

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:

- *Failure to File License Renewal Application Results in Cancelled License*
- *Call Provider Receives Cease-and-Desist Letter From FCC for Apparently Transmitting Illegal Robocalls*
- *New York Broadcaster Agrees to Consent Decree for Violations Relating to the Public Inspection File*

Station Owner Unsuccessful in Reinstatement of Cancelled License After Failing to File Renewal Application

In a recent letter, the Audio Division of the FCC's Media Bureau (the "Bureau") upheld the cancellation of a Kentucky AM radio station's license. The letter follows a 2022 petition for reconsideration filed by the station's owner that sought, among other things, to reinstate the station's license after the station failed to file a license renewal application in 2020, while its prior license renewal application from 2012 was still pending. Section 1.106 of the FCC's Rules requires petitions for reconsideration in non-rulemaking proceedings, such as license renewal matters, to be filed within thirty days of the date on which public notice is given of a decision.

The station filed a license renewal application in 2012 during the 2011-2014 radio license renewal cycle. Action on that application was withheld while the Enforcement Bureau investigated the station's compliance with the FCC's public file rules and because the licensee had not paid regulatory fees and was in "red light" status. In 2017, the FCC notified the licensee that the Enforcement Bureau had concluded its investigation and directed the licensee to amend the application to reflect the station's non-compliance with the public file rules and to also clear the red light hold. The licensee did not amend the application or clear the hold, and the application remained in pending status.

License renewal applications for Kentucky radio stations were next due by April 1, 2020. In advance of the start of the 2019-2022 radio license renewal cycle, the FCC released a public notice setting out the procedures for stations to follow when filing for renewal of their license. In that notice, the FCC wrote that "[l]icensees with pending applications from the prior renewal cycle also are subject to [these] filing requirements." The station owner did not file a license renewal application by the April 1, 2020 deadline and the station was included in a public notice stating that the station's license would expire on August 1, 2020, if no renewal application was filed. On August 6, 2020, the FCC released another public notice—this one stating that the station's license had been cancelled, and on the same day dismissed the 2012 renewal

application but did not release a public notice about that action. After outreach from the owner's counsel, Media Bureau staff on March 16, 2022 reinstated and granted the 2012 application, with no explanation for doing so in the public notices that accompanied those actions, but otherwise left the station's license in cancelled status.

In the petition for reconsideration, the station owner argued that when the Bureau reinstated and granted the 2012 application in 2022, it should have also rescinded the 2020 cancellation of the license. The owner argued that reinstatement of the 2012 application should have reinstated the license for the station, giving him the opportunity to file the license renewal application that was due in 2020. The station owner further noted that he was unaware of the 2020 public notice announcing that the station's license was set to expire and that, in any event, he was not required to file a renewal application in 2020 because the 2012 renewal application was still pending, meaning he did not hold a license with an August 2020 expiration, so no license could have expired at that time.

The Bureau's letter states that, under the FCC's rules, the owner should have filed its petition for reconsideration of the cancellation of its license within 30 days of the August 2020 public notice of that action, that is, by September 8, 2020. He did not do so until April 20, 2022, making the petition untimely as it relates to the license cancellation. Because that cancellation was final in September 2020, the Bureau's March 2022 reinstatement and grant of the 2012 license renewal application had no bearing on the license's status. Rather, the cancellation was tied to the failure to file a 2020 license renewal application. As a result, the Bureau notes that its failure to issue a public notice for the dismissal of the 2012 application was harmless. The owner had notice of the expiration and cancellation of the license in 2020, even if he was unaware of such notice, under FCC precedent that issuance of a public notice is considered notice to all affected licensees.

The Bureau acknowledges that it erroneously reinstated and granted the 2012 application but notes that those mistakes do not then allow the untimely petition for reconsideration to be considered timely or for the owner to now file a renewal application for the 2020-2028 license term. The Bureau notes that not only was the owner required to file a renewal application in 2020, but even if the 2012 application remained pending, a grant of the 2012 application after the August 1, 2020 expiration date for stations licensed to communities in Kentucky would be issued with an expired date because the 2012 application was only for a term from August 1, 2012 until August 1, 2020. Further, the Bureau states that it has no authority to reinstate a cancelled license once the 30-day statutory period for seeking reconsideration has concluded, because doing so would discourage future applicants for new facilities on seemingly vacant channels due to the possibility of challenges in perpetuity to cancelled licenses by former licensees.

FCC Issues Cease-and-Desist Letter to U.S.-Based Call Provider for Apparently Transmitting Illegal Robocalls

The FCC's Enforcement Bureau recently issued a cease-and-desist letter to a U.S.-based intermediate call provider for apparently transmitting illegal robocalls. The letter instructs the call provider to investigate the identified call traffic 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 call provider apparently transmitted 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 pertaining to bank impersonation and claims of "preauthorized orders" placed on the recipient's "account" that were flagged by consumers as illegal robocalls made without their consent.

Between September and November 2022, the Traceback Consortium conducted tracebacks and determined that the call provider acted as the gateway provider for the calls. A company is a gateway provider if it is a U.S.-based intermediate provider that receives a call directly from a foreign originating provider or foreign intermediate provider at its U.S.-based facilities before transmitting the call downstream to another U.S.-based provider. The Traceback Consortium previously

notified the call provider about the calls and provided it with access to supporting data identifying each call prior to the cease-and-desist letter being sent.

The FCC noted that the numerous tracebacks to the call provider indicated that the call provider is apparently knowingly or negligently transmitting or processing illegal robocall traffic. Additionally, the Enforcement Bureau determined that the call provider's CEO is a recipient of a previous cease-and-desist letter from the Bureau from October 2021. The CEO allegedly shut down the former company associated with the 2021 cease-and-desist letter, and later created the instant call provider to evade past enforcement efforts.

The cease-and-desist letter requires the call provider to undertake a series of actions to investigate the identified call traffic, block it, determine its source, and take actions to prevent its recurrence and otherwise prevent its customers from using its network to make illegal robocalls. Some of these actions are required to be taken within 48 hours and follow up reports to the Bureau and the Traceback Consortium are similarly required in short order.

The letter states that if the call provider 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 call provider. Additionally, the FCC may find that the call provider'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 call provider.

Concurrent with the cease-and-desist letter, the FCC issued a Public Notice notifying all U.S.-based voice service providers of the apparently unlawful robocalls transmitted by the call provider. The Public Notice also notifies U.S.-based voice service providers that, if the call provider fails to mitigate the illegal traffic described in the letter, they may block or stop accepting traffic from the call provider in question, without liability under the Communications Act or under the FCC's rules.

Licensee of New York Radio Station Enters into Consent Decree for Violations Relating to the Public Inspection File

A New York noncommercial radio station recently agreed to enter into a Consent Decree with the FCC's Enforcement Bureau (the "Bureau"), resolving an investigation into the broadcaster's compliance with the Public File Rule contained in Section 73.3527 of the Commission's Rules. The investigation arose in connection with the Bureau's review of the broadcaster's license renewal application.

Section 73.3527 of the FCC's Rules requires radio station licenses to maintain an online public inspection file and to upload certain documents to the FCC's public file database throughout the year. The Bureau emphasized the importance of stations complying with the public file rule, as it directly affects the public's ability to stay informed of a station's compliance with its obligations.

The Bureau mentioned that the radio industry is recovering from a recent downturn in sponsorship revenues which has placed the industry under considerable financial stress. As such, the Bureau explained that these exceptional, industry-wide financial circumstances presented a unique situation which justified resolving the investigation into the public file violations.

The broadcaster elected to enter into a Consent Decree with the Bureau and admitted that it failed to timely place certain records into the online public inspection file in violation of Section 73.3527 of the FCC's Rules. Pursuant to Section 503(b)(2)(e) of the Rules, the FCC may consider "any history of prior offenses" by a licensee when exercising its forfeiture authority. The broadcaster acknowledged that the FCC may consider its admission of liability in the Consent Decree when proposing any future forfeitures against the broadcaster.

The Consent Decree also requires the broadcaster to implement and maintain a compliance program, including appointment of a compliance officer, development of a compliance manual, implementation of a training program, filing of a compliance report with the FCC a year after entering into the Decree, and reporting to the FCC any violations of either the Consent Decree or the Public File Rule within ten days of discovering such violation.