ADVISORY

FCC Enforcement Monitor April 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:

- *Connecticut Radio Station Risks Losing License Due to Unpaid Regulatory Fees*
- *TV Translator Licensee Faces $16,500 Fine for Late License Renewal Applications*
- *Voice Call Gateway Provider Accused of Flouting Call Blocking Rules, Faces Further Enforcement Action*

Failure to Pay 8 Years of Regulatory Fees Puts Connecticut AM Radio Station License in Jeopardy

A Connecticut AM radio station is at risk of losing its license for failing to pay regulatory fees for eight years. The licensee currently owes more than $27,000 in unpaid regulatory fee debt, and additional charges will continue to accrue until the debt is paid in full.

Under Section 9 of the Communications Act of 1934 and Section 1.1151 of the FCC's Rules, the FCC each year assesses regulatory fees on 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 require a penalty assessment of 25% of the fee owed plus interest.

In addition, when regulatory fees or interest go unpaid, the FCC is authorized to revoke affected licenses and authorizations. In this case, the FCC sent demand letters to the licensee and its counsel, but payment was still not made. Ultimately, the Commission transferred the unpaid debts from years prior to fiscal year 2021 to the United States Department of Treasury for collection. Later, at the Commission's request, the debt collection responsibility was transferred back to the FCC.

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 have been paid or to show cause why the payments are not legally required 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.

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.

Television District Fails to Timely File Translator License Renewal Applications

A western state television district is facing a monetary fine of $16,500 for failing to timely file license renewal applications for eleven digital TV translator stations. The applications were due by June 1, 2022 but were not filed until mid-July of 2022. The licensee provided no explanation for the late filings.

Television districts are administrative bodies commonly established to own and maintain TV translator stations to serve sparsely populated areas that would not otherwise be served by free, over-the-air TV signals. In this case, the TV district pulls in signals from two nearby cities and retransmits them to residents of a rural county for fill-in service.

Under Section 73.3539(a) of the FCC's Rules, license renewal applications are (confusingly) due by the first day of the fourth full calendar month prior to the station's license expiration date. Failure to file a license renewal application on time subjects the licensee to potential enforcement action, starting with a base fine of $3,000. The FCC has discretion to adjust that amount upward or downward after considering "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."

Exercising its discretion and recognizing that translator stations provide a secondary service and do not originate programming, the FCC reduced the proposed fine for each station that failed to timely file a license renewal application from $3,000 to $1,500. Since eleven translators were involved, the Commission's proposed fine comes to a total of $16,500. The FCC indicated that the late-filed license renewal applications would be granted by separate action if no other issues are found.

Voice Call Provider Fails to Block Illegal Robocall Traffic After Warning

The FCC's Enforcement Bureau issued an Initial Determination Order to a telecommunications provider (the Provider) for failing to comply with the FCC's call blocking rules applicable to gateway providers. Gateway providers receive voice call traffic directly from foreign providers and transmit the calls to a U.S. provider. Because such providers directly receive overseas call traffic, they play a critical role in cutting off illegal robocalls before they reach U.S. phone numbers.

In May 2022, the FCC adopted an order increasing the obligations of gateway providers and imposing consequences on providers that fail to police their own networks for illegal traffic. The order required gateway providers to block illegal traffic when notified of such traffic by the FCC. If the provider fails to block the illegal traffic, it must explain to the FCC why the traffic was not illegal. The Initial Determination Order notes that protecting Americans from the dangers and risks of unwanted and illegal robocalls is the FCC's top consumer protection priority.

Earlier this year, the FCC issued the Provider a Notice of Suspected Illegal Robocall Traffic (the Notice) for apparently transmitting illegal calls that impersonated banks and made claims of "preauthorized orders" placed "on your name." This Notice followed an investigation by USTelecom's Industry Traceback Group identifying the Provider as the gateway provider for the offending calls. The Notice required the Provider to conduct its own investigation into the traffic and report its results to the FCC. The Provider did not respond to the Notice or file any report. In addition, the FCC connected the Provider with a previous recipient of an FCC cease-and-desist letter, finding that the CEO of that entity created the Provider after FCC enforcement efforts were directed at the prior entity.

The Initial Determination Order requires the Provider to respond with an adequate explanation for why the FCC should not move forward with a Final Determination Order that would require downstream providers to block all of the Provider's traffic within thirty days, not just suspected illegal traffic. The Provider has fourteen days from the date of the Initial Determination Order to file that response.