Advisory

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Communications

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FCC Enforcement Monitor

By Scott R. Flick and Jessica Nyman

Headlines:

- *FCC Scuttles New York Pirate Radio Operator and Proposes $20,000 Fine*
- *Failure to Properly Identify Children's Programming Results in $3,000 Fine*
- *Telecommunications Carrier Consents to Pay $16 Million To Resolve 911 Outage Investigation*

Fire in the Hole: FCC Proposes $20,000 Fine Against Pirate Radio Operator

This month, the FCC proposed a fine of $20,000 against an individual in Queens, NY for operating a pirate FM radio station. Section 301 of the Communications Act prohibits the unlicensed use or operation of any apparatus for the transmission of communications or signals by radio. Pirate radio operations can interfere with and pose illegal competitive harm to licensed broadcasters, and impede the FCC's ability to manage radio spectrum.

The FCC sent several warning shots across the bow of the operator, noting that pirate radio broadcasts are illegal. None, however, deterred the individual from continuing to operate his unlicensed station. On May 29, 2014, agents from the Enforcement Bureau's New York Office responded to complaints of unauthorized operations and traced the source of radio transmissions to an apartment building in Queens. The agents spoke with the landlord, who identified the man that set the equipment up in the building's basement. According to FCC records, no authorization had been issued to the man, or anyone else, to operate an FM broadcast station at or near the building. After the man admitted that he owned and installed the equipment, the agents issued a Notice of Unlicensed Operation and verbally warned him to cease operations or face significant fines. The man did not respond to the notice.

Not long after, on January 13, 2015, New York agents responded to additional complaints of unlicensed operations on the same frequency and traced the source of the transmissions to another multi-family dwelling in Queens. The agents heard the station playing advertisements and identifying itself with the same name the man had used during his previous unlicensed operations. Again, the agents issued a Notice of Unlicensed Operation and ordered the man to cease operations, and again he did not respond.

The FCC therefore concluded it had sufficient evidence that the man willfully and repeatedly violated Section 301 of the Communications Act, and that his unauthorized operation of a pirate FM station warranted a significant fine. The FCC's Rules establish a base fine of $10,000 for unlicensed operation of a radio station, but because the man had ignored multiple warnings, the FCC doubled the base amount, resulting in a proposed fine of $20,000.

FCC Rejects Licensee's Improper "E/I" Waiver Request and Issues $3,000 Fine

A California TV licensee received a $3,000 fine this month for failing to properly identify children's programming with an "E/I" symbol on the screen. The Children's Television Act ("CTA") requires TV licensees to offer programming that meets the educational and informational needs of children, known as "Core Programming." Section 73.671 of the FCC's Rules requires licensees to satisfy certain criteria to demonstrate compliance with the CTA; for example, broadcasters are required to provide specific information to the public about the children's programming they air, such as displaying the "E/I" symbol to identify Core Programing.

When the licensee filed its license renewal application on August 6, 2014, it certified that it did not identify each CORE program that it aired at the beginning of the program on two of its Korean-language digital multicast channels. The licensee explained that "the Korean language does not use the Roman alphabet and [the program suppliers] did not have equipment to produce the characters." The licensee also disclosed in its Children's Programming Reports its belief that the "E/I" symbol would not make sense to Korean speaking viewers. Based on these circumstances, the licensee asserted in its renewal application that a waiver of the Rules was warranted.

The FCC disagreed, explaining that the licensee's opinion that the symbol would not make sense to its Korean speaking viewers did not relieve it of its obligations under the Rules. Accordingly, the station's failure to properly display the "E/I" symbol constituted a willful and/or repeated violation of Section 73.671. The FCC added that if the licensee believes the symbol would not be meaningful for its viewers and compliance would be contrary to the public interest, the correct process is to request a waiver of the "E/I" requirement under Section 1.3 of the Rules, rather than in a license renewal application. While the Rules establish a base fine amount of $8,000 for violations of the FCC's children's programming requirements, the FCC concluded that the facts and circumstances of the violation warranted a reduced fine of $3,000.

Six-Hour 911 Outage Results in $16 Million Fine

A large telecommunications provider entered into a consent decree with the FCC this month to resolve an investigation into a six-hour long 911 service outage that occurred last April. Section 64.3001 of the FCC's Rules provides that all "telecommunications carriers shall transmit all 911 calls to a PSAP, to a designated statewide default answering point, or to an appropriate local emergency authority[.]" Additionally, Section 4.9(f)(4) of the Rules requires a wireline communications provider experiencing a network outage of at least 30 minutes that potentially affects a 911 special facility to notify, as soon as possible, the facility's designated contact person for communications outages. The provider must give that person all available information that could be useful in minimizing the effects of the outage on public efforts to communicate with that facility.

During the April 9 "sunny day" outage, over 10 million people in Washington, Minnesota, and North Carolina were unable to make 911 calls for a period of six hours, and the carrier failed to timely notify all 83 affected PSAPs of the outage. The carrier fully acknowledged that it was responsible for complying with applicable FCC rules regardless of any alleged failures by its subcontractors, and ultimately entered into a consent decree with the FCC to resolve the investigation.

The terms of the consent decree require the carrier to pay a $16 million fine. Additionally, the carrier must implement a "far-reaching compliance plan to develop and implement proactive risk management principles designed to reduce the likelihood and impact of 911 failures, ensure reliable 911 call completion, and plan for and provide expeditious notifications to Public Safety Answering Points (PSAPs) affected by 911 outages."

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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