ADVISORY

FCC Enforcement Monitor July 2019

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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:

- *Pennsylvania AM Station's "Shenanigans" in Connection With Tower Violations Lead to $25,000 Fine*
- *Georgia and North Carolina Radio Station Licenses at Risk Due to Unpaid Fees*
- *FCC Cites New Jersey Vehicle Equipment Vendor for Programming Transmitters with Unauthorized Frequencies*

Pennsylvania Station's Tower "Shenanigans" Lead to $25,000 Fine

In a recent Forfeiture Order, the FCC fined a Pennsylvania AM radio licensee for various tower-related violations after the licensee failed to sufficiently respond to a 2016 Notice of Apparent Liability for Forfeiture (NAL).

Broadcasters must comply with various FCC and FAA rules relating to registration, lighting and painting requirements. In particular, they must be lit and painted 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. The FCC's Rules require lighting repairs to be made "as soon as practicable."

In 2015, FCC Enforcement Bureau agents responded to an anonymous complaint regarding a pair of radio towers. Over multiple site visits, the agents determined that multiple mandatory tower lights and beacons were unlit and that the towers' paint was chipping and faded to such a degree that the towers did not have good visibility. In connection with the lighting problems, the licensee had also failed to timely file the required "Notice to Airmen" with the FAA, which informs aircraft pilots of potential hazards along their flight route. The FCC cited these issues in a February 2016 Notice of Violation sent to the station. The licensee responded by assuring the FCC that it would immediately undertake remedial actions. However, a site visit from the FCC several months later revealed continuing violations, and the FCC subsequently issued the $25,000 NAL along with directions on how to respond.

At that point, the licensee's woes expanded from substantive to procedural. According to a Forfeiture Order, the licensee failed to file a "proper response" to the NAL. Instead, in a bizarre series of events that the FCC chalked up to "shenanigans," it noted that the licensee submitted a Petition for Reconsideration of the NAL, as well as a response to the NAL to the Office of Managing Director (OMD), instead of to the Enforcement Bureau. OMD is a separate department within the FCC that deals with agency administrative matters, such as budgets, human resources, scheduling, and document distribution. OMD subsequently returned the Petition and the NAL response to the licensee with a letter noting the licensee's procedural misstep.

The licensee's "shenanigans" were still far from over, however. More than a month after OMD returned the licensee's submissions, the licensee sent a letter to the Enforcement Bureau seeking to arrange an installment plan for the $25,000 proposed fine. This, too, was procedurally flawed, as the NAL specifically explained that any requests for payment plans must be directed to the FCC's Chief Financial Officer, not to the Enforcement Bureau. Though the Enforcement Bureau itself forwarded the request to the CFO's office, no plan was ever put in place.

According to the Forfeiture Order, despite the licensee's various filings, it failed to successfully submit a response to the NAL to the Enforcement Bureau. The Forfeiture Order also noted that even had the licensee's NAL response been sent to the Enforcement Bureau (instead of OMD), it would have been defective for being late-filed. The Enforcement Bureau therefore affirmed the proposed fine and ordered the licensee to pay the $25,000 fine within 30 days.

Pay to Play: FCC Initiates Proceedings Against North Carolina and Georgia Radio Stations Over Delinquent Fees

In a pair of Orders to Pay or to Show Cause released on the same day, the FCC began proceedings to potentially revoke the AM radio license of a Georgia station and the FM radio license of a North Carolina station.

Section 9 of the amended Communications Act of 1934 requires the FCC to assess and collect annual regulatory fees for certain regulated activities, including broadcast radio operations. 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.

According to the respective Orders, the licensee of the North Carolina station owes the FCC a total of $11,560.13 in outstanding fees, interest, penalties, and other charges from fiscal years 2010 through 2018. In the same period, the licensee of the Georgia station had amassed a debt of $13,804.02. The FCC had sent Demand Letters over the years to both licensees seeking payment, but to no avail.

Under the Orders, each licensee has 60 days in which to submit evidence showing that either full payment has been made, or to provide reasons why the payment should be waived or deferred. If full payment is not made within that period, and the FCC is not persuaded that there is a valid reason for waiving or deferring the debt, the FCC may proceed with revocation of the stations' respective licenses.

Radio Nowhere: New Jersey Vendor of Taxi Radios Warned Over Noncompliant Equipment

In a recent Citation and Order, the FCC's Enforcement Bureau cited a New Jersey communications equipment vendor for programming unauthorized frequencies into radio transmitters it had provided to a nearby taxi company.

In February, Enforcement Bureau agents responded to an interference complaint regarding unauthorized transmissions on a radio band reserved for public safety operations. The agents tracked down the communications to the taxi company, which is authorized to operate a base station and mobile units on a Private Land Mobile Radio Station on a nearby frequency. Land Mobile Radio Services are common among companies that need to communicate with fleet vehicles and personnel spread out over a wide area.

The following month, the Enforcement Bureau issued a Notice of Violation to the car company for operating on an unauthorized frequency. In response, the car company told the agents that its radio vendor was the one that had programmed its radio transmitters to operate on that frequency. The agents then reached out to the vendor, who acknowledged that he had programmed the equipment. In the Citation and Order, the Enforcement Bureau notified the vendor that he was in violation of Section 90.427(b) of the FCC's Rules, which prohibits an individual from programming into a transmitter frequencies for which the operating licensee is not authorized.

Though such actions might normally lead directly to a monetary fine, the Communications Act of 1934 bars the FCC from imposing such a punishment against a non-regulatee unless (1) the FCC issues a citation to the violator; (2) the violator is offered a reasonable opportunity to respond; and (3) the violator subsequently engages in the same conduct. As a result, the Citation and Order demands that the vendor immediately cease programming improper frequencies into radio transmitters, and respond to the FCC within thirty days with a timeline for implementing any corrective actions (presumably, the retuning of any previously mistuned radios). Failure to comply will expose the vendor to additional sanctions.