

**FHH Telecom Law**  
**December 2005**

**Equipment Vendor Fined \$17K**  
**FCC Ups Fine Based on Violations**  
**Outside Statute of Limitations Period**

*By: Mitchell Lazarus*  
*703-812-0440*  
*Lazarus@fhhlaw.com*

The FCC recently fined a company \$17,000 for marketing two models of a motion detector that lacked valid FCC certification. These were upgrades of earlier models that were properly certified. But the upgrade did not qualify as a “permissive change” under the FCC rules, and hence triggered the need for a new certification, which the company failed to obtain.

The otherwise routine case is interesting for two reasons.

First, equipment violations are subject to a one-year statute of limitations, and the FCC may not impose fines for violations outside that period. Here, separate violations occurred within the one-year period and beyond it. The FCC therefore fined the violator for offenses occurring within the statute of limitations but then adjusted the fine *upward* to account for the alleged violations occurring outside the statute. This is, we believe, a new approach by the Enforcement Bureau and it can greatly increase an offender's financial exposure. Whether this action by the Commission is legally sustainable is open to question since it is effectively punishing offenders for activity occurring in a time period for which they were immune from fines. Continuation of this approach could be challenged at the full Commission or Court, if circumstances occur where the size of the fine merits appeal.

In addition, the company received its new certification less than two weeks after the Enforcement Bureau issued its letter of inquiry. The FCC acknowledges that the company caught the problem by itself and began coming into compliance before it heard from the FCC. When this has happened in the past, especially with an offender having an otherwise clean record – as seems to be the case here – the FCC often closed the matter with a warning. Here, the company's good-faith effort succeeded only in reducing an initial fine from \$25,000 to \$20,000 (later reduced by another \$3,000 in view of the company's clean record.)

This is just the latest in a series of cases implementing what appears to be a get-tough policy on equipment violations. Manufacturers and importers should keep a close eye on regulatory compliance.