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FCC Enforcement Monitor October 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:

- *Seven-Figure Fine Imposed on Pirate Radio Brothers*
- *$25,000 Fine Proposed for Kansas Radio Station EEO Rule Violations*
- *Satellite Company Enters $150,000 Consent Decree for Orbital Debris*

FCC Affirms Largest-Ever Pirate Radio Fine

The FCC affirmed a $2,316,034 fine against two brothers operating a pirate radio station in Queens, New York. The penalty followed a March 2023 Notice of Apparent Liability for Forfeiture (NAL), which we wrote about **here**.

In the NAL, the FCC set out the details of the brothers' pirate radio activities, including that they had been illegally operating since 2008. The Preventing Illegal Radio Abuse Through Enforcement Act (known as the PIRATE Act and enacted in 2020) expanded the FCC's authority to take enforcement action against radio pirates, and the fine proposed in March was the first issued under the FCC's newly-expanded authority. 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.

In this case, the FCC's investigation documented 184 days of pirate broadcasts. With a $20,000 base fine for each willful and knowing violation, plus upward adjustments for intentional conduct and a history of rule violations, the FCC arrived at a fine of $21,307,568, but then reduced it to the statutory maximum of $2,316,034. The brothers are jointly and severally liable for the fine, which means that each brother is responsible for paying the full fine and the FCC can recover the total fine from either brother or both. Payment of the penalty is due within 30 days of the release date of the Forfeiture Order.

Kansas Radio Licensees Face $25,000 Fine for EEO Violations

Two related radio companies, licensees of a combined nine Kansas radio stations, received an NAL for various violations of the FCC's Equal Employment Opportunity (EEO) rules. The NAL proposed a $25,000 fine.

The FCC's EEO rules prohibit broadcasters from discriminating in hiring on the basis of race, color, religion, national origin, or gender and, in many cases, require broadcasters to conduct and document broad job vacancy recruitment efforts. The nine stations are run by the same two principals and operate as two Station Employment Units. A Station

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Employment Unit (SEU) is a "a station or a group of commonly owned stations in the same market that share at least one employee." The FCC Enforcement Bureau's investigation into the SEUs' EEO compliance appears to have stemmed from the FCC's processing of the stations' license renewal applications, during which FCC staff reviews a station's compliance with the FCC's various rules throughout the station's license term.

The NAL alleges that the licensees violated FCC rules requiring that (1) annual EEO reports be timely uploaded to the station's Public Inspection File; (2) stations upload annual EEO reports to their website, if they have one; (3) stations recruit broadly for certain job vacancies; (4) each SEU conduct periodic analysis of the effectiveness of its EEO program; and (5) each SEU maintain records of its recruiting efforts. Under Section 73.2080(c)(6) of the FCC's Rules, an annual EEO report must include information about the SEU's full-time vacancies over the prior year, the recruitment sources used to fill full-time vacancies, the recruitment source that referred the hiree for each such full-time vacancy, the total number of persons interviewed for each full-time vacancy and the total number of interviewees referred by each recruitment source for that vacancy, and a list and brief description of the SEU's recruitment initiatives during the prior year.

The NAL states that the SEUs uploaded three annual EEO reports to stations' Public Inspection Files from five months late to nearly 17 months late. In response to the Enforcement Bureau's letter of inquiry, the licensees claimed that the late uploads were "due to a combination of circumstances," involving "unusual disruptions in their operations," and pointed to the departure of a company CEO, COVID-19 financial hardship, and reliance on an inexperienced operations manager as reasons for the lapses. The FCC, for its part, reiterated that negligent acts, omissions, or remedial efforts do not excuse a licensee's rule violations.

During its investigation, the Enforcement Bureau found that one of the SEUs failed to recruit broadly for two of five full-time openings over a two-year period. For one position, the SEU relied solely on an "internal recommendation" in filling the position, with the FCC noting in response that broad recruitment requires public outreach and cannot be done merely through private contacts. For another position, on-air announcements about the vacancy on the SEU's stations were the only form of recruitment outreach. The FCC noted in the NAL that on-air announcements may be used as part of a broad recruiting effort but cannot be the only method used since such announcements only reach people listening to that particular station at that particular time rather than the entire community, as the rule requires. According to the FCC, the licensees were also unable to produce records documenting the recruiting efforts claimed in their EEO reports.

In light of these alleged violations, the Enforcement Bureau surmised that the licensees also could not have complied with Section 73.2080(c)(3) of the FCC's Rules, which requires an SEU to routinely analyze its EEO program to ensure it is recruiting broadly and reaching the entire community, because such analysis would have uncovered the claimed violations.

The FCC's Rules set a base fine of $10,000 for each public inspection file violation, with the FCC having discretion to adjust that amount upward or downward based on the facts of each case. Here, the Enforcement Bureau proposed a $15,000 penalty for failure to timely upload the annual EEO reports to the stations' Public Inspection Files and websites. With regard to the licensees' alleged EEO violations, it looked to the FCC's guidelines and precedent, and ultimately proposed a $4,000 fine for failing to recruit broadly, a $4,000 fine for failing to produce records of recruitment initiatives, and a $2,000 fine for failing to regularly analyze the SEUs' EEO programs. The licensees have thirty days from the release of the NAL to either pay the fine or file a written statement with the Commission seeking reduction or cancellation of the proposed fines.

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Failure to Minimize Space Debris Leads to $150,000 Civil Penalty

A major satellite telecommunications company entered into a consent decree with the FCC, agreeing to pay a $150,000 penalty for failing to properly move one of its satellites to the satellite's designated disposal orbit at the end of the satellite's mission. The FCC monitors such activities because orbital debris can damage the nation's space-based communications infrastructure.

In 2002, the company launched a direct broadcast satellite to provide TV service. Eight years later, the company requested modification of the satellite's license, including in the amended application an orbital debris mitigation plan. That plan called for the satellite to be maneuvered at the end of its mission to a disposal orbit 300 kilometers above its normal orbit, reserving 11 kilograms of fuel to do so. The company subsequently filed a license extension application incorporating the same debris mitigation plan. The extension was granted in 2012 with the condition that the company would follow the terms set out in the modification application, including the debris mitigation plan.

About three months before the satellite's expected May 2022 decommission date, the company noticed that certain maneuvers were not producing the expected changes in trajectory. The company and the satellite's manufacturer concluded that the satellite was running low on propellant and would likely need to be deorbited sooner than expected. The company contacted the FCC's International Bureau staff to alert them that the satellite might not be able to reach its disposal orbit. On May 6, 2022, the company notified the FCC that the satellite had been placed into a disposal orbit 122 kilometers above its geostationary arc. Because of the discrepancy between the actual disposal orbit and what the company had committed to in its end-of-mission plan, the matter was referred to the Enforcement Bureau. After an investigation and settlement discussions, the company and Enforcement Bureau entered into a consent decree under which the company must pay $150,000 to the government. The company must also develop and implement a compliance plan that includes improved propellant tracking and end-of-mission disposals.

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