Pillsbury Winthrop Shaw Pittman LLP

Communications Advisory

FCC Enforcement Monitor
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FCC Rescinds Grant of Two California Low Power Television Licenses

The Commission recently rescinded the license grants and cancelled the underlying construction permits of two low power television stations in California. The FCC discovered that the licensee of the two stations falsely certified in its license application that "all terms, conditions, and obligations" set forth in the underlying construction permit had been met.

The licensee obtained construction permits to operate two low power television stations through an FCC auction. The construction permits were granted in April 2003 with an expiration date in April 2006. The licensee filed license applications for both stations in April 2006 and certified that all conditions of the underlying construction permits, including construction of the stations by the specified deadline, had been met. The applications were granted in May 2006.

Later that month, the licensee of another station filed a request with the Enforcement Bureau and Media Bureau to investigate whether or not the licensee of the low power stations had made false certifications in the license applications. In its request, the complainant provided photographs of the transmitter sites referenced in the license applications. The photographs showed no evidence of a television antenna at the height specified in the applications. The complainant also submitted a declaration from the tower's owner which stated that the space specified in the license application was available.

The Enforcement Bureau initiated an investigation and issued a report confirming that the facilities in question had not been constructed as certified in the license applications. As a result, the Media Bureau rescinded the license grants, dismissed the license applications and cancelled the underlying construction permits. An investigation is still pending with the Enforcement Bureau to determine whether the licensee knowingly made false certifications in its license applications, and the licensee may face additional Commission sanctions.

FCC Fines Septic Company $9,000 for Unsolicited Messages

The FCC recently fined a New Jersey septic company $9,000 for violating Section 64.1200(a)(s) of the Commission's Rules and Section 227(b)(1)(B) of the Communications Act. The company delivered at least two unsolicited prerecorded advertising messages to at least two consumers.

The Commission issued a Notice of Apparent Liability against the company in February 2005 in which it assessed a fine of $14,500. The recent Order of Forfeiture affirms the Commission's decision to fine the company, but reduces the forfeiture amount to $9,000 ($4,500 for each violation). The Commission investigation arose from complaints by two consumers that received unsolicited, prerecorded messages advertising septic system products. As a result of its investigation, the FCC issued a Notice of Apparent Liability to which the company responded in February and March 2005. In its responses, the company's owner made various claims, among them that competitors had been unlawfully using the name of his business to make the calls, that the company accused of making the calls was no longer in business, and that the phone number of one of the two complainants had previously belonged to a valid customer of the company.

The Commission rejected each of the arguments presented in the company's responses and upheld its initial decision to fine the company. However, the Commission reconsidered its decision to fine the company a total of $14,500 ($4,500 for the first complaint and $10,000 for the second), noting that the company did in fact remove the complainant from its call registry after that person requested removal. The $10,000 forfeiture amount is reserved for instances in which a company continues to contact a party after he or she has requested that the calls cease. The Commission recognized the difference and subsequently reduced the fine to $4,500 for each violation.

FCC Fines Florida Radio Station $6,000 for Contest Hoax

The FCC recently fined the licensee of a Florida FM station $6,000 for perpetrating a contest hoax, a violation of Section 73.1216 of the Commission's Rules, which requires stations to fully and accurately disclose the terms of any on-air contest and to operate the contest according to those terms.

In February 2005, the hosts of the station's morning talk show announced a call-in contest where the 100th caller to the station would receive a cash prize of $1,000. The hosts urged listeners to call either of two telephone numbers over the course of several hours. In reality, the contest was a hoax. The telephone numbers belonged to a rival station which was inundated with phone calls for several hours. Many of the listeners who phoned the rival station became angry when informed that there was no contest and no money would be awarded.

Acting on a complaint filed by the rival station, the FCC issued a Letter of Inquiry in June 2005. The station responded in July and did not dispute the facts in the complaint. The licensee confirmed to the FCC that the hosts did air information about a false contest and urged listeners to call the rival station. However, the licensee contended that the broadcast in question was a "prank" and therefore was not a violation of the Commission's contest rules. The licensee further claimed that near the end of the show, the hosts disclosed that there was no actual contest and were later admonished by station management for their actions.

The Commission was unmoved by the station's arguments. Section 73.1216 of the Rules states that "no contest description shall be false, misleading or deceptive with respect to any material term." The FCC found that the station clearly violated that rule by initiating the prank and then continuing to broadcast it for more than two hours. As a result, the FCC fined the station $6,000. The base forfeiture amount for violations of the Commission's rules regarding on-air contests is $4,000. In this case, the Commission increased the fine on the grounds that the station intentionally undermined the public's trust in broadcasters by making fraudulent announcements for more than two hours, maliciously and intentionally harmed the listener goodwill of its competitor, and had a "history of violations of the Commission's rules."

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