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FCC Consent Decree an Important Reminder that Prior Consent Is Required for Transactions Affecting Control of FCC Licenses

The Enforcement Bureau of the Federal Communications Commission (FCC) recently entered into a consent decree with Marriott International, Inc. (Marriott) to resolve an investigation into the unauthorized transfer of control of FCC wireless licenses when Marriott acquired Starwood Hotels and Resorts Worldwide Inc. (Starwood) in 2016 (Consent Decree). As part of the Consent Decree, Marriott admitted liability, will implement a compliance plan, and will pay \$504,000 as a civil penalty. Many companies hold private wireless licenses issued by the FCC to operate radio communications systems used for security, maintenance, and other internal communications purposes. However, these licenses are often overlooked when companies engage in business transactions or internal reorganizations that affect control of the licenses.

FCC Regulation of Assignments and Transfers of Control of Licenses

Section 310(d) of the Communications Act (47 U.S.C. § 310(d)) prohibits the assignment or transfer of control of any FCC license, including any private wireless license used for internal business communications, prior to obtaining FCC consent (*see also* 47 C.F.R. § 1.948). Assignment of an FCC license occurs when a license is assigned or sold to another entity, such as when a company sells its assets to another company. Transfer of control of an FCC license occurs when control of the licensee is transferred, but the licensee remains the same. The FCC considers a transfer of control of a licensee to occur when an entity goes from having less than a 50 percent ownership interest in a licensee to having a 50 percent or more ownership interest in the licensee.

Assignments and transfers of control of FCC licenses can be either substantial or *pro forma*. Both types of transactions require FCC consent prior to closing. A substantial assignment or transfer of control of a license occurs when a transaction involves a third party (i.e., an entity that is not controlled by the same entity that currently controls the licensee). Marriott's acquisition of Starwood, which holds several FCC licenses, was a substantial transfer of control of those licenses. A *pro forma* assignment or transfer of control of a license occurs when a transaction does not alter the ultimate ownership or control of the license. For example, a *pro forma* assignment occurs when a license is assigned from a wholly-owned subsidiary to a parent. A *pro forma* transfer of control occurs when a company reorganizes, such as by merging a licensee subsidiary with another subsidiary.

Obtaining FCC consent to assignments and transfers of control is accomplished by filing an application requesting authorization to complete a proposed transaction. The parties may close the transaction on the date the FCC grants the application. However, some parties choose to delay closing until after the FCC consents to the license assignments or transfers have become "final" (i.e., after the deadline for seeking reconsideration has expired). The majority of transactions involving private wireless licenses (i.e., licenses solely used for internal business communications that do not allow users to interconnect with the public switched telecommunications network) qualify for immediate processing. Under the FCC's immediate approval procedures, the FCC will consent to the proposed assignment or transfer of control on the next business day after receipt of a complete application. If an application does not qualify for immediate approval, the FCC usually grants the application within a month of filing.

The Marriott-Starwood Consent Decree should serve as a reminder to all companies holding FCC radio licenses (not only hospitality companies) that it is important to obtain FCC consent to assignment or transfer of control of such licenses before closing any transaction involving FCC licenses. The costs of applying for such consent are modest, and the costs of non-compliance can be significant.

If you have questions about the Consent Decree or the FCC's rules governing licensees, please contact us at your convenience.

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