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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:

- *FCC Fines Kentucky Men $144,344 for Illegally Operating LPTV Station for 18 Years*
- *North Carolina Radio Station Settles With FCC Over Decades of Unauthorized Transfers*
- *Connecticut Radio Station Warned for Inspection and Antenna Violations*

Pay Up: FCC Fines Two Kentucky Men for Illegally Operating LPTV Station for 18 Years

The FCC issued a Forfeiture Order imposing a $144,344 penalty against the operators of a Kentucky unlicensed low-power television ("LPTV") station. The station had been operating without FCC authorization since 1998. The Communications Act prohibits the operation of a broadcast station without FCC authorization. **As we reported in 2017**, the FCC previously adopted a Notice of Apparent Liability ("NAL") against the individuals. This Forfeiture Order affirms the NAL.

The first individual ("Individual 1") initially applied for and was granted the LPTV license in 1990, as well as a subsequent renewal term that ran from July 1993 through August 1998. By the time that term expired, however, the individual licensee had failed to file a license renewal application or seek special temporary authorization to operate the station, and by August 1998, the station was operating without any FCC authorization. In 2004, the FCC's Media Bureau sent a letter to the individual asking whether he had filed a license renewal application. Receiving no response, the Media Bureau sent a letter notifying the licensee that the station's license had been cancelled.

Fast forward eight years, to 2016, when the Media Bureau learned that the station might still be operating. The matter was referred to the Enforcement Bureau, which confirmed that the station was still on the air. During the investigation, Enforcement Bureau field agents interviewed Individual 1 as well as a second individual who identified himself as the station's studio manager and operations manager ("Individual 2"). During their meeting with Individual 2 at the station, the agents issued a Notice of Unlicensed Radio Operation ("NOUO") demanding the station cease operations and warning of possible further enforcement action. In Individual 2's response to the NOUO, he argued that the station was actually still licensed and referred to the NOUO as only a "request" to shut down.

Field agents returned a few months later to find the station still operating. The Enforcement Bureau subsequently issued the NAL.

Both men responded individually to the NAL. Individual 1 claimed, among other things, that the license should still be in effect because he filed a license renewal application in 2004 and included $1,155 to cover license renewal fees for three of his stations through 2022. He further claimed that the station should remain on air because of the benefits it provides to local residents. At the same time, however, Individual 1 also claimed to have "never operated a TV station" in the area and had not visited the station in over 15 years. Finally, Individual 1 sought a reduction in the proposed penalty due to an inability to pay.

The FCC outright rejected all of Individual 1's claims. Regarding the late license renewal application, besides filing the application six year late, the filing would only have covered the preceding license term. Further, the Media Bureau could not have accepted the application because while the funds could have covered the stations' accumulated annual regulatory fees, Individual 1 did not include application processing fees, without which the Media Bureau cannot review an application.

In response to the claims about benefiting the local community, the FCC stated that any alleged benefit from operations "does not absolve [the operator] from liability." The FCC also rejected Individual 1's claim that he never operated the station, noting that the claim conflicted with the evidence, which included filings and statements made by both individuals to the contrary.

Individual 2's response to the NAL similarly did not gain much traction with the FCC, despite a few novel theories. In his response, Individual 2 claimed that the FCC lacks jurisdiction over the station because its signal was not intended to reach beyond the state of Kentucky. Further, Individual 2 included a petition signed by over 100 local residents urging the FCC to allow the station to continue operating. Individual 2 also claimed that he lacked the financial resources to pay the penalty.

The FCC rejected Individual 2's federalism argument as contradicting the plain language of the Communications Act, which prohibits making unauthorized intrastate or interstate transmissions. Further, the Commission gave no weight to the station's "community support," as it had no bearing on the unlicensed operation of a broadcast station.

The FCC also declined to reduce the penalty amount for either party, who it found jointly and individually liable. Beyond a lack of evidence of inability to pay, the FCC determined that the severity of the violation warranted the penalty, which was calculated by multiplying the $10,000 per day base penalty amount by 22 days of unauthorized operations. In fact, the Forfeiture Order states that the only reason the penalty was not greater is because $144,344 is the statutory maximum permitted under the Communications Act for a continuing violation. The FCC also reminded the parties that an ability to pay is only one consideration in adjusting a penalty amount. Here, the violation lasted over 18 years, and the parties were notified or directly warned at several points over that period about the consequences of operating without a license.

History of an Error: North Carolina Licensee Settles with FCC Over Decades of Unauthorized Transfers and Missing Ownership Reports

The Media Bureau entered into a Consent Decree with the licensee of a North Carolina AM radio station and FM translator station for violating the FCC's rules governing transfers of control and the filing of ownership reports.

Section 310 of the Communications Act and Section 73.3540 of the FCC's Rules prohibit the transfer of control of broadcast licenses from one individual, entity, or group to another without prior FCC approval. In the case of full-power broadcast stations, parties must file FCC Form 315 applications and receive FCC consent before a transfer of control can be consummated.

The transfer of control applications ultimately leading to the Consent Decree were filed with the FCC in April 2018, but the licensee's problems began over thirty years earlier, shortly after the FCC approved an assignment of the AM station's license. The FCC believes that, in 1986, the licensee had five attributable shareholders (the FCC states in a footnote that it is unable to locate the licensee's original assignment application). However, over the next few years, over 50% of the licensee's stock changed hands without FCC consent. Again, in 1992, more than 50% of the licensee's stock was transferred without consent, and new directors were appointed to control the licensee. In 1994, another unauthorized transfer transpired when a minority shareholder acquired a 66% interest in the licensee without prior Commission approval.

According to the Consent Decree, the most recent unauthorized transfer took place when, in 2004, the majority shareholder passed away and his interest in the licensee transferred to his wife.

The Consent Decree also addressed decades of missing ownership reports. The licensee had failed to file biennial ownership reports since 1999. In the past year, the licensee attempted to late-file Biennial Ownership Reports for the period from 1999 through 2015. However, since the conversion of the ownership report filing process to the FCC's Licensing Management System ("LMS"), pre-2017 reports can no longer be filed.

The licensee filed an application to clarify the licensee's ownership and to seek consent to the aforementioned transfers of control so that it could continue to operate the stations. According to the licensee, "the individuals involved [in the prior transfers] are now elderly, deceased, or no longer shareholders in the Company" and "none of the relevant parties were represented by FCC counsel, and they simply did not know that prior Commission authority was required to effectuate the transfer of control transactions."

To resolve the FCC's investigation of the violations, the licensee entered into the Consent Decree, in which the licensee agreed to: (1) admit liability for violations of the FCC's unauthorized transfer and ownership report rules; (2) develop and implement a three-year compliance plan to prevent further violations of the FCC's Rules; and (3) pay an $8,000 civil penalty to the United States Treasury.

CT Scan: FCC Warns Connecticut Licensee Over Various Antenna Facility Violations

The Enforcement Bureau presented a Notice of Violation ("NOV") to the licensee of a Connecticut AM station and FM translator station for violating the FCC's rules for station inspections and antenna structures.

Section 74.3 of the FCC's Rules requires a licensee to makes its station available to the FCC for inspection during the station's business hours or at any time it is in operation. Section 74.1235 sets various power limitations on radio station transmissions, including on a station's Transmitter Power Output ("TPO"). The TPO is the total amount of power that a transmitter produces. Further, Part 17 of the Rules requires tower owners to comply with various registration, lighting and painting requirements for their towers. Tower owners must also inform the Federal Aviation Administration ("FAA") of any "improper functioning" of tower lighting not remedied within 30 minutes.

The licensee's woes began in October 2018, when agents from the Enforcement Bureau's regional office attempted to inspect the licensee's central Connecticut transmission site. Upon arrival at the translator station during regular business hours and while the station was broadcasting, the agents were unable to gain access to complete their inspection. While on site, the agents measured the station's TPO and found that the station was operating at over 2,000% of its authorized power. A field strength test taken the following month verified this measurement.

The agents also observed violations associated with towers registered under the licensee's name and associated with the licensee's FM station. According to their registrations, all of the structures should have had red nighttime obstruction lighting. However, the agents observed that several lighting markers on two of the structures were extinguished, and a third structure's red lighting was extinguished entirely.

In a subsequent inspection, the agents confirmed with a contract engineer that two of the structures' top-level lighting had been extinguished for an "extended period," and determined that the station had not immediately reported the outages to the FAA.

The licensee has 20 days to respond to the NOV. In its response, it must provide under penalty of perjury: (1) a complete explanation of each violation; (2) a description of the licensee's corrective actions; and (3) a timeline for completion of these actions. The FCC will then consider the licensee's responses and all relevant information to determine what, if any, enforcement action it will take against the licensee for the violations.