FCC Enforcement Monitor

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Headlines:

- *FCC Issues Multiple Forfeitures for Unauthorized Marketing of Transmitters*
- *FCC Proposes $35,000 in Fines for Unauthorized Radio Operations*

Three Years Later, FCC Pursues Unauthorized Marketing of Transmitters

This month, the FCC issued Forfeiture Orders against two companies for marketing unauthorized transmitters, with both orders following up on Notices of Apparent Liability for Forfeiture (NAL) issued in 2009.

In one instance, the FCC issued a Forfeiture Order for $18,000 against a company that marketed an unauthorized FM broadcast transmitter in the U.S. and provided incorrect information to the FCC "without a reasonable basis for believing that the information was correct." The FCC first issued an NAL against this company in 2009, after an in-depth investigation by the Spectrum Enforcement Division, alleging that the company was marketing several FM transmitters, including one model of transmitter that was not verified to comply with FCC regulations. The FCC's rules prohibit the manufacturing, importation, and sale of radio frequency devices that do not comply with all applicable FCC requirements, and Section 73.1660 of the FCC's Rules requires that transmitters be verified for compliance. If a transmitter has not complied with the verification requirements of Section 73.1660, then the transmitter is considered unauthorized and may not be marketed in the United States.

In response to multiple Letters of Inquiry, the company attempted to demonstrate the transmitter's compliance with FCC regulations by submitting verification information for a component part of the transmitter. The FCC concluded, however, that "[b]ecause transmitters are a combination of several functional components that interact with one another … verification of [one part] incorporated into a transmitter is insufficient to verify the final transmitter."

The company also claimed that it had stopped marketing the unverified transmitter months before the FCC's investigation. However, the FCC found evidence that the company was marketing the transmitter on its website under a different name several months after it claimed to have stopped selling the product. Section 1.17 of the FCC's Rules states that no one may provide the FCC with material factual information that is incorrect or omit material information that is necessary to prevent a statement made to the FCC from being incorrect. In the NAL, the FCC found that, "even in the absence of an intent to deceive, a false statement provided without a reasonable basis for believing that the statement is correct and not misleading constitutes an actionable violation of Section 1.17 of the Rules."

The $18,000 NAL was comprised of a fine of $7,000 for the marketing of the transmitter and an additional $11,000 for providing incorrect factual information to the FCC.

The FCC issued a Forfeiture Order for $14,000 against a different company for marketing unauthorized radio frequency devices over several years. In 2009, the FCC issued an NAL against the company because the FCC found that the company manufactured and marketed two models of wireless video transmitters in the U.S. without first obtaining FCC certifications for them. In response to a Letter of Inquiry from the FCC, the company admitted to having sold the uncertified video transmitters for a year prior to the issuance of the NAL.

The company responded to the NAL in late 2009, requesting that the proposed fine be reduced or cancelled because it was taking remedial measures to come into compliance (such as discontinuing production of the uncertified models and posting a notice on its website and to all distributors that the devices may not be marketed in the U.S.). The FCC held that these after-the-fact measures did not warrant any reduction in the forfeiture amount.

The company also argued that the forfeiture should be reduced because of its past history of compliance. The FCC concluded that the evidence did not support this claim and again refused to cancel or reduce the fine. As a result, the FCC determined that the proposed fine amount was appropriate, and issued the Forfeiture Order for $14,000.

FCC Investigates Unlicensed Radio Operations

The FCC assessed a combined total of $35,000 in proposed fines this month against two individuals whom agents discovered were operating unlicensed radio transmitters in violation of Section 301 of the Communications Act. Section 301 prohibits any person from operating any device for the transmission of radio signals within the United States, except in accordance with and pursuant to a license granted under the Act. The word "operate," for purposes of Section 301, means both the technical operation of the station as well as the "general conduct or management of a station as a whole." An individual who exercises working control over the operation of a station may be said to be involved in the general conduct or management and thus operation of that station.

With this in mind, the FCC recently proposed fining a Kansas man $10,000—the base forfeiture for operating an unlicensed FM radio transmitter. In September 2012, agents from the FCC's Kansas City Field Office used direction-finding techniques to locate the source of radio frequency transmissions in Manhattan, Kansas. The next day, the agents visited that location. The property owner disclosed that he allowed an individual to use the location to operate the radio station, but that he believed the operation was lawful. When agents spoke to the man who was physically operating the station, he confirmed that he was an extra class amateur licensee, and that he would not voluntarily relinquish the transmitter if asked to do so. In an NAL released this month, the FCC alleged that the individual's actions (e.g., securing a rental space for operation of the station, owning the station's radio transmitting equipment, refusing to relinquish the equipment) and knowledge (as an extra class amateur licensee, the individual was aware or should have been aware that the operation of the radio transmitter required a license) provided sufficient evidence that the individual willfully and repeatedly failed to comply with Section 301, justifying the proposed fine.

On the same day it released the first NAL, the FCC issued a second NAL concluding that a Florida man had willfully and repeatedly violated Section 301 of the Act. After agents from the Enforcement Bureau's Miami Office spent six days monitoring unlicensed operations on a particular FM frequency, they determined that the signals originated from three distinct locations. The agents traced the operations to a single individual using the on-air moniker "DJ Paz" and station name "Touche Douce." That same individual had been convicted in 2006 for violating a Florida state law prohibiting individuals from operating an unlicensed radio station in the state. The FCC found that the individual's "complete disregard for Federal and State authorities and their laws," as evidenced by his prior conviction, his efforts to evade detection by operating the unlicensed station from multiple locations, and his continued operation of the station even after federal marshals seized the transmitting equipment from the first of the three locations, warranted an upward adjustment of the base fine. The FCC proposed a fine of $25,000, and cautioned the individual that future violations may result in more severe enforcement action, including but not limited to more fines, criminal prosecution, and seizure of his equipment.

If you have any questions about the content of this Advisory, please contact the Pillsbury attorney with whom you regularly work, or the authors of this Advisory.

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