Advisory

pillsbury

Communications

October 2011

FCC Enforcement Monitor

by Scott R. Flick and Christine A. Reilly

Headlines:

- *Cable Operator Subject to $25,000 Fine for EAS and Signal Leakage Violations*
- *Late-filed Renewals Garner $26,000 Fine*

Interfering Signal Leakage Proves Costly for Florida Cable Television Operator

The FCC issued a Notice of Apparent Liability for Forfeiture ("NAL") to the operator of a Florida cable television system for multiple violations of the FCC's rules. The NAL proposes a $25,000 forfeiture for the system based upon violation of the FCC's cable signal leakage standards, failure to submit the required registration form to the FCC, and failure to maintain operational Emergency Alert System ("EAS") equipment.

During a 2011 inspection of the system, agents from the Tampa Office of the FCC's Enforcement Bureau discovered extensive signal leakage. In order to protect aeronautical frequencies from interference, Sections 76.605 and 76.611 of the FCC's Rules establish a maximum cable signal leakage standard of 20 microvolts per meter ("µV/m") for any point in the system and a maximum Cumulative Leak Index ("CLI") of 64. Inspection of the cable system revealed twenty signal leaks, fourteen of which were over 100 µV/m, with the highest measuring 1,023 µV/m. In addition, the system's CLI measured 64.88, exceeding the maximum permitted level of 64. The operator also acknowledged the system had not maintained cable leakage logs or performed routine maintenance as required by the FCC. The base forfeiture for these violations is $8,000.

The FCC also found two other violations. In 2010, FCC agents discovered the cable system had not filed its required registration statement with the FCC. In the 2011 inspection, the owner admitted the station had not submitted the required form, and, as of the date of the NAL, had still not filed the form. Section 76.1801 of the FCC's Rules specifies a base forfeiture of $3,000 for failing to file required forms. Since the system had still not submitted the form more than a year after being instructed to do so, the FCC ordered an upward adjustment of the fine by $1,500.

In the same 2011 inspection, the operator of the cable system also conceded that the station had never installed any EAS equipment. Under Section 11.35(a) of the FCC's Rules, cable systems must ensure that appropriate EAS equipment is installed and operational. The base forfeiture for not maintaining operational EAS equipment is $8,000. However, because the operator had owned the system for more than a decade without installing the necessary EAS equipment, the FCC increased the proposed fine by an additional $4,500.

As a result, the fine proposed for all three violations, including the upward adjustments, totaled $25,000. The NAL also ordered the director of the cable system to submit a sworn statement within 30 days confirming that the system had installed operational EAS equipment and had submitted the required registration statement to the FCC.

In a separate and unrelated proceeding, the FCC fined a Michigan cable operator $8,000 for failure to install EAS equipment at one of its headend locations. An agent from the FCC's Detroit Field Office discovered during a 2010 inspection that the cable system had not installed any EAS equipment, in violation of Section 11.35 of the FCC's Rules. According to the NAL, the manager of the cable facility indicated that the facility did not maintain any EAS equipment and that he "believed" this particular system had been exempted from the EAS requirements due to the limited subscriber base, which totaled 55 subscribers.

The field agent later determined that the cable system operator, citing financial hardship, had sought and received waivers of the EAS equipment requirements for some, but not all, of its cable systems in 2002. The 2002 waiver did not include the cable system inspected by the FCC. Citing the "vital role" played by cable systems in the national emergency warning system, the FCC levied the base fine of $8,000 against the cable operator.

Late-filed License Renewal Application Leads to Compound Fine Totaling $13,000 per Station

A broadcaster's failure to timely file its license renewal application often leads to a compound fine. Section 73.3539 of the FCC's Rules requires that broadcasters file their license renewal applications at least four months prior to their station's license expiration date. The base fine for violating this rule is $3,000. However, the financial implications are rarely limited to just the violation of Section 73.3539. As evidenced by enforcement decisions routinely released by the FCC, broadcasters that violate Section 73.3539 are often also in violation of Section 301 of the Communications Act of 1934 (the "Act"), which prohibits operation without authorization. In the absence of a timely filed license renewal application, or grant of special temporary authority ("STA") to continue operating, any station operations beyond the license expiration date are unauthorized.

In two recent Memorandum Opinion and Orders ("MO&O"), the FCC assessed compound fines totaling $26,000 to the licensee of an AM/FM combination in Idaho. According to the MO&Os, both station licenses expired on October 1, 2005. Pursuant to Section 73.3539, the license renewal applications were due by June 1, 2005. However, the MO&O stated that the licensee failed to file the license renewal applications by the June 1, 2005 deadline and did not seek an STA to continue operations after both licenses expired on October 1, 2005.

The MO&Os indicated that in September 2010, the FCC issued letters to the licensee indicating that each license had expired, all authority to operate had been terminated, the call letters were cancelled, and any broadcast operations must cease immediately. Approximately five years after the date of the stations' license expirations, and in response to the FCC's letters, the licensee filed STA requests seeking authority to continue operations "pending consideration of the untimely filed renewal application." The licensee indicated that its failure to timely file was unintentional, and subsequently it submitted the late-filed license renewal applications.

The STA requests were granted by the FCC on November 9, 2010, with an expiration date of May 9, 2011. The licensee failed to request extensions of the STAs prior to their expiration, and the licensee continued operating both stations beyond the expiration of the STAs. The FCC determined that, given the lengthy unauthorized operations, a fine of $13,000 per station was appropriate, resulting in a $26,000 forfeiture for the AM/FM combo. The FCC did, however, ultimately grant both license renewal applications.

If you have any questions about the content of this publication, please contact the authors below, or the Pillsbury attorney with whom you regularly work.	
Scott R. Flick (bio) Washington, DC +1.202.663.8167 scott.flick@pillsburylaw.com	Christine A. Reilly (bio) Washington, DC +1.202.663.8245 christine.reilly@pillsburylaw.com