Advisory

Communications

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FCC Enforcement Monitor

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Headlines:

▪FCC Issues Heavy Fines for Late-Filed Children's Television Programming Reports

▪Motel with Multichannel Video Programming Distribution System is Cited for Excessive Cable Signal Leakage

FCC Fines Multiple Licenses for Failure to Timely File Children's Television Programming Reports

As broadcasters have learned, the FCC takes licensees' public inspection file and reporting obligations very seriously. This month, the FCC issued multiple Notices of Apparent Liability for Forfeiture ("NAL") against licensees for failing to file Children's Television Programming Reports on Form 398 in a timely manner. On June 18 and 21, the FCC issued a total of seven decisions proposing to fine stations between $3,000 and $18,000 for not filing their Form 398s on time.

Under the FCC's rules, commercial television stations must report their children's educational and informational broadcast programming efforts each quarter by electronically filing FCC Form 398, the Children's Television Programming Report. Historically, the FCC has fined stations for failing to file their reports, and there would be nothing new about the FCC issuing an NAL for "failure to file".

In these seven cases, however, the stations were not fined for a failure to file their reports, but for failing to file their reports on time. In the decisions, the FCC issued the following fines:

- For a station that missed the filing deadline twenty-three times, the FCC issued an NAL in the amount of $18,000.
- For a licensee that missed the filing deadline eleven times on one station and thirteen times on another, the FCC issued an NAL in the amount of $15,000.
- For a station that missed the filing deadline fourteen times, the FCC issued an NAL in the amount of $9,000.

- For a station that missed the filing deadline ten times, the FCC issued an NAL in the amount of $9,000 (eight reports were filed more than 30 days late).
- For a station that missed the filing deadline three times, the FCC issued an NAL in the amount of $6,000 (three reports were filed more than 30 days late).
- For a station that missed the deadline sixteen times, the FCC issued an NAL in the amount of $6,000.
- For a station that missed the filing deadline eleven times, the FCC issued an NAL in the amount of $3,000.

The cases were all relatively similar. As an example, in the $15,000 NAL, the licensee filed license renewal applications for its two Class A TV stations. At the time of the applications, the licensee did not disclose that it had filed some of its Children's Television Programming Reports late, and in fact, certified in its renewal applications that it had timely filed all relevant programming reports with the FCC. However, the Commission subsequently reviewed its records and found that the licensee failed to file programming reports on time for 11 quarters for one station and 13 quarters for another.

The base forfeiture for failing to file a required form with the FCC is $3,000. In this particular case, since the licensee failed to file in a timely manner so many of its reports, the FCC decided that the licensee was liable for $6,000 for the station with 11 quarters of late-filed reports and $9,000 for the station with 13 quarters of late-filed reports. The FCC did not pursue the issue of the licensee's certification and failure to disclose the late filings.

The other common thread in these cases is that the FCC issued the fines in relation to its review of the stations' license renewal applications. The FCC has historically focused its attention on fines for public inspection file violations at license renewal time. With these decisions, however, licensees can expect that Children's Television Programming Report violations will also be the frequent subject of fines at license renewal time. While there is some truth to the old saying "better late than never", the new slogan of the FCC appears to be "better never be late."

FCC Issues Citation and Order to Motel for Excessive Cable Signal Leakage

The FCC recently issued a Citation and Order to a motel in Miami, Florida for failing to notify the FCC prior to operating an MVPD system using a carrier in the aeronautical radio frequency band and for exceeding the cable signal leakage limits in that band. In the decision, the FCC warned the motel that it could be fined **$112,500** if it fails to promptly remedy the situation.

In May 2013, agents from the Enforcement Bureau conducted an investigation and discovered that the motel was using a non-cable MVPD system operating in the aeronautical frequencies, but had not filed FCC Form 321 to notify the FCC before commencing operation on those frequencies. In addition, the agents performed field strength measurements and found that the MVPD system was emitting signals significantly above the established signal leakage limits. For the bands in which the MVPD was operating, the signal leakage limits are between 15-20 microvolts per meter; the agents measured emissions at two different locations, leading to readings of 513 and 1,659 microvolts per meter.

In the Citation and Order, the FCC directed the motel to come into immediate compliance with the signal leakage limits and to register with the FCC as an MVPD. In addition, the motel must submit to the FCC written descriptions of the actions taken or planned to be taken to correct the violations and prevent future violations. The FCC also warned the motel that future violations could lead to additional enforcement actions, including substantial fines, seizure of equipment, and criminal charges.

This case serves as a reminder to all non-cable MVPDs that they, like all cable television systems, must notify the FCC prior to using any aeronautical frequency bands. Aeronautical frequencies are those within the ranges of 108-137 MHz and 225-400 MHz. Notification must be provided electronically on FCC Form 321, using the Commission's COALs database system, which can be found at www.fcc.gov/coals.

According to the FCC, a "non-cable MVPD" is an entity (other than a cable company), "that engages in the business of making available for purchase, by subscribers or customers, multiple channels of video programming." The FCC has indicated in the past that this can include universities, hotels, apartment complexes, prisons, office buildings, and other facilities with in-house systems providing multiple channels of video programming available to subscribers or customers.

With potential liability for as much as $112,500 in fines in this particular case, non-cable MVPDs should be taking a close look at their system operations to ensure they are operating on appropriate frequencies, monitoring their operations, and preventing excessive signal leakage. However, given that many of these systems are operated by entities without much experience in operating such systems, or with the FCC, it is a safe bet that we will be hearing more from the FCC regarding this aspect of its rules in future enforcement decisions.

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.

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