to whether the licensee misrepresented to the Commission both the makeup and the citizenship of its attributable owners.

The FCC sent the licensee two Letters of Inquiry seeking information about the licensee's board members, but never received any response. Failure to respond to a Commission inquiry is also a violation of the FCC's Rules.

As a result, the FCC commenced an administrative hearing to determine whether the licensee: (1) made misrepresentations in its applications; (2) violated the Commission's foreign ownership rules; (3) failed to maintain the accuracy of its pending application; and (4) failed to respond to the FCC's inquiries.

In light of these questions, the ALJ must also examine the facts to determine whether granting the licensee's pending application is in the public interest, and whether the licensee is even qualified to hold an FCC license at all.

FCC Proposes \$40,000 Fine for Impersonating a Firefighter

In a Notice of Apparent Liability ("NAL"), the FCC found a North Carolina man apparently liable for transmitting on a frequency licensed to local first responders while impersonating a member of the local Volunteer Fire Department.

Section 301 of the Act prohibits the transmission of radio signals without prior FCC authorization. The FCC reserves certain frequencies for first responders as "public safety spectrum." As noted on many occasions by the FCC, unauthorized transmissions on these frequencies pose a threat to first responders and the general public by disrupting communications that are vital for emergency management and disaster response.

Last year, Chairman Pai affirmed that "within the realm of public safety, the FCC has no higher purpose than promoting secure and reliable public safety and emergency response communications." To this end, the FCC has historically **responded aggressively** to the unauthorized use of these frequencies.

On October 17, 2017, a North Carolina county's emergency dispatcher transmitted a message over the county's licensed public safety radio system requesting a response to an activated residential fire alarm. Seconds later, an individual claiming to be a member of the local Volunteer Fire Department and identifying himself as "Unit 7331," transmitted over the radio that he was on his way to the scene. A few minutes later, the same individual called in again to cancel the call, meaning that no other personnel would need to be dispatched. Unbeknownst to the dispatcher, "Unit 7331" did not exist and, as a result, no first responders ever responded to the triggered alarm. Fortunately, the lack of a response did not result in any damage to life or property.

In its investigation of the event, the county sheriff's office identified and interviewed the individual. The man initially denied any involvement but returned to the sheriff's office the next day and admitted making the transmissions from a mobile radio in his car, even though he was not a member of the Volunteer Fire Department. Shortly thereafter, he was charged with interfering with emergency communications in violation of North Carolina law, and now awaits trial in state court.

Almost a year later, the FCC issued an NAL proposing the statutory maximum of \$19,639 for each unauthorized transmission, for a total fine of \$39,278. Though the base forfeiture for each violation is \$10,000, the FCC adjusted this amount upward to the maximum to reflect the disruption to the public safety radio system and the risk to life and property that the man's behavior caused.

Licensee of Hospital Paging System Warned Over Harmful Interference

The FCC presented a Notice of Violation ("NOV") to a Private Carrier Paging Station licensee for operating a paging transmitter at an Ohio hospital that was causing harmful interference on nearby frequencies.

A Private Carrier Paging Station is a commercial radio service that is interconnected to the public switched telephone network. This system is popular in hospital systems because it allows nurses, physicians, and other staff to quickly and efficiently communicate via simple text. Though a pager may seem low-tech for 2018, a private paging system offers certain benefits. Pagers do not rely on cell service, which can be spotty inside hospitals and overwhelmed during emergencies. Further, upper band paging systems operate in the 929 MHz and 931 MHz bands, which offer strong propagation through walls. Sections 22.359 and 90.210 of the FCC's Rules set emissions limits for paging systems.

According to the NOV, the Enforcement Bureau responded to a complaint of harmful interference from a mail delivery company that was experiencing disruptions on nearby frequencies. When agents inspected the paging licensee's equipment at the hospital, they found two paging transmitters generating spurious emissions that could affect services across several adjacent frequencies.

The licensee was given 20 days to respond to the NOV. In its response, it must explain: (1) the facts and circumstances surrounding the violations; (2) any corrective action taken to prevent further violations; and (3) a timeline for completing the corrective actions. The FCC will then consider all relevant information to determine what, if any, enforcement action it will take against the licensee.