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FCC Enforcement Monitor March 2023

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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:

- *Repeated Failure to Pay Annual Regulatory Fees Puts Texas Station License in Jeopardy*
- *FCC Proposes First-Ever PIRATE Act Fines, Including $2 Million-Plus Statutory Maximum*
- *Failure to File License Renewal Applications Brings $13,500 Proposed Fine for Utah Television Translator Stations*

Texas Radio Station at Risk of Losing License Over Unpaid Regulatory Fees

A Texas AM radio station's license is at risk over the licensee's failure to pay regulatory fees for nine years, dating back to Fiscal Year 2012. The licensee owes more than $36,000 in fees before accounting for associated interest, late penalties, and administrative costs.

Under Section 9 of the Communications Act of 1934 and Section 1.1151 of the FCC's Rules, the FCC each year assesses regulatory fees on its regulatees to cover the costs of operating the agency. The fees are typically due during the last two weeks of September so that the agency is fully funded at the start of the federal government's fiscal year on October 1. When payments are late or incomplete, the Communications Act and FCC Rules require a penalty assessment of 25% of the fee owed plus interest.

When regulatory fees or interest go unpaid, the FCC is authorized to revoke licenses and authorizations. In this case, the FCC sent demand letters to the licensee and its counsel, but payments were still not made. In an Order to Pay or Show Cause, the FCC gives the licensee 60 days to file with the Media Bureau documentation that all outstanding regulatory fee debts have been paid or to show cause why the payments are inapplicable or should be waived or deferred. The Media Bureau notes that failure to provide evidence of payment or to show cause within the time specified may result in revocation of the station's license.

Revocation normally requires a hearing, but only if the licensee presents a substantial and material question of fact as to whether the fees are owed. If a hearing is designated on that basis, the FCC can require the licensee to pay for the costs of the hearing if the licensee does not prevail.

FCC Exercises Its PIRATE Act Monetary Penalty Authority for First Time

In a pair of Notices of Apparent Liability for Forfeiture (NAL), the FCC proposed fines of $2,316,034 and $80,000 against brothers in New York and an individual in Oregon, respectively, for unauthorized radio broadcasting. The Preventing Illegal Radio Abuse Through Enforcement Act (known as the PIRATE Act) gave the FCC authority to take enforcement action against the pirates themselves and also against landlords and property owners who knowingly and willfully allow pirates to broadcast from their properties. Illegal broadcast operations can interfere with licensed communications and pose a danger to the public by interfering with licensed stations that carry public safety messages, including Emergency Alert System transmissions. These proposed fines are the first time the FCC has proposed fines using its PIRATE Act authority.

In the New York NAL, the FCC described the investigative history that led to the NAL in which it found, through publicly available information, that the station had been operating since 2008. The FCC first took note of the station in 2013 after receiving complaints, and subsequently issued Notices of Unauthorized Operation (NOUO). In 2014, FCC New York field agents took measurements that confirmed the location of the transmitter and were told by the building's owner who was responsible for the broadcasts. The responsible party was asked by the building owner to claim his equipment. At that time, the individual admitted to the agents that he owned the equipment, installed the equipment, and was responsible for its operation. A verbal warning was given and another NOUO was issued. A 2015 NAL went unanswered, so the FCC issued a $20,000 fine. The operator did not respond to the forfeiture order and the fine was never paid. After more field work, a task force including the US Marshals Service executed a search warrant in 2016 and seized the equipment causing the illegal transmissions. The pirate station continued even after seizure of the equipment, while field work by FCC agents was prevented by COVID travel restrictions until 2022.

The FCC's investigation, using the illegal station's website and information collected from the field, found 184 days of illegal radio broadcasts, which included violations of Part 15 of the FCC's Rules relating to operation of radio frequency devices. The FCC proposed a base fine of $20,000 for each of the 184 days that the brothers apparently willfully and knowingly violated the Act for a proposed base fine of $3,680,000. In applying an upward adjustment, the FCC pointed to the brothers' intentional conduct and their history of prior FCC violations. The FCC proposed the maximum fine of $115,802 for each day of the 184 days during which the brothers operated their pirate radio station, for a total fine of $21,307,568. This fine amount was then reduced to the statutory maximum of $2,316,034. The brothers have 30 days from the release of the NAL to either pay the fine or submit a written statement seeking reduction or cancellation of the proposed fine.

In the Oregon NAL, the FCC proposed an $80,000 fine against an individual who was alleged to have operated a pirate radio station since at least 2018. Acting on a complaint, FCC agents observed an illegal radio station and determined the identity of the operator, who voluntarily surrendered his transmitter. The FCC later mailed an NOUO to the operator, which went unanswered. About a year later and acting on another complaint, agents found another illegal radio station and the operator again surrendered a transmitter. This was followed by another NOUO. Three years later and acting on a third complaint, agents again observed an illegal radio station and the operator's wife voluntarily surrendered two transmitters to the agents. Another NOUO was issued.

Just weeks after the third NOUO, the operator posted a video to Facebook in which he announced he was again operating the station and that he did not think the FCC could stop his unauthorized broadcasts unless it "locked him up." Using its PIRATE Act authority, the FCC sent a Notice of Illegal Pirate Radio Broadcasting (NIPRB) to the owner of the property from which the illegal operation was transmitting, warning the property owner that he could be held liable for up to $2,000,000 in fines if he was willingly and knowingly allowing a pirate radio station to operate from his premises. The site owner sent the NIPRB back to FCC with a handwritten, signed statement from the operator stating that the property owner had informed him that he is not allowed to run a pirate radio station on the property.

Pointing to the intentionality of the operator's repeated actions and his egregious disregard for the FCC's authority in announcing he would have to be jailed before he stopped broadcasting, the FCC proposed a $60,000 upward adjustment to the $20,000 base fine for a total proposed fine of $80,000. The individual has 30 days from the release of the NAL to either pay the fine or submit a written statement seeking reduction or cancellation of it.

FCC Proposes $13,500 Fine for Utah Television Translator Licensee That Failed to File License Renewal Applications

A Utah broadcaster failed to timely file license renewal applications for nine of its television translator stations. As a result, the FCC's Media Bureau issued a Memorandum Opinion and Order and NAL proposing a $13,500 fine.

Section 73.3539(a) of the FCC's Rules requires that license renewal applications for broadcast stations must be filed no later than "the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed." In this case, the applications for renewal should have been filed by June 1, 2022, but were not filed until August 12, 2022. The licensee did not provide an explanation for the late filings.

In the NAL, the FCC concluded that the licensee had apparently willfully violated Section 73.3539(a) of its Rules by failing to timely file license renewal applications. Section 312(f)(1) of the Communications Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law, and "repeated" as applying where an act occurs more than once or, if an act is continuous, for more than one day.

When issuing fines, Section 503(b)(2)(E) of the Communications Act requires the FCC to account for the nature, circumstances, extent, and gravity of the violation. The FCC also considers the degree of culpability, any history of prior offenses, and the ability of the violator to pay the fine. The FCC cited to its *Forfeiture Policy Statement*, which sets a base fine of $3,000 for failing to file a required form. In this case, the FCC reduced the proposed fine to $1,500 per station, explaining that as digital television translators, the stations provide a secondary service. The FCC found that the Licensee's apparent violation of the rules did not constitute a serious violation and found no evidence of violations that constituted a pattern of abuse. Thus, the FCC indicated it would grant the license renewal applications by separate action upon payment of the proposed fine if no other issues arose.