ADVISORY

# FCC Enforcement Monitor May 2020

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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:*

- *Wireless Internet Provider Hit With $25,000 Proposed Fine for Interference Caused by Network Equipment*
- *Unauthorized License Transfers Lead to Consent Decree and $70,000 Civil Penalty*
- *FCC Issues Notice of Violation to AM Daytimer Operating Past Sunset*

### FCC Proposes $25,000 Fine Against Wireless Internet Provider for Causing Harmful Interference

The FCC recently issued a $25,000 Notice of Apparent Liability for Forfeiture against a wireless Internet provider. This is one of several recent proposed fines involving unauthorized equipment causing harmful interference to Federal Aviation Administration (FAA) weather radar systems.

Section 301 of the Communications Act generally prohibits the use or operation of a device for the transmission of radio signals, communications, or energy without an FCC license. There is an exception, however, for low power devices emitting radiofrequency energy in compliance with certain technical restrictions under Part 15 of the FCC's Rules. Relevant to this particular matter, the FCC has authorized unlicensed operations in portions of the 5 GHz band for U-NII (Unlicensed National Information Infrastructure) devices, which are commonly used to provide Wi-Fi and broadband access. The FCC's rules require U-NII devices to have Dynamic Frequency Selection ("DFS"), allowing them to detect and thereby avoid interfering with radar systems operating on similar frequencies in the 5 GHz band.

In May 2018, the FCC issued a written warning to the Internet provider concerning interference to the FAA's nearby doppler weather radar station from unlicensed devices operating on nearby frequencies. In response, the Internet provider confirmed that all of its equipment conformed to the FCC's rules designed to prevent such interference.

A year later, however, the FAA notified the FCC that its weather radar station was still experiencing interference from a source operating on a nearby frequency. Following an investigation, the FCC determined that some of the equipment used by the provider's network was causing the interference. Further analysis indicated that the provider's U-NII devices were improperly configured, and that DFS functionality had been disabled. The FCC instructed the provider to reconfigure the devices to operate on a different frequency. Following this change, the interference ceased immediately.

The FCC's rules establish a base fine of $10,000 for operation without a license or other authorization from the Commission. In this case, the FCC found two separate $10,000 rule violations: (1) the unauthorized operation of devices in the 5 GHz frequencies, and (2) failure to enable DFS functionality. The FCC also applied an upward adjustment of $5,000 for failing to address the problem after the first warning, and the provider's false claim that its equipment complied with FCC rules.

In addition to the $25,000 proposed fine, and to protect the FAA's weather radar systems from further interference, the FCC ordered the provider to submit a signed statement within 30 days certifying that its U-NII operations comply with the FCC's rules and all applicable equipment authorizations.

### Hospitality Company Enters Into FCC Consent Decree Over Unauthorized Transfer of Wireless Licenses

The FCC entered into a Consent Decree with a large hospitality company to resolve an investigation into unauthorized transfers of wireless licenses acquired in connection with several corporate acquisitions and other transactions. The resulting $70,000 civil penalty serves as a reminder to companies that don't often deal with the FCC of the risks and regulatory obligations at play in transactions involving control of FCC licenses.

Section 310(d) of the Communications Act prohibits the assignment or transfer of control of wireless licenses without FCC approval. To obtain such approval, Section 1.948 of the FCC's Rules provides that parties wishing to transfer private radio licenses must first file Form 603 with the Commission and obtain FCC approval before consummating a transfer.

The FCC's investigation began after the company voluntarily disclosed to the Commission deficiencies in past transactions involving the transfer of FCC licenses. Specifically, the company did a number of corporate acquisitions and other transactions where, along with many other assets, private radio licenses were transferred without seeking or obtaining prior FCC approval.

The company discovered the problem in a review of its FCC-licensed facilities following consummation of a recent acquisition involving FCC licenses. From 2007 to 2018, the company and its affiliated entities conducted seven transactions involving 69 license transfers where prior FCC approval was not obtained. Shortly after disclosing that fact to the FCC, the company filed applications seeking a waiver of the FCC's rules and retroactive approval of the 69 unauthorized license transfers. As of now, those applications remain pending.

In the meantime, to resolve the investigation, the company entered into a Consent Decree with the FCC under which the company (1) admitted that it failed to obtain prior FCC approval for the various license transfers; (2) agreed to pay a $70,000 civil penalty; and (3) agreed to implement a compliance plan to prevent future violations.

### How Do You Measure a Day? Daytime-Only Station Receives Notice of Violation For Operating After Sunset

A Maryland AM station received a Notice of Violation for operating beyond the time authorized by its license, which limits the station to daytime operations only.

Many AM stations are subject to rules restricting operations at night in order to avoid harmful interference to other AM stations. Section 73.1745 of the FCC's Rules prohibits stations from operating at times, or at power levels, other than those specified in their license. Under Section 73.1720, permitted daytime operations include the hours between average monthly local sunrise and average monthly local sunset.

In response to a complaint, an FCC field agent monitored the station's transmissions. The agent observed the station operating well past local sunset time, in violation of the terms of its license. The FCC therefore issued a Notice of Violation to which the station must respond within 20 days. The response must provide: (1) an explanation of the violation; (2) a statement of corrective actions taken; and (3) a timeline for completing all corrective actions. The Commission will then review the station's response and determine whether future enforcement action may be appropriate in light of the facts developed.