

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:

- *FCC Orders Dismantling of Unlit Arkansas Tower*
- *New York Man Ordered to Cease Operating Interference-Causing Device*
- *Louisiana Corporation Fined for Engaging in Prohibited Communications during FCC Auction*

FCC Orders Unlit, Unmarked Tower Dismantled

In a recent Order, the FCC directed the owners of a parcel of land where an unlit tower in Arkansas sits to dismantle the structure because it is not lit or marked according to the FCC's Rules or the Communications Act (the "Act"). The Federal Aviation Administration had declared the structure to be a "menace to aviation." Section 303(q) of the Act allows the FCC to require the painting and/or illumination of radio towers where those towers are a menace to air navigation. That provision also requires that when a tower ceases to be licensed by the FCC, the tower owner must continue to maintain the painting and/or lighting of the tower, and the FCC can order it dismantled if the FCC determines the tower is a menace to air navigation.

The tower "owner" may include an "individual or entity vested with ownership, equitable ownership, dominion or title to the [tower] structure." The FCC has determined that if the title holder of the tower does not own the land where the structure is located (i.e., if the tower owner has leased the land), the title holder of the structure is deemed the owner until the landowner acquires possession of the structure. After that occurs, the landowner will be considered the owner of the structure.

This particular situation was unusual in that the tower owner could not definitively be determined. In 1990, the then-current landowner granted an easement allowing an individual to build the tower structure and required an annual \$12,000 payment for the easement. The easement was to run with the land, but the landowner could terminate the easement if the payments were more than 45 days late. In subsequent years, the tower was sold several times. Ultimately, it was registered with the FCC in 1998, given an Antenna Structure Registration number, and required to have a steady-burning obstruction light at the top of the tower.

The tower and associated station were later sold to an entity that is no longer in existence. Through public property records in Arkansas, the FCC determined the identity of the owner of the land and sent a letter to the owner in 2017. In her response,

the landowner told the Commission that she jointly owns the land with two other individuals, has never received any payments for the easement, and that the electricity to the tower was disconnected in 2005 at her request. She also expressed interest in quieting title to the structure and indicated a desire to have it dismantled. The FCC sent letters to the two other landowners identified, seeking to confirm that no landowner had received the annual fee for the easement, but received no response.

In the Order, the FCC indicated that the landowners possess the structure for the limited purpose of invoking Section 303(q) of the Act, and ordered them to dismantle the structure. In case another party comes forward to challenge the dismantling of the tower, the FCC held that any person having a “remaining interest in the Structure” is subject to the Order as well. The Commission ordered the structure to be dismantled within 90 days of the release of the Order.

New York Resident Ordered to Cease Operating Interference-Causing Equipment

The FCC recently issued a Citation and Order (“C&O”) directing a New York man to stop operating a device at his home that was causing harmful interference to a wireless provider’s licensed operations. The Commission warned him that he may be liable for fines of up to \$22,021 per day if he does not comply with the order.

In November 2021, a cellular company filed a complaint with the FCC regarding interference to its cellular communications system. The complaint stated that the interference seemed to relate to a television antenna located at a residential home. The company explained that it had contacted the resident several months prior about the interference, but the resident had taken no action to correct the issue. An agent from the FCC’s New York office went to investigate in December 2021 and was able to confirm that the interference to the cellular communications system was indeed emanating from an active television antenna located on the side of the resident’s house. The next day, the FCC agent and a police officer visited the resident and asked to enter the house to search for the source of the interference, but the resident refused entry. The agent again observed the TV antenna, but this time it was powered off and no interference was occurring, causing the agent to conclude that the antenna was the likely source of the interference. The Commission then had a police officer deliver a Notice of Interference to Authorized Radio Station to the resident, who did not respond.

Section 301 of the Act states that no one “shall use or operate an apparatus for the transmission of energy or communications or signals by radio” in the United States without a license. Section 15 of the FCC’s Rules governs limited exceptions to this rule, such as operating a device at low power without the need for a license. Section 15.5(b) explains that operation of such a device is allowed only when no harmful interference is caused, and Section 15.5(c) states that the “operator of a radio frequency device shall be required to cease operating the device upon notification by a Commission representative that the device is causing harmful interference.”

In the C&O released by the FCC, the Commission found that the New York resident had violated Section 301 of the Act and Sections 15.5(b) and (c) of the Commission’s Rules by operating a device that was causing harmful interference to a wireless provider’s licensed operations and by failing to power off the antenna causing the interference when notified by the FCC agent.

The C&O directs the resident to confirm within 30 days that he has taken action to eliminate the interference. It also warns that further violations of Section 301 of the Act or Sections 15.5(b) or (c) of the FCC’s Rules may result in a fine. The FCC may issue fines of up to \$22,021 for each violation, or each day of a continuing violation, up to a total of \$165,159 for any single act or failure to act.

FCC Fines Communications Company for Violating Rules Against Communicative Bidding Strategies During FCC Auction

A communications provider (the “Company”) entered into a consent decree with the FCC last month to resolve an investigation into whether the Company engaged in prohibited communications regarding its bidding and bidding strategies with another FCC Auction 105 participant.

Section 1.2105(c)(1) of the FCC's Rules forbids FCC auction applicants from conveying certain information to other auction applicants during the "quiet period." This "quiet period" begins on the deadline for filing a short-form application to participate in the auction and ends on the deadline for winning bidders to submit their down payments. The rule applies to any communication by an applicant regarding its own, or any other applicant's, bids or bidding strategies.

Additionally, Section 1.2105(c)(4) requires an applicant to disclose to the FCC if it makes or receives a communication that appears to violate section 1.2105(c). Applicants must disclose potential violations in writing to the Commission immediately, and no later than five business days after the communication occurred.

The Company was a participant in the Commission's Auction 105 through a wholly-owned subsidiary. During the quiet period in May 2020, a site-acquisition consultant of the Company, who was acting on the Company's behalf, submitted a colocation application regarding the availability of tower space at a tower site owned by another participant in Auction 105. The Company did not notify the FCC that its agent had submitted the application to another participant in the auction.

In April 2021, the FCC sent a Letter of Inquiry to the Company, which responded in June 2021. Settlement negotiations to resolve the matter commenced in August and the terms of a Consent Decree were reached in December 2021. The Consent Decree requires the Company to institute a training and compliance program, report any violations of the Prohibited Communications Rules and with the terms of the Consent Decree, file annual compliance reports with the FCC for the next three years, and pay a civil penalty of \$75,000.