ALERT

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FCC Enforcement Monitor

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- Noncommercial TV Broadcaster Agrees to $5,000 Consent Decree for EEO Violations
- Taxi Company Fined $13,000 for Failing to Operate a Private Land Mobile Radio Station on a Narrowband Basis and Other Violations
- FCC Issues Notices of Unlicensed FM Station Operation to Five Individuals

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EEO Violations Lead to $5,000 Settlement with FCC

The FCC entered into a Consent Decree with a Maryland noncommercial TV broadcaster to resolve an investigation into whether the broadcaster violated the FCC's equal employment opportunity ("EEO") Rules.

Under Section 73.2080(c)(1)(ii) of the FCC's Rules, licensees must provide notices of job openings to any organization that "distributes information about employment opportunities to job seekers upon request by such organization," and under Section 73.2080(c)(3), must "analyze the recruitment program for its employment unit on an ongoing basis." In addition, Section 1.17(a)(2) requires that licensees provide correct and complete information to the FCC in any written statement.

The FCC audited the broadcaster for compliance with EEO Rules for the reporting period June 1, 2008 through May 31, 2010. During the audit, the FCC asserted that the broadcaster filled 11 vacancies at its TV stations without notifying an organization that had requested copies of job announcements. The FCC then concluded that the notification failure revealed a lack of self-assessment of the broadcaster's recruitment program. Finally, the FCC asserted that the broadcaster provided incorrect information to the FCC when it submitted two EEO public file reports stating that it had notified requesting organizations of vacancies, but later admitted those statements were incorrect.

The FCC subsequently issued a Notice of Apparent Liability for Forfeiture proposing a $20,000 fine. The broadcaster avoided the fine by instead entering into a Consent Decree with the FCC under which the company agreed to make a $5,000 settlement payment to the government, appoint a Compliance Officer, and implement a three-year compliance plan requiring annual reports to the FCC and annual training of station staff on complying with the broadcaster's EEO obligations.

FCC Fines Taxi Company $13,000 for Failing to Operate a Private Land Mobile Radio Station on a Narrowband Basis and Other Violations

The FCC fined a California taxi company $13,000 for failing to operate a private land mobile radio ("PLMR") station in accordance with the FCC's narrowbanding rule, failing to transmit a station ID, and failing to respond to an FCC communication.

Section 90.20(b)(5) of the FCC's Rules requires licensees to comply with applicable bandwidth limits, and Section 1.903 requires PLMR stations to be "used and operated only in accordance with the rules applicable to their particular service . . . ." In 2003, the FCC adopted a requirement that certain PLMR station licensees reduce the bandwidth used to transmit their signals from 25 kHz to 12.5 kHz or less by January 1, 2013.

In addition, Section 90.425(a) requires PLMR stations to regularly transmit a station identification message, and Section 1.89 requires licensees to respond to FCC Notices of Violation ("NOV").

The taxi company was the licensee of a PLMR station used to dispatch cabs. It filed a license renewal application for the station at the beginning of 2015, which the FCC returned because the application referenced wideband emission designators no longer permitted by the FCC. The company submitted an amended application removing the wideband emission designators on all of the company's listed frequencies, and the FCC granted the renewal in May 2015.

In January 2016, however, the FCC received an anonymous email stating that the company was not actually operating in compliance with the narrowband requirement. A subsequent FCC inspection revealed that the company had indeed failed to comply with the narrowband requirement, and was also failing to transmit its station identification. A few months later, the FCC issued an NOV to the company for violating the FCC's PLMR narrowband and station identification rules. The company never responded.

The FCC accordingly issued an NAL proposing a $13,000 fine against the company—a $4,000 fine for failing to comply with the narrowbanding requirement, $1,000 for failing to transmit station identification, $4,000 for failing to respond to the NOV, and a $4,000 upward adjustment to the total base fine amount for the egregiousness of the violation. The FCC reasoned that the adjustment was warranted because the company failed to comply with the narrowbanding requirement despite 10 years' advance notice, and because "failure to operate to be consistent with its license terms is egregious." After the company also failed to respond to the NAL, the FCC affirmed the $13,000 fine in a Forfeiture Order.

FCC Warns Five Individuals for Unlicensed FM Station Operations

In a year when the FCC has made the pursuit of pirate radio operators a high priority, five Massachusetts individuals can count themselves relatively fortunate to have received, at least for the moment, only a Notice of Unlicensed Operation ("NOUO") from the FCC. Section 301 of the Communications Act prohibits any person from operating any apparatus for the transmission of energy or communications by radio within the United States without FCC authorization.

In August 2017, the FCC investigated complaints of unlicensed FM stations operating in Boston, Massachusetts. FCC agents confirmed that radio signals on three frequencies were emanating from the same commercial building, and that no licenses to operate on such frequencies had been issued for that location. The FCC agents identified two individuals as the operators of the first station, another two individuals as the operators of the second station, and a fifth individual as the operator of the third station.

The FCC subsequently sent each individual an NOUO ordering the individuals to cease broadcasting and providing them a ten day period "to respond with any evidence that you have authority to operate granted by the FCC." The NOUOs stated that the FCC will use any information provided by the individuals to determine whether enforcement action is needed, and that operating without a license "could subject the operator to severe penalties, including, but not limited to, substantial monetary fines, *in rem* arrest action against the offending radio equipment, and criminal sanctions, including imprisonment."