

FCC Enforcement Monitor

December 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:

- *North Carolina FM Translator Station Hit With \$2,000 Proposed Fine Over Primary Station Change*
- *FCC Admonishes Georgia TV Stations for Insufficient Political File Disclosures*
- *FCC Proposes Historic Fine Against Massachusetts Pirate Radio Operation*

Carolina On My Mind: FCC Proposes \$2,000 Fine Over Raleigh FM Translator's Primary Station Confusion

A Raleigh FM translator briefly rebroadcast a station that was not its primary station and which was already being rebroadcast by another commonly-owned translator in the area. In response, the FCC proposed a \$2,000 fine for the licensee's failure to notify the Commission or to provide any justification for such redundant operations.

An FM translator station rebroadcasts the signal of a primary AM or FM station on a different frequency. Translators are often used to provide "fill in" service in poor reception areas due to distance or terrain obstructions. Section 74.1251(c) of the FCC's Rules requires an FM translator station to notify the FCC in writing if it changes its primary station. Pursuant to Section 74.1232, an entity may not hold multiple FM translator licenses to retransmit the same signal to substantially the same service area without first demonstrating "technical need" for an additional station, such as a signal gap in the service area.

The Raleigh licensee originally applied for a construction permit to build facilities for an FM translator in July 2018 and shortly thereafter amended the application to change the translator's proposed primary station. The FCC's Media Bureau granted the application a few weeks later. After completing construction, the licensee filed, and the Media Bureau granted, a license for the translator.

Throughout this process, the licensee of a nearby low power FM station filed multiple petitions—one challenging the FCC's grant of the construction permit, and a later one challenging the grant of the license itself. Though the first petition was dismissed by the FCC as "procedurally defective", the latter became the basis of an investigation into the new station. The petitioner claimed that since initiating service, the new translator station had been rebroadcasting a nearby

AM station rather than the FM station specified as the primary station in its construction permit application. According to the petitioner, the translator only “returned” to its authorized primary station when the primary FM station began simulcasting the AM station.

The petitioner also asserted that the translator licensee failed to show any “technical need” to rebroadcast the AM station since the AM station was already being rebroadcast to substantially the same area by another translator licensed to an entity that was commonly-owned with the FM translator.

The FCC concluded that the new translator had violated its rules by failing to notify the FCC when it commenced rebroadcasting the AM station during its first month of operation. The FCC further determined that the licensee should have first submitted a “technical need” showing to support this change due to the presence of the nearby commonly-owned translator station rebroadcasting the same programming.

As a result, the FCC issued a Memorandum Opinion and Order and Notice of Apparent Liability against the licensee, proposing a \$2,000 fine. While FCC guidelines set a base fine of \$3,000 for failure to file required forms or information, and a \$4,000 base fine for unauthorized emissions, the Commission may adjust a fine upward or downward after considering the particular facts of each case. Acknowledging the brief duration of the licensee’s violations and finding no history of prior offenses, the FCC proposed a total fine of \$2,000. Additionally, the Commission determined that the licensee’s actions did not raise a “substantial or material question of fact” regarding the licensee’s qualifications to remain a licensee, and affirmed its decision to grant the translator license application.

Political Ad Nauseum: FCC Admonishes Georgia TV Stations Over Political File Defects

In a recent Order, the FCC’s Media Bureau admonished the licensees of two Georgia television stations in response to complaints alleging violations of the FCC’s political file rules. According to the FCC, the stations failed to sufficiently comply with record-keeping obligations in response to several political ad sales made in 2017.

Pursuant to the Bipartisan Campaign Reform Act of 2002 (often referred to as “BCRA” or the “McCain-Feingold Act”), broadcasters are required to keep and make available extensive records of purchases and requests for purchases of advertising time if the advertisement communicates a message relating to a “political matter of national importance”. Section 315(e) of the Communications Act of 1934, which was amended by BCRA, states that ads that trigger such disclosure include those that relate to legally qualified federal candidates and elections to federal office, as well as “national legislative issues” of public importance.

The FCC clarified these requirements in a recent Memorandum Opinion and Order (“Clarifying Order”), explaining that stations must disclose all such candidates, elections and issues referenced in an ad, rather than selectively choosing which to disclose. Stations must keep these records up to date and open to the public in their “political file”, which is available online as part of a station’s Public Inspection File.

The Order admonishing the Georgia stations was in response to six complaints jointly filed by a pair of watchdog organizations in 2017. Due to the similarity of the allegations, the FCC decided to resolve them together. Three complaints were lodged against each of the licensees, and involved the same three ads that had run on both stations. Each ad was sponsored by a different, though ideologically similar, national political organization, and all addressed the then-ongoing campaign for the local Congressional District for the U.S. House of Representatives. One of the ads had referenced a candidate for the House seat, and another referenced the issue of lower taxes. While the complainants acknowledged that the stations had uploaded certain records of the ads to their respective political files, they alleged these records were inadequate because they lacked sufficient detail about the ads.

Upon reviewing the stations’ political files, the FCC admonished both stations, noting that the records in question were flawed because they failed to include the political matters of national importance referenced in the ads.

One station argued that its placement of its paperwork in the subfolder “U.S. House” clearly indicated to the public that the ad dealt with the upcoming election for the local district’s Congressional House seat. At the same time, the station acknowledged that it may have incorrectly completed its disclosure form for the ad purchase, but also noted that the particular form it used is voluntary and not required by law. In response, the FCC determined that the station’s subfolder name did not adequately disclose the election discussed in the ad, and noted that while stations are free to use a disclosure form of their choice, the disclosure must still contain the information required by law.

The second station acknowledged that its records regarding the three ads were incomplete, but maintained that its omissions were inadvertent and that the missing details did not cause any public harm because the subject of each ad was “self-evident” and “obvious”. Like the first station, this station made the argument that its use of a commonly-used disclosure form was purely voluntary, but fared no better with the FCC than the first station had. The FCC concluded that the subject of the ads was not self-evident, and that specific harm to the public need not be demonstrated as long as there is a finding that the station willfully or repeatedly failed to upload the required information.

Despite the rule violations, the FCC declined to fine the stations because the stations’ conduct predated the release of its Clarifying Order regarding similar violations by other stations.

Relevant to this proceeding, the National Association of Broadcasters (“NAB”) has filed a Petition for Reconsideration challenging the original Clarifying Order and another FCC action related to it. In it, the NAB argued that the FCC violated the Administrative Procedure Act by improperly adopting new rules outside of a traditional rulemaking proceeding. The NAB also challenged as overbroad the FCC’s definition of a “political matter of national importance”, and raised First Amendment questions about the constitutionality of these rules.

Despite that pending challenge, the FCC clearly intends to enforce these rules as now clarified. As the political season heats up, stations should keep in mind that they are now on notice of these “clarified” political file obligations, and should not assume the FCC will be as forgiving going forward.

Please Come to Boston: Historic Fines for Pirate Radio Operators in the Bay State

The FCC recently took action against two separate Boston-area pirate radio operators by proposing fines totaling over \$600,000 on the same day. One of these fines came to \$453,015, representing the largest fine ever proposed by the FCC against a pirate radio operation.

Under the chairmanship of Ajit Pai, and with outsized support from fellow Commissioner Michael O’Rielly, the FCC has committed significant time and resources to combat the scourge of illegal “pirate radio” operations. These unlicensed radio operators do not adhere to the numerous regulatory obligations imposed on authorized radio stations and do not pay regulatory fees. Unauthorized radio operations also pose safety risks, as they do not participate in the Emergency Alert System, and unauthorized transmissions can interfere with licensed operations vital to public safety, such as those used by first responders and air traffic control.

According to the Notice of Apparent Liability for Forfeiture (“NAL”) issued by the FCC, the radio operator targeted with the \$453,015 proposed fine had been simulcasting a radio signal over three unauthorized transmitters on two different FM frequencies. As a result of this expansive operation, the FCC received interference complaints from across the Boston metropolitan area. Through these complaints, the FCC was able to identify the illegal operator and track down his antennas, which were broadcasting at power levels that “far exceeded” allowable levels for unlicensed operation. Despite multiple written notices demanding the operator cease his illegal transmissions, the station operator continued his behavior, resulting in the record-breaking fine.

The target of the second proposed fine had also been repeatedly warned by the FCC to discontinue his broadcasts. The FCC first got wind of the illegal broadcasts when it received a complaint from a local broadcaster alleging that the pirate operation was interfering with its signal. According to local news sources, the unlicensed station has been in operation for nearly three decades.

Each operator was issued an NAL and must either pay the full fine or file a written statement with the FCC providing a basis for reduction or cancellation of the proposed fine amount.