ADVISORY

FCC Enforcement Monitor July 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:

- *Foreign Ownership Violation by Telecommunications Provider Leads to $50,000 Penalty and Four-Year Compliance Plan*
- *Arizona LPFM Station Hit with $20,000 Penalty and $41,500 Suspended Penalty for Underwriting Violations*
- *Unauthorized Station Transfers Result in $8,000 Consent Decree*

Telecommunications Provider to Pay $50,000 and Implement Four-Year Compliance Plan After Foreign Ownership Violations

A Guam-based telecommunications provider (Telecom Provider) settled an investigation by the Federal Communications Commission (FCC) into its ownership structure by entering into a consent decree that requires a $50,000 payment to the government and implementation of a 48-month compliance plan. The Telecom Provider holds domestic and international Section 214 authorizations, 84 wireless licenses, three submarine cable licenses, and an earth station satellite license. The FCC's investigation concerned the Telecom Provider's ownership, which includes two foreign corporations and a foreign government's finance ministry.

Section 310(b)(4) of the Communications Act of 1934, as amended (Act), places a 25 percent limit on ownership by foreign individuals, corporations, and governments in U.S.-organized entities controlling common carrier licensees. Under the Act, the FCC may permit higher levels of foreign ownership of an FCC licensee if it determines it is not contrary to the public interest. Since 2013, FCC approval has also been required for any foreign individual or entity not previously approved by the FCC to acquire more than a five percent equity or voting interest in the entity. These public interest determinations by the FCC incorporate input from a federal Executive Branch review of national security, law enforcement, foreign policy, and trade policy concerns conducted by a multi-agency group known as Team Telecom.

In 2015, the FCC granted an application that allowed the Telecom Provider to have 100 percent foreign ownership consisting of a parent entity two steps up in the ownership chain (Indirect Parent Entity) (owning up to 65.15 percent of the equity and voting interests) and the finance ministry (owning up to 26.95 percent of the equity interests and 41.53 percent of the voting interests). Five years later, the Indirect Parent Entity commenced a tender offer for outstanding shares in the parent entity directly above the telecom provider (Direct Parent Entity). Two months later, the Indirect Parent Entity acquired the tendered shares, which increased its indirect ownership interests in the Telecom Provider to 91.46 percent. At the end of 2020, the Indirect Parent Entity also acquired all shares of the Direct Parent Entity's common stock held by the remaining minority shareholders, resulting in it owning 100 percent of the equity and voting interests of the Telecom Provider. These transactions led to the finance ministry having an indirect ownership interest in the Telecom Provider (held through Indirect Parent Entity) of 33.93 percent equity and voting. The result was higher levels of foreign ownership in the Telecom Provider than had previously been approved by the FCC.

The Telecom Provider attempted to correct the problem by filing a Petition for Declaratory Ruling seeking approval for the Indirect Parent Entity and finance ministry to exceed their previously approved foreign ownership limits. In late 2021, the International Bureau granted the Petition, but the FCC's Enforcement Bureau pursued the prior foreign ownership violation, resulting in a Consent Decree with the Telecom Provider.

In addition to paying a $50,000 civil penalty for exceeding the foreign ownership levels approved by the FCC, the Telecom Provider must implement a plan to ensure compliance with the terms of the Consent Decree, including developing a compliance manual, administering employee compliance training, and submitting compliance reports to the Commission for four years regarding foreign ownership compliance. During that time, the Telecom Provider must also report instances of noncompliance with the FCC's foreign ownership rules and the terms of the Consent Decree within 15 days of discovering them.

Violations of Noncommercial Broadcast Underwriting Laws Result in $20,000 Penalty and a $41,500 Suspended Penalty for Low Power FM Station

The FCC's Enforcement Bureau entered into a Consent Decree with the licensee of an Arizona LPFM station to resolve an investigation into violations of the FCC's rules regarding underwriting. Under the Consent Decree, the licensee agreed to implement a compliance plan and pay a $20,000 civil penalty, with a suspended civil penalty of $41,500 to be levied in the event of default.

All LPFM radio stations are licensed as noncommercial educational stations and are therefore prohibited from airing promotional announcements on behalf of for-profit entities in exchange for compensation. Such prohibited promotional announcements include, among other things, descriptions of products or services, calls to action, or inducements to buy, sell, or rent a product. LPFMs are permitted to identify contributors and underwriters that provide financial support to the station but may not promote a contributor or underwriter's products, services, or businesses. The FCC articulated its noncommercial broadcasting policy in a 1981 Report and Order, explaining that "[t]the Commission's interest in creating a 'noncommercial' service has been to remove the programming decisions of public broadcasters from the normal kinds of commercial market pressures under which broadcasters in the unreserved spectrum usually operate." In exchange, the FCC exempts LPFM and other noncommercial stations from annual regulatory fees, reserves spectrum for their operations, and generally imposes fewer regulatory requirements on them.

In January 2020, the FCC received a complaint, including recordings, about an LPFM station airing ongoing advertisements in violation of the FCC's underwriting rules. The Enforcement Bureau issued letters of inquiry seeking additional information about the alleged advertisements. The licensee responded, confirming that it had broadcast the complained-of announcements over the air at various times from October 2019 to September 2021.

To resolve the investigation, the licensee entered into a Consent Decree with the Enforcement Bureau under which it must designate a compliance officer, develop a compliance plan to prevent future violations, and pay a $20,000 penalty. In addition to the payment, the licensee is also subject to a $41,500 suspended penalty that it must pay should it fail to pay the entire $20,000 penalty or if it violates the underwriting rules and/or the terms of the Consent Decree in the next three years.

Family of Deceased Radio Owner Fails to File Transfer Applications, Agrees to Consent Decree With $8,000 Payment

The family of a deceased radio owner failed to file several required FCC applications relating to the transfer of the licensee's voting stock into a trust and a transfer of control of the trust. These violations resulted in a Consent Decree with the FCC's Media Bureau requiring payment of an $8,000 penalty.

On May 8, 2022, the controlling shareholder of a number of radio licensees passed away. Prior to his passing, he placed his shares into a revocable trust on March 3, 2022. On March 4, 2022, he resigned as the trustee to the revocable trust and his son succeeded him as trustee. However, FCC consent was not obtained for either the transfer of stock, or the appointment of a new trustee. The trust agreement provided that after the owner's death, half of the shares held in the trust were to be distributed to a trust in his son's name, and half to a trust in his daughter's name. The son, and new trustee of the owner's trust, also had a separate trust containing additional shares.

On July 7, 2022, the stations' licensee filed an application for involuntary pro forma transfer of control of the licensee from the deceased to his trust. Subsequently, at the request of the FCC, the licensee withdrew that application and filed a non pro forma transfer of control application seeking FCC consent for the initial transfer of stock into the decedent's trust, the transfer of control of that trust to the son as the new trustee, and the subsequent distribution of shares to the son's and daughter's respective trusts.

Under Section 310(d) of the Communications Act and Section 73.3540 of the FCC's transfer of control rules, involuntary transfer of control applications must be filed within 30 days of the controlling shareholder's passing. Those applications must apprise the FCC of the facts surrounding the involuntary transfer, and seek Commission consent to the transfer of control of the licenses from, for example, the decedent to the decedent's estate/executor. Once the FCC approves the involuntary transfer, there will typically be a second set of applications to transfer the licenses out of the estate to the party inheriting the stations (or sometimes to a party buying the stations directly from the estate).

Here, the initial transfer of the voting shares from the controlling shareholder into the trust, and the change in trustee, each required prior FCC approval. The applications seeking that approval were filed several months after the initial transfer to the owner's trust and the subsequent appointment of a new trustee. During that time, the former controlling shareholder's son was the sole trustee of the controlling trusts, assuming de facto control of the licensees and their radio licenses without having obtained the required FCC approvals to do so.

To terminate the investigation of the violations, the station licensees agreed to enter into a Consent Decree with the FCC. Under the terms of the Decree, they must pay a civil penalty of $8,000 and admit to violating Section 310(d) of the Communications Act and Section 73.3540 of the FCC's transfer of control rules.