

# FCC Enforcement Monitor December 2018

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## 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:*

- *Unpaid Regulatory Fees Bring License Revocation Proceeding for Massachusetts FM Station*
- *Unregistered Tower and Unauthorized Silence Spell Trouble for North Carolina AM Station*
- *FCC Issues Warning to Denver Trucking Company for Unauthorized Transmissions on Public Safety Frequency*

### **The Check is (Not) in the Mail: Massachusetts Station Risks Revocation over Missing Regulatory Fees**

The FCC's Media Bureau issued an Order to Pay or to Show Cause ("Order") to the licensee of a Massachusetts FM station for failing to pay five years' worth of regulatory fees and the corresponding penalty fees. In response to the Order, the licensee must either pay the overdue fees or demonstrate why it does not owe regulatory fees. The Order also launches a proceeding to revoke the station's broadcast license.

Section 9 of the Communications Act ("Act") requires the FCC to "assess and collect regulatory fees" for certain regulated activities, including broadcast radio. Should a party fail to timely pay such fees, the FCC will assess a 25% late fee, as well as interest, penalties and administrative costs. The FCC may also revoke licenses for failure to pay.

The licensee failed to pay its regulatory fees between fiscal years 2014 and 2018, and has accumulated a debt of \$9,641.73 in unpaid fees and related charges. The FCC repeatedly sent the licensee Demand Letters calling for payment but received no response. The FCC eventually transferred the licensee's debt for fiscal years 2014-2017 to the Treasury Department for collection. At the FCC's request, the Treasury Department recently transferred this debt back to the FCC in order to consolidate the collection process.

The licensee has 60 days to either: (1) provide the FCC with documented evidence that all its regulatory fee debt has been paid, or (2) show cause for why such payment is either "inapplicable or should otherwise be waived or deferred."

Failure to provide a satisfactory response to the Order may result in the revocation of the licensee's sole FM station license.

**Silent Night: FCC Investigates North Carolina Licensee for Unregistered Tower and Other Violations**

The FCC's Enforcement Bureau issued a Notice of Violation ("NOV") to the licensee of a North Carolina AM radio station for failing to register and light its tower, and for failure to operate its station in accordance with the FCC's Rules.

Part 17 of the FCC's Rules requires a tower owner to comply with various registration, lighting and painting requirements. With limited exceptions, a tower that exceeds 200 feet in height above ground level must be registered with the FCC. Further, towers must be painted and lighted in compliance with FAA requirements, and any extinguished or improperly functioning lights must be reported to the FAA if the problem is not corrected within 30 minutes.

Part 73 of the FCC's Rules sets minimum operating hours for commercial broadcast stations. A commercial AM station must operate for at least two-thirds of the total hours it is authorized to operate between the hours of 6 a.m. and 6 p.m., and two-thirds of the total hours it is authorized to operate between 6 p.m. and midnight every day except Sunday. A station that expects to be silent for over 30 days must seek and obtain Special Temporary Authority ("STA") from the FCC to be silent for such an extended period.

In October 2018, an FCC field agent inspected the North Carolina tower and discovered that it exceeded 200 feet in height but was not registered in the FCC's Antenna Structure Registration system. That night, the agent observed that the obstruction lighting on the unregistered tower was not lit. The FCC had previously received a complaint in March 2018 about a tower light outage on the same tower in which the station had apparently not reported the outage to the FAA.

While inspecting the transmitter site, the agent also determined that the station was silent. According to an individual listed on what the NOV calls a "prospective purchaser's ownership report," the station had been silent at least as far back as August of this year. According to the NOV, there is no record of the station having applied for, much less being granted, an STA to remain silent.

The NOV is addressed to the licensee's estate due to the licensee's passing in 2017. The estate must respond to the NOV within 20 days with a complete explanation of each violation and all corrective actions taken or planned to be taken to address each of the violations. The FCC will then consider whether further enforcement action against the station is necessary.

**Radio Play: Trucking Company Warned over Unauthorized Transmissions on Public Safety Band**

The Enforcement Bureau issued a Notice of Unlicensed Operation ("NOUO") to a Denver-area trucking company for operating an unauthorized Land Mobile Radio Service station over a band reserved for public safety operations.

Land Mobile Radio Service systems are often used by transportation and shipping companies to communicate with fleet vehicles. Though these systems are widely used, users must still apply for and receive FCC authorization prior to operation, with limited exceptions.

The City and County of Denver complained to the FCC earlier this year about non-public safety communications on the 851.0125 MHz frequency. The FCC reserves the 851.0125-853.9875 MHz band solely for public safety licensees. The 851.0125 MHz frequency is designated as a "National Mutual Aid Repeater Channel" and retransmits inter-agency first responder communications.

In response to the complaint, an FCC field agent tracked down the "offending signal" to a vehicle owned by the trucking company located in an industrial area in the outskirts of Denver. The agent inspected the mobile radio installed in the vehicle and determined that the trucking company was operating on the reserved 851.0125 MHz channel. The Enforcement Bureau further verified that the trucking company did not have a license to operate on that frequency in that location, nor would it have been eligible to operate on that channel.

The NOUO warns the company that operating radio transmitting equipment without a valid FCC authorization is illegal and can lead to severe consequences, including fines, equipment seizure and imprisonment. The NOUO instructs the company to immediately cease the unauthorized transmissions and to respond within 10 days with any evidence that the company is authorized to operate on 851.0125 MHz. Upon receiving a response, the FCC will determine what, if any, enforcement action is necessary.