

Inexperience and Inadvertence No Excuse for Failure to Seek and Obtain FCC Consent to License Acquisitions

Chip Yorkgitis

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A recent Enforcement Bureau (“EB”) Order and Consent Decree highlights the perils that attend failure to get FCC approvals to transfer or assign wireless licenses. The March 13, 2014, release, involving [Skybeam Acquisition Corporation and Digis, LLC](#), commonly-owned affiliates providing fixed wireless broadband service and VoIP, also confirmed, once again, that voluntary disclosure does not necessarily count for much once violations are referred to the EB for investigation. The two companies discovered their failure in the context of a subsequent transaction, retained counsel, and self-reported. While the situation was put back on track from a licensing perspective, through requests and grants of special temporary authority followed by curative assignment applications granted by the Wireless Telecommunications Bureau (“WTB”), the EB’s subsequent investigation led to a \$50,000 voluntary contribution and a burdensome three-year compliance plan.

In mid-2012, the two companies, subsidiaries of JAB Wireless, Inc., which claims to be the largest fixed wireless broadband provider, acquired microwave licenses from third parties. Skybeam acquired ten licenses from KeyOn Communications, and Digis acquired forty licenses from HJ LLC. The parties proceeded without communications’ counsel and failed to seek approval from the FCC for the assignments. Once they realized in early 2013 that they had failed to obtain approval for the acquisitions, they proceeded to remedy the situation after the fact and voluntarily disclosed the earlier failure, attributing it to inadvertence, lack of experience in such matters, and not having counsel. While the Consent Decree states the two companies will pay a combined voluntary contribution of \$50,000, there is no indication whether this number reflects the unlawful assignment of 50 licenses or the failure to obtain authority for two transactions, each involving multiple licenses. The entities selling the licenses are not the subject of the enforcement action.

The three-year compliance plan does not contain any surprises, but reiterates the burden that parties risk should they fail to obtain FCC approval for transactions involving wireless authorizations, even if inadvertently, because the compliance plan extends to compliance with the communications laws generally, not just law and regulations related to transactions involving the transfer or assignment of wireless licenses. The companies must appoint a knowledgeable compliance officer, develop operating procedures to help ensure compliance as well as a compliance manual within 60 days (to be updated at least once annually), implement a compliance training program for all employees that perform or oversee those who perform duties relate to compliance with the communications laws generally – whether or not they are involved in corporate transactions that

may involve license transfers - within 90 days and conduct annual training, report non-compliance with the law and rules regarding license assignments and transfers as well as with the consent decree itself, and provide more general compliance reports four times over the thirty-six month compliance plan term. Depending upon how dispersed responsibility for compliance with the communications laws is within a company, administration of such a plan could easily prove to be more costly, especially in the long-run, than the voluntary contribution.