

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:

- *Pennsylvania AM Radio Station's Tower Marking and Lighting Violations End With Consent Decree*
- *Unauthorized Transfer of Control Costs Nevada FM Radio Licensee \$8,000*
- *Arizona Translator Station Violates Construction Permit Terms and Receives \$15,000 Penalty*

AM Station Enters Into Consent Decree to Settle Tower Marking and Lighting Case

The Enforcement Bureau entered into a Consent Decree with a Pennsylvania AM radio licensee and tower owner to resolve a years-long investigation into violations of the Commission's tower lighting and marking rules.

Under Part 17 of the FCC's Rules and in accordance with Federal Aviation Administration (FAA) requirements, tower owners must comply with various painting, lighting, and notification requirements. These rules are critical to maintaining air traffic safety, and the FCC imposes strict requirements regarding tower painting and lighting maintenance. Specifically, the FCC's rules require that tower owners: (1) clean and repaint tower structures as frequently as is necessary to maintain good visibility; (2) ensure tower structures conform to the painting and lighting requirements prescribed in their FCC registration; and (3) notify the FAA of any lighting outages.

In response to an anonymous complaint, FCC investigators made several on-site visits in late 2015 and early 2016 to inspect a broadcaster's antenna structures located in Pennsylvania, and observed faded paint markings and lighting outages on two of the four structures. In February 2016, the FCC issued a Notice of Violation for the station's failure to: (1) clean and paint the antenna structures so that their colored markings were sufficiently visible; (2) keep the structures lit in accordance with the terms of their FCC registration; and (3) timely notify the FAA of the lighting outage.

When presented with the Notice of Violation, the station responded by acknowledging that it was aware of the lighting outage issues and was taking steps to make the needed painting and lighting repairs. It also claimed that it had tried to notify the FAA about the lighting outage only to find that the FCC investigators had already filed a notification.

Returning for a reinspection several months later, FCC investigators found that the station had still not remedied any of the violations. As a result, the FCC issued a Notice of Apparent Liability (NAL) in December 2016 proposing a \$25,000 fine, and instructed the station to either pay the amount in full or submit to the Enforcement Bureau justification for a reduction or cancellation of the fine.

The station followed up with numerous filings at the FCC, including a submission to the Commission's Office of Managing Director seeking reconsideration of the NAL, but the filings failed to properly respond to the Enforcement Bureau, as directed in the NAL. In July 2019, the FCC issued a **Forfeiture Order**, noting these procedural failures and ordering payment of the full \$25,000 fine. The station submitted a petition seeking reconsideration of the Forfeiture Order in August 2019.

To finally resolve the matter, the FCC entered into a Consent Decree with the station owner under which the station will pay a reduced \$1,900 penalty, certify that each of its antenna structures complies with Part 17 of the FCC's Rules, and adopt a comprehensive compliance plan to prevent future violations.

Nevada FM Licensee Hit with \$8,000 Penalty for Improper Transfer of Control

In a recently adopted Consent Decree, the Media Bureau settled an investigation into an FM radio licensee for conducting a transfer of control without prior Commission approval.

Section 310(d) of the Communications Act prohibits the transfer of control of a station license without first obtaining FCC approval. Under Section 73.3540 of the FCC's Rules, a licensee seeking such approval must file an application on FCC Form 315 at least 45 days before the anticipated effective date of the transfer of control.

In October 2017, the FCC granted the assignment of two Nevada FM stations to the licensee, a Nevada-registered corporation controlled by a local family as its sole shareholders. However, on November 30, 2017, the licensee entered into a series of agreements through which it issued the majority of its stock to another family that had not previously held any interest in the licensee. Reportedly due to an oversight, the licensee did not request and obtain prior FCC approval before issuing the stock, which represented a controlling interest in the licensee, to the new third party.

To remedy this issue, the licensee filed applications with the FCC in February 2020 disclosing the unauthorized transfer of control. The licensee maintained that it filed the applications once it learned of the filing obligation, and requested a waiver of Section 73.3540 of the FCC's Rules and retroactive grant of the applications. In the course of the Media Bureau's investigation, the licensee also disclosed that it failed to file the required 2019 Biennial Ownership Report which had been due a few weeks prior to its February filings.

Though the licensee took steps to correct the missed filings and disclose the late 2019 Ownership Report, the Media Bureau noted that the unauthorized transfer of control occurred two years before the licensee notified the Commission of the violation, and the Ownership Report issue was only disclosed in response to a staff inquiry. As a result, the Bureau stated that while it anticipated granting the applications in the near future, it would not grant them retroactively.

To resolve the investigation, the Media Bureau entered into a Consent Decree with the licensee requiring payment of an \$8,000 penalty and implementation of a three-year compliance plan to prevent future violations.

Arizona Translator Station Receives \$15,000 Fine Over Unauthorized Operations

The Media Bureau recently issued an Order and Consent Decree to resolve an investigation into the operations of an Arizona translator licensee that arose in the Commission's review of license to cover and minor change applications.

Translator stations rebroadcast the signal of AM or FM stations on a different frequency, often providing “fill-in” service to bolster a station’s signal in areas of poor reception. Section 74.1251(b) of the FCC’s Rules requires FM translator stations to file an application on FCC Form 349 and obtain Commission approval when making changes to their antenna. In the event a licensee determines that information provided in a Commission application is no longer accurate, Section 1.65 of the FCC’s Rules requires licensees to amend their filings within 30 days.

In addition, when operating pursuant to a construction permit, Section 74.14(a) of the FCC’s Rules grants FM translators the authority to conduct service or program tests without any other Commission authorization so long as they have: (1) completed construction in accordance with the terms of their construction permit, and (2) filed an application for a station license demonstrating that the station is in satisfactory operating condition.

In April 2016, the licensee filed a license to cover a previously granted construction permit and submitted a letter to the Commission noting that the station had commenced program test operations from the facilities authorized in the permit. An informal objection was filed against the license application claiming that the station was not constructed as authorized, station identification requirements had been violated, and false certifications had been made in the license to cover application and program test letter submitted to the Commission. Specifically, the objector claimed that the station was operating with a different antenna model and at a different power level than specified in its construction permit. In response, the station amended its application in July 2017 to report that the facilities were in fact operating at variance from their authorization. According to the station, it was unaware of this fact, and beginning in October 2016, made the necessary changes to ensure it operated as authorized by its construction permit.

The objector questioned the explanations offered and maintained that the licensee had deliberately misrepresented facts to the Commission. Among a number of other sweeping allegations made, the petitioner accused the licensee, its principal, and its consulting engineer of “witness intimidation and harassment.”

The Media Bureau dismissed several of the objector’s claims, including the allegations regarding the station identification rules and misrepresentations to the Commission. Additionally, the licensee submitted further engineering support to demonstrate that the translator’s antenna and power levels now complied with the specifications in the permit. The Commission concluded, however, that from April to October 2016, as the licensee acknowledged, the translator’s antenna was in fact incorrectly mounted in violation of the FCC’s rules requiring Commission approval for such changes. Consequently, the Commission determined that the translator was not authorized to conduct program tests and that the translator had also failed to timely amend its license application accordingly.

This was not, however, the end of the saga. In June and July of 2018, the licensee filed applications for a minor change to modify the translator’s power level and relocate to a new frequency. An informal objection was filed against these applications as well, asserting that the licensee made a false certification in the minor change application regarding the translator authorizations held by the licensee. The Bureau rejected each of the objector’s claims with respect to these applications, but ultimately entered into a Consent Decree to settle the broader investigation. In it, the Bureau affirmed that it would approve the pending applications, but required the licensee to (1) pay a \$15,000 penalty; (2) retain an independent engineer for three years to examine any facilities constructed or operated pursuant to an FCC authorization; and (3) include with any license application a sworn statement by the engineer confirming the accuracy of the technical information provided in the application.