Beware: Changing Ownership of Company Radios Could Cost You

by Tim Lundgren

One of the most commonly overlooked regulatory agency approvals in a business transaction is Federal Communications Commission ("FCC") approval of radio license assignments and transfers - and the reason it is often overlooked is that many businesses are unaware that their radio communication systems fall under the jurisdiction of the FCC. But contractors with truck radios, fast food restaurants with drive up windows, hotels, restaurants and schools with security systems and many more all fall under FCC regulation of radios on licensed frequencies. On a yearly basis, the FCC issues tens of millions of dollars in fines and forfeitures for violations of licensure requirements.

When businesses using radio communication systems are bought, sold or otherwise transferred (including new ownership through a death, foreclosure or bankruptcy), the owners are susceptible to significant fines if they have not received proper FCC approval prior to the transaction: FCC approval is required for any change in who controls the radio license.

Often, prior FCC approval is even required for internal transfers, such as when the legal entity holding/wanting the radio license changes. These so-called *pro forma* transfers include when a business changes form, such as by incorporating or changing from a corporation to an LLC. Also included are the assignment of the license from a parent company to a wholly-owned subsidiary or from one subsidiary to another. Similarly, reorganizations - such as a stock reorganization in which control of the company is transferred from an individual to that individual's revocable trust - also may require prior FCC approval.

Costly Fines

The FCC's rules provide for a base "forfeiture amount" (basically a fine) of $8,000 per day for substantial transfers of control, while *pro forma* transfers of control carry a base forfeiture amount of $1,000 per day. These amounts can be adjusted upwards or downwards based on certain criteria, and proposed fines in the tens of thousands of dollars are not uncommon. Past transfers without FCC approval must still be reported to the FCC, and frequently are settled by payment of penalties under a Consent Decree. (The FCC can even require that the parties unwind the transaction.)

Who is at Risk?

A wide range of businesses and organizations have FCC licenses for radios used for dispatch, security and internal communications. Some examples include:

- Contractors, construction and engineering firms with truck radios
- Fast food restaurants where the drive up window attendant has a radio
- Hotels, retirement homes, hospitals, schools, colleges, universities, seminaries, museums, arenas, parks, etc. that utilize radios for building and grounds personnel or for transportation and security purposes
- Retailers and shopping centers
- Car dealerships
- Manufacturers of all types
- Service businesses such as plumbers and heating/cooling businesses with dispatch radios
- Food and beverage distributors with truck radios
- EMS, towing and wrecking companies, etc. with truck radios

To avoid violating these rules, the party or parties

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involved must file the appropriate applications with the FCC and receive the necessary approvals prior to consummating an assignment of a licensed radio (such as in a sale of assets), or a transfer of control (such as in a corporate merger or reorganization) The bottom line: FCC approval to transfer a licensed radio must be received before the consummation of the transaction takes place.

Varnum has one of the few telecommunications practices outside of Washington, D.C. with the experience necessary to aid in ensuring compliance with complicated FCC regulations, and to help negotiate acceptable outcomes when an FCC enforcement action has been launched. For more information on transferring FCC licenses and other FCC-related matters, contact Tim Lundgren (616-336-6750) or John Pestle (616-336-6725) from Varnum's Telecommunications Practice Group.