Advisory

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Communications

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FCC Enforcement Monitor

By Scott R. Flick and Carly A. Deckelboim

Headlines:

- *FCC Admonishes Television Stations for "Host-Selling" to Children*
- *$7,500 Fine Imposed for Documents Missing From Public Inspection File*
- *$17,000 Fine for Unauthorized Operation of a Radio Transmitter*

Admonishment Issued for Program Characters Promoting a Product

The FCC continues to enforce its restrictions on commercial content during children's shows. Section 73.670 of the FCC's Rules restricts the amount of commercial matter that can be aired during children's programming to 10.5 minutes per clock hour on weekends and 12 minutes per clock hour on weekdays. The Commission most often examines compliance with these limitations when acting on a television station's license renewal application.

Earlier this month, the FCC issued identical admonishments to two commonly-owned Wisconsin TV stations for failing to comply with the limits on commercial matter in children's programming. The stations disclosed in their license renewal applications that they had aired a commercial for cereal during a children's program seven years ago, and the commercial contained "glimpses of characters from the program on the screen." The licensee noted that the appearance was "small, fleeting, and confined to a small area of the picture," and that the software used by the CW Network to prevent such appearances failed to catch this particular incident. Where a program character appears during a commercial in that program, the FCC's approach is to treat the entire program as a commercial, which by definition exceeds the FCC's commercial time limits in children's programming.

The licensee argued that the images did not appear "during the commercial part of the spot but during a portion of the material promoting a contest." The FCC disagreed, but only issued an admonishment to each of the stations because the violation was an isolated incident. Nevertheless, the FCC warned that it would impose more serious sanctions if the licensee committed any similar violations in the future.

License Assessed $7,500 Fine for Failing to Provide Quarterly Issues/Programs Lists for Seventeen Quarters

Earlier this month, the FCC imposed a $7,500 fine on a Pennsylvania station for willfully and repeatedly violating the Commission's rule regarding the public inspection file. Under Section 73.3526(e)(12) of the FCC's Rules, a licensee must create a list of significant issues affecting its viewing area in the past quarter and the programs it aired during that quarter to address those issues. The list must then be placed in the station's public inspection file by the tenth day of the month following that quarter.

In April of 2010, an agent from the Enforcement Bureau's Philadelphia office found during an inspection that the licensee was missing fifteen quarters of issues/programs lists. The licensee explained in response to a subsequent Letter of Inquiry that some of the lists had been stolen or removed from the public inspection file and promised to replace the missing lists. However, in February of 2011, a follow-up investigation revealed that the public inspection file contained only one issues/programs list, which meant that there was a total of seventeen quarters of missing lists. At the time of the follow-up, the licensee said that part of the roof of a neighboring building had collapsed and destroyed the records.

In June of 2011, the FCC issued a Notice of Apparent Liability for Forfeiture ("NAL") for $15,000. In response, the licensee argued that the fine should be reduced because the missing records were outside his control and that he did not have the ability to pay such a fine. In January of 2014, the FCC determined that a reduction of the fine was warranted based on the licensee's inability to pay, but noted that the failure to maintain issues/programs lists was not outside of the licensee's control and that the licensee's explanations as to the cause of the missing documents conflicted with each other. Although the FCC reduced the fine from $15,000 to $7,500, the Enforcement Bureau cautioned that it has previously rejected inability to pay claims for repeated or egregious violations and that in the event this licensee commits future violations, it may result in significantly higher fines that may not be reduced merely because of the licensee's inability to pay.

Licensee Fined for Interfering with United States Coast Guard Operations

Last month, the FCC issued an NAL against a California licensee for operating a radio transmitter on a frequency not authorized by its license and failing to take precautionary measures to avoid causing interference. The base fine for operating on an unauthorized frequency is $4,000, and the base fine for interference is $7,000.

In January of last year, the United States Coast Guard complained to the FCC of interference with its operations in the 150 MHz VHF band. An agent from the Enforcement Bureau's Los Angeles office used radio direction-finding methods to determine that the interference was coming from the licensee's building. The agent located a transmitter at that location that was operating on a frequency different than that indicated on the transmitter's label. After the Bureau contacted the licensee and informed it of the agent's findings, the licensee turned off the transmitter, and the interference to the Coast Guard stopped.

Subsequently, the Enforcement Bureau's Los Angeles office issued a Notice of Violation ("NOV") to the licensee for failing to operate in accordance with its authorization and not taking reasonable precautions to avoid interference to licensed services. The NOV noted that the licensee's authorization specified operation on frequencies that included neither the transmitter's labeled frequency nor the frequency on which the transmitter was actually operating. In response, the licensee argued that the transmitter was unstable and operating about .8 MHz on both sides of the designated frequency.

Under Section 1.903(a) of the FCC's Rules, a licensee can only operate a station in compliance with a valid authorization granted by the Commission. The FCC rejected the licensee's argument that the malfunctioning transmitter was operating on the licensee's assigned frequency, finding that its agent's investigation indicated otherwise. The FCC also noted that Section 90.403(e) of the FCC's Rules requires that licensees take appropriate measures to avoid causing harmful interference, and that the licensee here failed to offer any evidence in response to the NOV that it had taken such precautions.

In determining the appropriate fine, the FCC considered the facts and circumstances and found that the violations warranted proposing a fine higher than the base amount for these violations. Because the licensee caused harmful interference to the Coast Guard's operations and the licensee was not aware of its spurious signal until the FCC notified it, the FCC assessed a total fine of $17,000, increasing the fine by $6,000 over the base amount for such violations.

If you have any questions about the content of this Advisory, please contact the Pillsbury attorney with whom you regularly work, or the authors of this Advisory.

Scott R. Flick (bio)
Washington, DC
+1.202.663.8217
scott.flick@pillsburylaw.com

Carly A. Deckelboim (bio)
Washington, DC
+1.202.663.8006
carly.deckelboim@pillsburylaw.com