
FCC Enforcement Monitor

By Scott R. Flick and Jessica Nyman

Headlines:

- *FCC Admonishes TV Station Licensees for Violating Commercial Limits in Children's Programming*
 - *Telecommunications Provider Agrees to \$1.175 Million Payment to Resolve Investigation of 911 Call Failures*
 - *Pirate Radio Operator's Repeated Disregard for the Rules Results in \$15,000 Proposed Fine*
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Network's Inclusion of Web Address in Children's Programming Results in Admonishments for Three TV Station Licensees

The FCC admonished TV station licensees in Maine, Massachusetts, and Pennsylvania for failing to comply with the limits on commercial matter in children's programming. As part of the Children's Television Act of 1990 ("CTA"), Congress directed the FCC to adopt rules that, among other things, limit the amount of commercial matter that television stations may air during children's programming. Pursuant to that mandate, the FCC adopted Section 73.670 of its Rules, limiting commercial matter in children's programming to 10.5 minutes per hour on the weekends and 12 minutes per hour on weekdays.

The FCC later adopted "website address" rules to restrict the airing of commercial website addresses as a form of commercial matter. These rules limit the display of Internet web addresses during children's programming directed at kids aged 12 and under. In particular, Section 73.670(b) of the Rules only allows broadcasters to display website addresses during program material if the address satisfies a four prong test. First, the website must offer a substantial amount of *bona fide* program-related or other noncommercial content. Second, the website must not be primarily intended for commercial purposes. Third, the website's home page and other menu pages must be clearly labeled to distinguish between commercial and noncommercial sections. Lastly, the page of the website to which viewers are directed by the aired web address must not be used for e-commerce, advertising, or other commercial purposes.

When filing license renewal applications for their stations, each of the licensees included a statement indicating that the website address for "www.lazytown.com" aired during the closing credits of the

children’s program “LazyTown.” The licensees explained that the program was supplied by a network and was reviewed by a third party whose policy is to remove all website addresses from program materials. The licensees stated that the inclusion of this particular website address was “inadvertent” and “fleeting,” and added that the supplier network was working to “develop and implement additional procedures to minimize the possibility of a re-occurrences of this isolated incident.”

The FCC reminded the licensees that relying on a program’s source or producer for compliance with the children’s television rules will not excuse or mitigate violations that occur. The FCC then concluded that the website did not comply with the four-prong test of Section 73.670(b); specifically, the FCC determined it did not meet the fourth prong because the homepage of the website contained content of a commercial nature in the form of a link labeled “shop”. The FCC also noted that, even though the website was displayed for less than one-half of a second, the display of any noncompliant web address during program material—which includes the closing credits—is a violation of the Rules.

Finding that the stations’ airing of the non-compliant web address appeared to have been an isolated incident, the FCC decided to admonish, rather than fine, the licensees. The FCC warned, however, that it would not rule out more severe sanctions for similar violations in the future.

Telecommunications Provider Agrees to Pay \$1.175 Million for Mishandling 911 Calls From Callers With Hearing Impairments

The FCC’s Enforcement Bureau entered into a Consent Decree with a telecommunications provider to resolve an investigation into whether the provider was unable to accept and handle emergency calls made by users of its Internet Protocol Captioned Telephone Service (“IP CTS”). Telecommunications Relay Services (“TRS”) enable individuals who have difficulty hearing to conduct telephone conversations using an Internet Protocol-enabled device that allows them to simultaneously listen to and read captions of what the other party is saying. Companies provide IP CTS free of charge, but are eligible to receive compensation from the federally-mandated TRS Fund if they adhere to the FCC’s TRS Rules and orders.

Section 64.605(a)(2) of the FCC’s Rules requires IP CTS providers to (i) accept and handle 911 calls, (ii) determine the appropriate Public Safety Answering Point, designated statewide default answering point, or local emergency authority, and (iii) relay the call to that entity. Providers must prioritize 911 calls over non-911 calls and implement a system to collect and relay the user’s name and location at the beginning of the call to enable a 911 call to be reconnected in the event one or both legs of a call is disconnected. To the extent the provider has any problems with accepting or handling such calls, the provider must notify the FCC.

In September 2014, FCC staff tested the provider’s wireless IP CTS application and found that the provider could not accept such 911 calls. A subsequent investigation revealed that the provider had been unable to accept and handle 911 calls through its wireless IP CTS application from March 28, 2014 to September 18, 2014. After conducting an internal investigation, the provider determined that on March 28, 2014, during a vendor’s routine maintenance, an error occurred which resulted in the resetting of the communications path. During the ensuing period, 911 calls were not placed ahead of non-emergency calls as the FCC’s Rules require. As a result, the 911 calls were not properly relayed to an emergency authority, and instead an error message was sent to the IP CTS application—causing the application to disconnect the 911 calls.

As part of the settlement, the provider admitted that its actions violated the Rules and agreed to pay \$1.175 million to the U.S. Treasury. The provider further agreed to adopt a compliance plan to (i) ensure that it adheres to the FCC’s emergency call handling requirements for IP CTS providers, (ii) inform and

educate consumers on emergency calling, and (iii) strengthen its policies and procedures for detecting emergency call handling problems. The Consent Decree also requires the provider to develop and implement risk management processes and to waive all rights and claims to reimbursements from the TRS Fund associated with IP CTS applications during the time that emergency calls could not be handled.

Pirate Radio Operator Flaunts Multiple Warnings and Catches a \$15,000 Broadside From the FCC

After issuing repeated warnings, the FCC proposed a \$15,000 fine against a New Jersey man for operating an unlicensed radio station on 90.5 MHz. In so doing, the FCC emphasized that enforcement is essential because unlicensed radio stations create a danger of interference to licensed communications and undermine the FCC's authority over FM broadcast operations.

In 2013 and 2014, the man and his wife received two Notices of Unlicensed Operation ("NUO") for operating on 90.5 MHz from various locations within Paterson, New Jersey. On May 18, 2015, agents from the Enforcement Bureau's New York Office responded to continued complaints of unlicensed operations and traced the source of the transmissions to the roof of a multi-family dwelling. After checking the FCC's records, the agents confirmed that no authorization had been issued for operation of an FM station at or near that residence. The agents subsequently sent an NUO to the company that owned the property, informing it that an unlicensed radio station was operating at one of its residences. The agents did not take any further action against the company, as a later visit revealed that the FM antenna had been removed from the roof.

Following additional complaints of unlicensed operations in August 2015, the agents tracked the transmissions to a new location, a single-family dwelling. The agents also found a website for the unauthorized radio station, where the station purported to operate from the house's address and identified the man living there as the program director and producer. The FCC's New York field office issued NUOs to the man and his wife, who owned the house, warning that continued operation would result in significant fines.

Having received no response from either individual, the FCC concluded that the man willfully and repeatedly violated Section 301 of the Communications Act, which prohibits any person from operating any apparatus for the transmission of energy or communications or signals by radio within the United States without an FCC license. Section 503(b)(2)(D) of the Act allows the FCC to assess fines of up to \$16,000 for each day of a continuing violation—up to \$122,500 per act or failure to act. However, the FCC chose to follow its forfeiture guidelines instead, which establish a base penalty of \$10,000 for operation without a license. From there, the FCC applied an upward adjustment of \$5,000 to account for the multiple warnings that the man disregarded.

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

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