

FCC Enforcement Monitor

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HEADLINES

Pillsbury's communications lawyers have published the 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:

- *FCC Proposes \$8,000 Fine for Contest Rule Violations*
- *Business Communications Company Settles Business Radio Investigation by Agreeing to Compliance Plan and \$100,000 Penalty*
- *FCC Issues \$16,500 Fine to Alabama FM Translator for Multiple Rule Violations*

California FM Station Receives \$8,000 Proposed Fine for Contest Rule Violation

The FCC proposed a fine of \$8,000 against the licensee of a California FM radio station for violating the FCC's Contest Rule. Specifically, the FCC issued a Notice of Apparent Liability for Forfeiture (NAL) asserting that the licensee failed to conduct the contest substantially as announced.

Section 73.1216 of the FCC's Rules requires a licensee to "fully and accurately disclose the material terms" of a contest it conducts or promotes and to conduct the contest "substantially as announced and advertised." Material terms include, among other things, eligibility restrictions, the means of selecting winners, and the extent, nature, and value of prizes. Prizes must also be awarded promptly, and in the past the FCC has found Contest Rule violations where a station failed to award prizes in a manner consistent with the advertised rules.

The FCC received a complaint alleging that the station did not award a cash prize to the winner of a contest conducted in October 2019. To investigate the complaint, the FCC issued a Letter of Inquiry (LOI) to the station. In response, the station admitted that there had been "undue delay," with the prize being awarded after the announced timeline. The station's contest rules indicated prizes were to be awarded to winners "within thirty (30) business days of the date the winner completes all required Station documents." The station acknowledged that it received all required documentation on January 16, 2020, and thus it should have issued the prize by March 2, 2020, but did not issue the prize until May 2021. The station cited three separate events as the cause of the undue delay: (1) difficulty accessing necessary files after the COVID-19 pandemic led to employees working from home; (2) a ransomware attack that affected corporate IT systems between October 2020 and March 2021; and (3) a lack of staff after the ransomware attack that prevented the station from completing work in a timely manner.

Despite these defenses, the FCC found that the station apparently willfully violated Section 73.1216 of the FCC's Rules when it failed to award the prize in accordance with the advertised contest rules, and therefore failed to conduct the contest "fairly and substantially as represented to the public." The FCC explained that "timely fulfillment of the prize" was a "material term of the Licensee's own contest rules" and the station delayed issuing the prize for over a year. The FCC disagreed with the station's justifications for the delay, finding that they did not excuse the failure to award the prize in compliance with the announced contest rules. In particular, the FCC pointed out that the station's first justification for the delay (the pandemic transition to work-from-home) occurred in mid-March 2020 – after the station should have already issued the prize by March 2, 2020.

The FCC's base fine for violations pertaining to licensee-conducted contests is \$4,000. In this case, the FCC found a single violation of Section 73.1216 of the FCC's Rules resulting from the station's failure to issue the prize within the timeframe established by the contest rules. However, considering the totality of the circumstances, and in line with the FCC's Forfeiture Policy Statement, the FCC determined an upward adjustment was warranted, emphasizing that "large or highly profitable companies should expect to pay higher forfeitures for violations of the Act and the Commission's rules" to ensure that the fine is an "effective deterrent and not simply a cost of doing business." The FCC therefore concluded that an upward adjustment of the proposed fine from \$4,000 to \$8,000 was appropriate. The station has 30 days from release of the NAL to pay the fine or file a written statement seeking reduction or cancellation of it.

Rule Violations by Business Communications Company Result in Consent Decree with Compliance Plan and Six-Figure Penalty

A nationwide business communications company settled an FCC investigation by admitting that it failed to seek approval from the FCC before transferring control of business radio licenses and that it conducted business radio operations without authorization. The company entered into a consent decree that requires implementation of a compliance plan and payment of a \$100,000 civil penalty.

In 2021 and 2022, one of the company's subsidiaries that held two business radio licenses was dissolved, resulting in a pro forma assignment of the licenses to the company. During this time, the company also acquired two other entities which held six business radio licenses, but did not seek prior FCC approval for those transfers.

In addition, one of the company's private business radio licenses expired in January 2023, but the company continued to operate under the expired license. Later realizing its error, in September 2023 the company filed for Special Temporary Authority (STA) to continue operating under the license, acknowledging that the license had expired and that the company could be subject to enforcement action. The STA was granted and then subsequently canceled once the FCC granted an application for a permanent replacement license.

Within two weeks of granting the application for a permanent replacement license, the FCC sent an LOI to the company with questions about the assignment, transfers, and unauthorized operation. The company's response to the letter conceded that it had: (1) failed to provide notice within thirty days of the pro forma assignment of the licenses held by the subsidiary; (2) failed to seek and receive FCC approval to transfer the six licenses held by the acquired companies; and (3) operated without valid authorization due to the expired license.

Under the Communications Act and the FCC's Rules for Wireless Radio Services, pro forma assignments of business radio licenses do not require prior FCC approval, but notification of the FCC must be made within thirty days of the assignment. Transfers of control of such licenses do require prior FCC approval, and entities must always hold a valid authorization to operate a business radio. To resolve the investigation, the company entered into a Consent Decree with the FCC's Enforcement Bureau under which it must develop and implement a compliance program that includes quarterly educational meetings with regulatory counsel, a written compliance plan, employee compliance training, and compliance reporting to the FCC for four years. In addition, a \$100,000 civil penalty must be paid to the government within thirty days of the effective date of the Consent Decree.

Years-Long Unauthorized Operation, Failure to Disclose, and False Certifications Result in \$16,500 Fine for FM Translator Licensee

The licensee of an Alabama FM translator station received a \$16,500 fine for operating the station at variance from its license without proper authorization from the FCC, failing to timely file for an STA to operate with nonconforming technical facilities, failing to disclose material information about the station's unauthorized operation to the FCC, and making false certifications in the translator's license renewal application.

In 2015, the station suffered damage, causing it to adjust its technical parameters and apply for an STA after the fact for the altered operations. The STA and a subsequent extension were granted, ultimately expiring in November 2016, at which time the licensee failed to request a further extension. However, the station continued operating with the altered facilities through July 2018. The licensee later filed a license renewal application for the station in 2019 that included a certification that there had been no violations of the Act or the FCC's rules during the license term.

The Communications Act and FCC's rules require that a broadcast licensee hold a valid license to operate a station, that any material information regarding unauthorized operation be disclosed to the FCC, and that applicants have a reasonable basis for making any certifications in their license renewal applications. In this case, the station's authorization had expired and the FCC found that the licensee lacked a reasonable basis for certifying in its license renewal application that it had not violated the Communications Act or the FCC's rules.

In January 2024, the FCC released an NAL proposing a \$16,500 fine. The FCC's Forfeiture Policy Statement sets a base fine of \$3,000 for failing to file a required form and \$10,000 for operation of broadcast facilities without authorization. The FCC may adjust a fine upward or downward based upon factors such as the "nature, circumstances, extent and gravity of the violation." After reviewing all the factors, the FCC reduced the fine in this case from the \$10,000 base amount for unauthorized operation to \$5,000, and from \$3,000 to \$1,500 for the late-filed STA applications, noting that translator stations provide a secondary service. However, the FCC then added an additional proposed fine of \$10,000 for submitting false certifications in the translator's license renewal application. The licensee had 30 days from release of the NAL to pay the proposed fine of \$16,500 or to file a written statement seeking reduction or cancellation of it.

In February 2024, the licensee responded to the NAL. It did not dispute the rule violations but asked for a reduction or cancellation of the fines, arguing that it lacked the ability to pay them. The licensee provided tax returns confirming that the station operated at a loss for two of the last three years and argued that the proposed fine could lead to the station going off the air. While the FCC uses gross revenue as the best indicator of a licensee's ability to pay a fine, the FCC also "looks to all potential sources of income available to the entity." In this case, the FCC noted that a sale of the station for \$184,000 was pending, and that it did not think a fine that represented 8.9% of the purchase price was excessive, particularly in light of the licensee's "history of noncompliance, including unauthorized operations, and the extended duration of the violations..." The Media Bureau therefore refused to reduce the \$16,500 fine originally proposed.