

FCC Enforcement Monitor

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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:

- *Arkansas University's Underwriting Violations Lead to \$76,000 Consent Decree*
- *Large TV Broadcaster Agrees to Pay \$1.3 Million Over Predecessor's Tower Compliance Problems*
- *Recent Fine Cancellations Prompt Broadcasters to Double-Check Fees and Fines*

A Word From Our Sponsors: Arkansas University Settles With FCC Over Underwriting Violations

The FCC recently entered into a Consent Decree with an Arkansas university for violating the FCC's underwriting rules for noncommercial stations. The university admitted that two of its FM stations aired announcements over several days in 2016 that impermissibly promoted the products or services of its financial contributors. The two stations are operated by a community college under the University's control.

Noncommercial educational ("NCE") broadcast stations are prohibited from airing promotional announcements on behalf of for-profit entities in exchange for any benefit or payment. Instead, NCE stations may broadcast announcements that identify but do not "promote" station benefactors. Such messages may not, among other things, include product descriptions, price comparisons, or calls to action on behalf of a for-profit donor. According to the FCC, these limitations "protect the public's use and enjoyment of commercial-free broadcasts" and "provide a level playing field for the noncommercial broadcasters that obey the law and for the commercial broadcasters that are entitled to seek revenue from advertising."

The FCC was tipped off to the violations when the licensees of several nearby commonly-owned stations filed a Formal Complaint outlining over a dozen announcements broadcast on the University's stations. The complainants alleged that these messages, which were aired on an ongoing basis in 2016, violated the underwriting rules by either including promotional statements or promoting specific products for sale. Most of the announcements were sponsored by local businesses, including an announcement for a nearby car dealership described as "impressive with a very clean pre-owned model or program unit," a furniture store that has a "good deal ... going there" where listeners can get "pretty stuff," and a local insurance agent offering services that he had "never done on radio before."

The Enforcement Bureau responded to the Formal Complaint by issuing multiple Letters of Inquiry to the University seeking additional information about the announcements and the University's underwriting compliance efforts. In its

response, the University admitted that the announcements had been simulcast on both stations, but emphasized that the stations' staff had received "extensive" training on underwriting issues, and that it believed that the stations had complied with the underwriting rules.

To resolve the years-long investigation, the University agreed to enter into a Consent Decree under which the University agreed to: (1) pay a \$76,000 civil penalty; (2) admit to violating the FCC's underwriting rules; and (3) implement a five-year compliance plan to ensure there will be no future violations.

Tower Records: Predecessor's Lax Oversight of Antenna Structures Leads to \$1.3 Million Settlement for Large Broadcast Company

A large television broadcast company has agreed to settle an FCC investigation into whether the prior owner of several of the company's towers failed to sufficiently monitor and maintain records regarding them.

Part 17 of the FCC's Rules requires a tower owner to comply with various registration, lighting and painting requirements. Tower marking and lighting is a vital component of air traffic safety, and noncompliant structures pose serious hazards to air navigation. To this end, a tower owner is responsible for observing the tower at least once every day for any lighting failures or to have in place an automatic monitoring system to detect such failures. The tower owner must also maintain a record of any extinguished or improperly functioning lights. The FCC's rules also require a tower owner to notify the FCC within 5 days of a change in a tower's ownership.

In September 2018, a small plane crashed into a southern Louisiana broadcast tower, prompting an FCC investigation into the tower and its owner. The FCC determined that the tower was registered to a subsidiary of a national broadcaster which at the time controlled over a dozen television stations and related antenna structures. Following up on the crash, the Enforcement Bureau issued the company a Letter of Inquiry seeking information about its compliance with the FCC's tower rules. The company responded by disclosing numerous "irregularities" in its monitoring of the lighting systems of the toppled tower and nine other towers. It also disclosed that it had failed to keep complete records of a dozen lighting failures at several of its towers, and that it had not notified the Commission of its acquisition of two other towers.

While the investigation was underway, the broadcaster entered into an agreement to sell most of its broadcast properties to a larger broadcaster, including 15 television stations and the towers under investigation. According to the terms of the agreement, the purchasing broadcaster would accept liability with respect to the FCC's ongoing investigation following the deal's consummation. The FCC granted the relevant transfer of control and assignment applications for the transaction, and the deal closed shortly thereafter.

Although the FCC eventually "found no evidence connecting the [tower] collision" to the former broadcaster's compliance failures, the acquiring broadcaster and the FCC negotiated a Consent Decree to resolve the investigation. Under the terms of the settlement, the broadcaster agreed to pay a civil penalty of \$1.3 million and implement a two-year compliance plan to prevent future violations.

Recent Fine Cancellations Serve as Reminders to Double-Check FCC Fines and Fees

As Otis Redding noted many years ago, "everybody makes a mistake sometimes." As recent events have demonstrated, broadcasters should keep this in mind the next time they are presented with a regulatory fee, proposed fine, or other bill from the FCC. Consider the curious case of a North Carolina FM station that was issued a \$3,000 Notice of Apparent Liability for Forfeiture ("NAL") for filing its license renewal application in October of last year when it should have filed by August 1 (with all other North Carolina radio stations). The problem with that? The station had actually timely filed its application on July 30, and the October "application" at the heart of the NAL was only an amendment. The FCC also seems to have pulled the trigger a little too soon on two North Carolina FM translator stations that both supposedly late-filed their license renewals despite neither having had a license to renew until after the license renewal application deadline had passed. To its credit, the Media Bureau published a series of orders only weeks later cancelling these NALs.

The lesson is that even the FCC makes mistakes from time to time, and it is always worth checking before opening your checkbook. This extends to annual regulatory fees, where it is not uncommon for broadcasters to be overbilled or underbilled. In case of overbilling, broadcasters should not expect the FCC to go out of its way to spot a math error and spontaneously reimburse the licensee. At the same time, should the FCC accidentally underbill, broadcasters are reminded that “licensees are solely responsible for accurately accounting for all licenses and for properly paying regulatory fees” (and of course the 25% late payment penalty and any interest accrued on the bill).