

FCC Enforcement Monitor

November 2021

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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:

- *Florida Broadcaster Pays \$20,000 for Unauthorized Tower Construction Work*
- *Colorado Broadcaster Issued Notice of Violation for Operating FM Translator on Wrong Frequency*
- *Telecommunications Company Receives Cease-and-Desist Letter From FCC for Transmitting Illegal Robocalls*

FCC Fines Florida Broadcaster \$20,000 for Commencing Tower Construction Prior to Completing Required Environmental Review

The FCC's Enforcement Bureau and a Florida broadcaster entered into a Consent Decree to resolve an investigation into whether the broadcaster began clearing land for a wireless telecommunications tower before it completed the required environmental review. Environmental reviews are required by the FCC's Rules, including rules implementing the National Environmental Policy Act of 1969 (NEPA). To settle the matter, the broadcaster admitted violating the FCC's environmental and antenna structure rules, and agreed to implement a compliance plan while making a \$20,000 penalty payment.

The FCC's Environmental Rules require applicants and licensees to assess whether proposed facilities may significantly affect the environment. Under Section 1.1307(a)(3) of the Commissions Rules, an applicant must prepare an Environmental Assessment for facilities that could have a significant environmental effect. When considering whether an action may have a significant environmental effect, one of the factors an applicant must consider is whether the proposed site may affect threatened or endangered species or designated critical habitats.

Additionally, the FCC's Antenna Structure Registration (ASR) rules require the owner of a proposed or existing antenna structure to follow registration procedures prior to constructing or altering a tower. If an Environmental Assessment is required by the rules, it must be included in the ASR application.

In July and August of 2020, the broadcaster hired contractors to perform the necessary environmental review and construct a wireless communications tower located within the designated critical habitat of the endangered Florida bonneted bat. When the broadcaster filed its ASR application in November 2020, it included an Environmental Assessment depicting premature clearing and admitted to preconstruction activities.

Although the environmental review was later completed and the FCC authorized construction of the tower, the FCC issued a Letter of Inquiry to the broadcaster in April 2021 asking a series of questions related to its compliance with the Commission's Environmental and ASR rules. The broadcaster responded in July 2021, admitting that it began construction by clearing vegetation from the tower site around August 3, 2020 – before it prepared an Environmental Assessment and before applying for an ASR.

To resolve the investigation, the broadcaster agreed to enter into a Consent Decree in which it admitted its actions violated the FCC's Environmental and ASR rules. As part of the Decree, the broadcaster must designate a compliance officer, implement a multi-part compliance plan, including developing a compliance manual and compliance training program, disclose within fifteen days any violations of the Consent Decree or the Environmental and ASR rules, file annual compliance reports with the FCC for the next three years, and pay a \$20,000 civil penalty.

FCC Issues Notice of Violation to Colorado Licensee for Operating FM Translator on Unauthorized Frequency

Earlier this month, the FCC issued a Notice of Violation to the licensee of a Colorado FM Translator asserting violations of Sections 1.903(a) and 74.14(a) of the FCC's Rules by operating a station on a channel for which it wasn't licensed.

Section 1.903(a) requires stations to be used and operated only in accordance with the rules applicable to their particular service and with a valid authorization granted by the Commission. Pursuant to Section 74.14(a), once an FM Translator has been built in accordance with the terms of its construction permit and a license application has been filed showing the station is in satisfactory operating condition, it may commence service or program tests.

On three different dates between October 2020 and January 2021, an agent of the Denver Office of the FCC's Enforcement Bureau observed the FM Translator operating on Channel 282 despite being licensed to operate on Channel 272. While the licensee had obtained a construction permit authorizing it to modify the station to operate on Channel 282, at the time of the three separate observations, it had not yet filed an FM Translator License Application. Until a license application is filed, the facility lacked authority to operate with the parameters outlined in the construction permit, and any such operation would violate Section 74.14(a).

The Notice of Violation seeks additional information from the broadcaster concerning these apparent violations. It instructs the broadcaster to submit within 20 days a written response fully explaining each apparent violation and all relevant surrounding facts and circumstances, including the specific actions taken to correct any violations and prevent them from recurring. The Notice also requires the broadcaster to include a timeline for completing any pending corrective actions.

FCC Issues Cease-and-Desist Letter to Telecommunications Company for Transmitting Illegal Robocalls

The FCC's Enforcement Bureau issued a cease-and-desist letter to a telecommunications company for apparently transmitting illegal robocalls. The letter instructs the company to investigate, and if necessary, cease transmitting any illegal robocall traffic immediately and take steps to prevent its network from being used to transmit illegal robocalls.

The Enforcement Bureau issued the letter after an investigation revealed the company apparently originated multiple illegal robocall campaigns. The Bureau works closely with the USTelecom Industry Traceback Group ("Traceback Consortium"), which is the consortium selected pursuant to the TRACED Act to conduct tracebacks. The Traceback Consortium investigated prerecorded voice message calls that voice service providers and customers of YouMail flagged as illegal robocalls made without consent of the called party.

Between August 24, 2021 and October 15, 2021, the Traceback Consortium conducted tracebacks and concluded that the company originated over 80 calls that appeared to be illegal robocalls, including substantial numbers of government imposter scam calls such as posing as the Social Security Administration and the Federal Reserve, as well as calls threatening

utility discontinuation, offering fake credit card rate reductions, and arrest warrant scams. Furthermore, the Traceback Consortium notified the company about the calls and provided access to supporting data identifying each call prior to the cease-and-desist letter being sent.

The FCC noted that in addition to the Traceback Consortium previously notifying the company, the numerous tracebacks to the company as an originator indicated that the company is apparently knowingly or negligently originating illegal robocall traffic. The letter instructs the company to take steps to “effectively mitigate illegal traffic within 48 hours” and inform the FCC and the Traceback Consortium within 14 days of the date of the letter of the steps it has taken to “implement effective measures” to prevent customers from using the network to make illegal calls.

If the company fails to properly take the actions listed in the letter or fails to take sufficient mitigating actions to prevent customers from using its network to make illegal robocalls, downstream U.S.-based providers may block calls transmitted by the company. Additionally, the FCC may find that the company’s certification in the Robocall Mitigation Database is deficient and direct the removal of its certification from the database. If its certification is removed from the Robocall Mitigation Database, all intermediate and terminating voice service providers would be required to immediately cease accepting calls from the company.