ADVISORY

FCC Enforcement Monitor November 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:

- *Fourteen Years of Unpaid Regulatory Fees Could Lead to License Revocation*
- *$6 Million in Fines Imposed on Three Pirate Radio Operators*
- *Florida and Washington Television Stations Fined for Late Issues/Programs Lists*

License of Missouri FM Could Be Revoked If Years of Regulatory Fees Remain Unpaid

The licensee of a Missouri FM station must either pay its overdue regulatory fees or show cause why the fees are inapplicable or should otherwise be waived or deferred. The FCC's Media Bureau and Office of Managing Director assert that the licensee failed to pay regulatory fees for fourteen years (2010-2023) and that it owes the U.S. Treasury nearly $26,000 in fees, interest, penalties, and other charges.

Under Section 9 of the Communications Act of 1934 (the Communications Act) and Section 1.1151 of the FCC's Rules, the FCC each year assesses regulatory fees upon 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 impose a penalty of 25% of the fees owed plus interest. When regulatory fees or interest go unpaid, the FCC is authorized to revoke affected licenses and authorizations. The licensee defaulted on a payment plan it had previously arranged with the Treasury.

In an *Order to Pay or Show Cause*, the FCC gave the licensee 60 days to file with the Media Bureau documentation showing all outstanding regulatory fee debts had been paid or to show cause why the fees are inapplicable or should be waived or deferred. The Media Bureau noted in the *Order* that failure to provide evidence of payment or to show cause within the time permitted could result in revocation of the station's license. The *Order* followed letters to the licensee demanding payment without result.

License revocation normally requires the licensee first be given a hearing, but only if the licensee presents a substantial and material question of fact as to whether the fees are owed. In the case of a hearing, the licensee bears the burden to introduce evidence and provide proof. Where a hearing is conducted to collect regulatory fees, the FCC can require the licensee to pay for the costs of the hearing if the licensee does not ultimately prevail.

FCC Proposes Over $6 Million in Fines on Three Pirate Radio Operators

The FCC recently issued *Notices of Apparent Liability for Forfeiture* (NAL) proposing fines against three New York pirate radio operators under the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act). In the NALs, the FCC proposed fines of $1,780,000, $2,316,034, and $2,316,034, respectively, against radio operators in Brooklyn, the Bronx, and Mount Vernon, New York. The PIRATE Act gave the FCC enhanced authority to take enforcement action against the pirates themselves and 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.

In the Brooklyn NAL, the FCC explained that it first became aware of the pirate radio station in November 2022 in response to complaints of interference with a licensed station in the area. From November 2022 through February 2023, New York FCC field agents observed 89 days of unauthorized operation. On numerous occasions, FCC field agents took field strength measurements of the signal and determined that it exceeded the limits for operations under Part 15 of the FCC's Rules relating to operation of unlicensed low power radio frequency devices. Agents also took close-up photographs of the broadcast antenna illegally transmitting the signal. The FCC concluded that the operator willfully and knowingly violated the Communications Act by operating a pirate radio station, and it imposed a base fine of $20,000 for each of the 89 days of observed activity, for a total proposed fine of $1,780,000. The FCC did not find any factors that would dictate an upward or downward adjustment of the base fine amount.

According to the Bronx NAL, the station had been on-air since at least 2018. The FCC became aware of the pirate radio station in September 2018 due to complaints. In September and October 2018, FCC field agents took field strength measurements of the station's signal and determined that it exceeded the power limits for operations under Part 15 of the FCC's Rules, as well as observed the antenna used to broadcast the signal and determined that it was not compliant with the FCC's rules. The agents posted a *Notice of Unauthorized Operation* (NOUO) on the building's entry door. While the station briefly went off the air following the October 2018 NOUO, it soon resurfaced. In response to further complaints, field agents again visited the area in February 2019 and discovered that while the antenna had been removed from the original building, it was located at another location approximately a mile away. Agents again collected measurements and determined that the signal was still exceeding legal limits for unlicensed operation. Further site visits in March, May, and August 2019, March 2020, and May, June, and September 2022, revealed the same ongoing violations.

Through additional investigative work, the FCC determined that pirate radio broadcasts occurred on at least 98 days between November 2022 and February 2023. The FCC imposed a base fine of $20,000 for each of the 98 days, for a total proposed fine of $1,960,000. However, given the operator's history of prior violations, the FCC concluded that a significant upward adjustment was warranted, proposing the maximum penalty of $115,802 for each of the 98 days, for a total penalty of $11,348,596. However, the Commission had to reduce the total proposed penalty to $2,316,034 based on the statutory limits of the Communications Act.

Similarly, in the Mount Vernon NAL, the Commission found that the station had a long history of violations – at least fifteen years. Beginning in March 2008, in response to complaints, FCC field agents traced the source of radio transmissions and found that the pirate facility's signal exceeded the power limits permitted under Part 15 of the FCC's Rules. The FCC issued an NAL in March 2009 and a *Forfeiture Order* in July 2010 proposing a $10,000 fine, to which the operator responded by seeking cancellation or reduction of the fine based on inability to pay. The FCC reduced the fine to $1,700, but the station operator never paid the reduced penalty. The FCC received another complaint in February 2017 and agents again visited the site and determined that the station's signal still exceeded legal power limits for an unlicensed operation.

The FCC subsequently mailed a NOUO to the operator. In April 2017, after another site visit, field agents left an on-scene NOUO for both the operator and the building owner. Several more follow-up investigations occurred over the years (June 2017, October 2018, April and August 2019, and May 2022), each confirming the station was still exceeding the legal limits for unlicensed low power operation. In July 2022, the FCC, pursuant to new authority under the PIRATE Act, sent a *Notice of Illegal Pirate Radio Broadcasting* (NIPRB) to the owner of the building where the broadcasts originated. The NIPRB notified the building owner that under the PIRATE Act, the FCC may issue a fine of up to $2,000,000 if it determines the building owner continued to permit an individual or entity to engage in pirate radio broadcasting from her property. Although the station's broadcasts ceased shortly after the NIPRB, they resumed by February 2023 and further illegal operations were observed several times between February and May 2023. As a result, the FCC released an NAL stating that the operator apparently willfully and knowingly violated the Communications Act for at least 20 days of operation.

Citing the operator's intentional conduct and history of violations, the FCC concluded that an upward adjustment was warranted and proposed the maximum penalty of $115,802 for each of the 20 days, for a total penalty of 2,316,040. However, as with the Bronx NAL, the total fine was reduced to $2,316,034 based on the statutory limits imposed by the Communications Act.

FCC Proposes $9,000 Fines for Florida and Washington Televisions Stations' Late-Filed Issues/Programs Lists

The FCC's Media Bureau fined a Florida and a Washington television station each $9,000 for failing to timely upload all quarterly issues/programs lists to their respective Public Inspection File (PIF). Section 73.3526(e)(11)(i) of the FCC's Rules requires that every commercial television station place in its PIF "a list of programs that have provided the station's most significant treatment of community issues during the preceding three-month period." Section 73.3527(e)(8) of the Rules requires every noncommercial educational (NCE) television station to do the same. The lists must include a brief narrative of the issues addressed, as well as the date, time, duration, and title of each program addressing those issues. The lists must be placed in the PIF within 10 days of the end of each calendar quarter.

The Florida station, a commercial television station, filed a license renewal application in September 2020, and an FCC staff review of the station's PIF revealed that during the license term, the station uploaded ten of the lists late, which was inconsistent with the station's certifications in its license renewal application. In its application, the station's licensee disclosed missing issues/programs lists prior to May 2016 but stated that the lists had been timely submitted since that date. However, an FCC review of the station's PIF revealed that the station was missing issues/programs lists for the last three quarters of 2016, all of 2017, and the first three quarters of 2018.

In light of this, the Bureau released a *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (NAL) in August 2023 in which it proposed a fine of $9,000 for the omitted filings. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(10) of the FCC's Rules establishes a base fine of $10,000 for Public Inspection File violations. However, the Commission may adjust the amount upwards or downwards based upon factors such as the "nature, circumstances, extent and gravity of the violation," in addition to the licensee's "degree of culpability" and "any history of prior offenses." Taking those factors into account, the FCC found that a fine of $9,000 was appropriate. Additionally, the FCC noted that that the violation did not constitute a "serious violation" nor a pattern of abuse that would prevent renewal of the station's license and indicated it would grant the license renewal application in a separate proceeding if no other issues arose.

The NAL gave the licensee thirty days to pay the full amount of the proposed fine or file a written statement seeking reduction or cancellation of it. However, the licensee did not pay the fine nor did it file a written statement in response to the NAL. As a result, in October 2023, the FCC concluded that the licensee willfully violated the Commission's rules and issued a *Forfeiture Order* assessing the $9,000 fine proposed in the NAL.

The Washington station, a noncommercial television station, filed its license renewal application in September 2022. In its application, the licensee disclosed that it failed to upload a number of issues/programs lists by the respective deadlines. Specifically, it uploaded seven lists more than one year late, four lists between one month and one year late, and one list between one day and one month late.

The FCC found that a $9,000 fine was also appropriate for the Washington station, citing the licensee's apparent willful and repeated failure to timely upload twelve of its issues/programs lists. The FCC noted that the licensee's apparent violation of Section 73.3527(e)(8) of the Rules did not constitute a "serious violation," that there was no evidence of violations that constitute a pattern of abuse, and that the station served the public interest, convenience, and necessity during the subject license term. As a result, the Commission stated that it would grant the license renewal application by separate action upon the conclusion of the forfeiture proceeding.