

FCC Enforcement Monitor

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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 Revokes License for Unpaid Regulatory Fees; Warns Other Stations of Similar Fate*
- *Texas Station Warned Over Multiple Tower and Transmission Violations*
- *FCC Nabs Massachusetts Pirate While Commission Continues to Push for Anti-Piracy Legislation*

Winter Comes for FM Station With Unpaid Regulatory Fees

The FCC's Media Bureau published a trio of orders this month relating to the unpaid regulatory fees of three unrelated FM stations. In the most severe case, the Media Bureau revoked the license of a Massachusetts station, ordering it to cease operations immediately. The Bureau also initiated license revocation proceedings for overdue fees from stations in Illinois and Louisiana.

The Communications Act requires the FCC to assess and collect regulatory fees for certain regulated activities, including broadcast radio. The FCC assesses a 25 percent penalty on any late or missing payments. Failure to pay these regulatory fees or related penalties is grounds for license revocation.

The Media Bureau initially sent the Massachusetts licensee several Demand Letters requiring payment of delinquent fees. The licensee did not respond to them. Subsequently, in November 2018, the Media Bureau issued an Order to Pay or to Show Cause, which required the licensee to either pay its overdue fees or demonstrate why it did not owe them. **As we discussed at the time**, between fiscal years 2014 and 2018, the licensee had accumulated a debt to the FCC of \$9,641.73 in unpaid fees and related charges. After the licensee failed to respond to the November Order, the Media Bureau issued a Revocation Order. This "death sentence" terminates the licensee's authority to operate the station and deletes the station's call sign from FCC databases.

Shortly after releasing the Revocation Order, the Media Bureau issued two separate Orders to Pay or to Show Cause to the licensees of FM stations in Louisiana and Illinois. According to the Media Bureau, the Louisiana licensee owes the FCC \$11,386.77 in regulatory fees, interest, penalties, and other charges for fiscal years 2009, 2011-2014, and 2017, and the Illinois licensee owes \$17,296.21 for fiscal years 2007, 2009, 2010, 2012, and 2013. The Media Bureau had previously sent various notices and Demand Letters to the licensees regarding the overdue amounts without success.

The Louisiana and Illinois licensees each have 60 days in which to submit evidence showing that either full payment has been made, or that payment should be waived or deferred, lest they suffer the same fate as the Massachusetts FM station.

Who Monitors the Monitoring Points? FCC Warns Texas AM Station Over Multiple Tower and Transmission Violations

The FCC's Enforcement Bureau issued a Notice of Violation ("NOV") against the tower owner and licensee of a Dallas-area AM station for improper tower painting and lighting and for operating at variance from its license.

The FCC's Part 17 Rules require a tower owner to comply with various Federal Aviation Administration ("FAA") paint and lighting specifications. Tower marking and lighting is a vital component of air traffic safety, and noncompliant structures pose serious hazards to air navigation.

In December 2018, Enforcement Bureau agents responding to a complaint investigated the tower. The agents determined that while the tower was registered in the FCC's Antenna Structure Registration database, it was not painted and lit in compliance with that registration. Generally, a tower over 200 feet tall must (among other things) be painted and have a flashing beacon at the top. The agents discovered that not only was the tower not painted, but it was topped with steady burning lights, including one extinguished light.

The agents also found other technical violations in the station's operations. Section 73.62(c)(3) of the FCC's Rules sets out specific procedures to be followed when a directional antenna begins to transmit outside of its licensed parameters. If a station transmits at power levels exceeding its licensed limit, the licensee must terminate operations within three hours or at least reduce its power in order to "eliminate the possibility of interference or excessive radiation in any direction." When the agents measured radiated power from nearby monitoring points, they found that the antenna's radiated power exceeded its licensed value by over 7 percent in multiple directions.

To make things worse, the agents noted that the licensee's authorized monitoring points were not accurate. The FCC's Rules require licensees to file up-to-date descriptions of their monitoring points with the Commission, including their location. In some cases, the location is only apparent relative to nearby landmarks. For example, the station's license specified a monitoring point at "100 feet South of bridge and 75ft. East of Belt Line by large pile of rocks." However, during the inspection, the agents determined that the description was no longer correct due to construction of a new bridge at the site and the removal of the pile of rocks. Similarly, another monitoring point was determined to be inaccurate because it was described as being situated next to a set of dumpsters at the end of an unnamed street. The NOV notes that the dumpsters were no longer present and the streets in that area have since been named.

Finally, the NOV states that the station's antenna input power was measured at only 82 percent of its authorized power level.

The licensee has 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.

Stormy Seas: FCC Warns Massachusetts Pirate as Commissioner Rallies Support for Anti-Piracy Action

As regular readers of *FCC Enforcement Monitor* **are certainly aware by now**, the FCC, and **Commissioner Michael O'Rielly in particular**, has employed a full-court press against unauthorized radio stations in recent years. The Communications Act prohibits the transmission of radio signals without prior FCC authorization, and the FCC's Enforcement Bureau has spent the past few years issuing dozens of Notices of Unlicensed Operation ("NOUOs") to violators.

The FCC has repeatedly warned of the risks that so-called “pirate radio” operators present by not adhering to the numerous regulatory requirements imposed on licensed radio stations. For example, pirate station operations can interfere with licensed users, including public safety communications. Unauthorized stations do not participate in the Emergency Alert System, nor is there oversight over such operators’ equipment and radiation emissions. On the business side, such unscrupulous operators also divert local advertising revenue from legitimate broadcasters.

To emphasize the safety risks presented by pirate radio operators, the FCC’s Enforcement Bureau issued an NOUO against the operator of an unlicensed FM station out of central Massachusetts. The Enforcement Bureau came upon the pirate while investigating a complaint of harmful interference to the Federal Aviation Administration’s air traffic control radio communications at Boston’s Logan International Airport. Airports are particularly at risk from pirate operations due to the scale and complexity of their operations. Agents followed the 103.5 MHz radio signal to its source at a commercial property in nearby Worcester, Massachusetts, and determined that the operator was not licensed to operate at that frequency.

The NOUO noted that unauthorized operations subject the responsible parties to monetary fines, equipment seizure, and criminal sanctions including imprisonment, and gave the operator ten days to respond with evidence that it was in fact authorized to operate on 103.5 MHz. The FCC will then assess that and any other relevant information to determine what enforcement action it may pursue against the operator.

Recognizing the limited impact that even a revitalized FCC anti-piracy campaign has yielded, broadcasters and the FCC have supported, and the House of Representatives recently passed, the “Preventing Radio Abuse Through Enforcement Act” (“PIRATE Act”). This bill would allow the FCC to impose significantly higher penalties of up to \$100,000 per day against pirate operators and would require the FCC to conduct regular sweeps of the country’s largest radio markets for unlicensed stations. The bill is currently pending with the Senate Committee on Commerce, Science, and Transportation. This past month, Commissioner O’Rielly reached out to various House members from the New York tri-state area, encouraging them to **support the FCC’s efforts** to combat pirate stations.