

FCC FOCUSES ON ENFORCEMENT

In 2007, the Federal Communications Commission's Enforcement Bureau levied a record-breaking \$43 million in fines, forfeitures and monetary settlements entered into through consent decrees. The Bureau is on pace to surpass this total in 2008. This article identifies common enforcement proceedings brought against private licensees and briefly outlines the Commission's enforcement procedures.

Examples of the FCC's aggressive focus on enforcement abound:

- A private licensee paid \$16,500 for allegedly operating four private land mobile radio service stations after the licenses had expired.
- A tower owner was fined \$13,000 for failing to paint its antenna structure and maintain good visibility and failing to notify the Commission of a change in tower ownership.
- Private licensees recently have paid \$24,000, \$30,000 and \$35,000 to terminate FCC investigations into allegations of failure to secure prior consent to the assignment of wireless licenses or transfer of control of wireless licensees as part of a corporate acquisition.

Brief Overview: Enforcement Procedure

The Commission typically initiates investigations after receiving a complaint, through an inspection of its own, by a referral or as a result of a voluntary disclosure. Following the initiation of an investigation, the Bureau typically contacts the subject of the investigation regarding any alleged rule infraction by issuing either a Citation or a Letter of Inquiry ("LOI").

A Citation alleges that an entity that does not hold any FCC licenses, permits, certificates or other authorizations has committed a rule violation. Generally, the Commission does not impose a fine upon the recipient of a Citation unless the recipient continues to violate the Commission's rules after receipt of the Citation or engages in activities for which an FCC license, permit, certificate, or other authorization is required but was not obtained.

An LOI is issued to an FCC applicant or licensee and poses questions to company officials to elicit information and supporting documentation regarding an alleged rule violation. The recipient of an LOI is generally given 30 days to respond and usually may request an extension if additional time is needed.

If after reviewing the response to an LOI the Bureau believes that a violation has occurred, it may issue a Notice of Apparent Liability ("NAL") or be receptive to negotiating a Consent Decree with the licensee or applicant. A Consent Decree is a voluntary settlement between the entity and the FCC resulting in a finding of no wrongdoing and usually requiring the

licensee or applicant to make a “voluntary” monetary contribution to the United States Government and to implement various corrective measures looking toward future compliance.

A NAL alleges that a rule violation has occurred and finds the recipient apparently liable for a fine or penalty. Following the issuance of the NAL, affected licensees or applicants are provided a reasonable period of time, generally 30 days, to respond and demonstrate why the forfeiture should not be imposed or should be reduced. If an enforcement matter is not resolved through payment of an NAL or a Consent Decree, the Commission may issue a Forfeiture Order requiring the fine to be paid in full or in part or canceling the proposed fine.

Under Section § 504(c) of the Communications Act, a licensee’s or applicant’s refusal to pay a Forfeiture Order cannot be used against the licensee or applicant in any future proceedings at the FCC and the Commission cannot collect an unpaid forfeiture on its own. Rather, unpaid Forfeiture Orders may be referred by the FCC to the Department of Justice (“DOJ”) for collection pursuant to the Communications Act. DOJ, in its discretion, may elect to file a civil suit to collect the fine in the district where the recipient has its principal operating office.

The suit will be a “trial *de novo*,” which means that DOJ cannot rely on the facts or legal findings in the FCC’s Forfeiture Order but must prove the case on its own as if it were “new.” As a result, the FCC usually refers to DOJ for collection only particularly egregious enforcement matters or ones involving serious issues of public policy.

Protecting Your Company

In light of the Commission’s increased focus on enforcement, sound business practices require that your company be in compliance with all applicable FCC rules. To promote compliance with the rules, private licensees are urged to review periodically their physical facilities and to compare them with all applicable authorizations. Any discrepancy between actual and licensed operations should be quickly corrected.

The Enforcement Bureau recently has also expressed increased concern regarding mergers and acquisitions of entities holding FCC authorizations. Parties to a corporate merger or acquisition must secure the FCC’s *prior* consent to an assignment or transfer of control of FCC licenses as part of any merger or acquisition. For private licensees, failing to comply with this requirement may result in a forfeiture calculated, in part, by the number of licenses involved in the transaction and the nature of the facilities. Potential forfeiture amounts approach \$100,000. Only by closely tracking all FCC-licensed assets and licensing requirements can companies involved in mergers and acquisitions ensure compliance with applicable FCC requirements.

A private licensee also should be prepared to investigate and promptly respond to all Commission inquiries. Private licensees having substantial investments in land mobile and microwave systems should establish an internal procedure to ensure that appropriate personnel are apprised of citations and LOIs so that internal reviews may be conducted, corrective measures may be taken, and a complete response to the citation or LOI may be timely filed with the Commission.