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## **Focus on FCC Fines**

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***Cable company fined for changing channel line-up*** – Television broadcasters are usually quite aware of many of the FCC regulations that control how cable companies operate their businesses. One regulation requires cable companies to notify subscribers and the local franchise authority before making a rate or service change. The Time-Warner subsidiary on Hawaii was issued a \$7,500 fine for failing to follow this rule. Obviously, familiarity with all of the ins and outs of carriage requirements is important for cable operators **and** broadcasters alike, as both groups are directly affected by those requirements.

In this case, the Time-Warner affiliate shuffled the stations on its channel lineup. Prior to the shuffling, cable customers could watch dozens of channels directly through their television sets without a converter. After the shuffle, more than forty channels moved to a tier that required a converter box. The cable company defended its actions claiming that it offered to give cable converter boxes to customers without extra charge. However, the FCC said that the requirement to add a converter box was a change in service.

As broadcasters prepare for the transition to digital-only operations, they should be mindful of how cable operators are supposed to alert subscribers to any changes in service – including changes which may occur in connection with the upcoming DTV transition. In particular, cable companies are required to provide their subscribers and authorities with written notices about transitions to all-digital systems, listing any actions or information required to continue receiving service.

***San Diego TV station claims it is a filter for emergencies*** – In March, 2005, the FCC proposed fining three San Diego television stations for failing to provide emergency information (about nearby wildfires) accessible to hearing-impaired viewers through, *e.g.*, closed-captioning or visual-text displays. The FCC has now rejected a request for further consideration posed by one of the target stations; as a result, that station is now on the hook for \$25,000.

The FCC's rules mandate that video program distributors provide persons with hearing disabilities access to the same emergency information as is available in the audio portion

of the programming.

The FCC reviewed hours of tape from the television station and found at least 22 instances where emergency information about the wildfires was reported in the audio without corresponding reporting accessible to the hard of hearing. The station responded that its journalists and producers should be allowed to act as filters as to what constitutes an emergency for purposes of requiring visual information. The FCC acknowledged that programmers should be able to exercise good faith judgment in determining what is an emergency; yet in all 22 cases, the FCC determined that the station failed in exercising such judgment. (One example: viewers were given oral instruction on what to do if flames were spotted near their house, but that instruction was not provided visually.) The FCC seems unwavering that flames lapping near your home is an emergency.

After three years of reviewing the file, the FCC has finally flamed the station with a \$25,000 fine. Readers are reminded that the FCC requires that visual information be provided along with aural information in cases of emergencies. While some discretion is provided to stations as to what constitutes an emergency, it may be best to err on the side of caution, particularly if the station has visual aids at the ready.

***FCC taking aim at pirates*** – During the first three weeks of September, the FCC issued orders and notices regarding nearly a dozen pirate radio stations identified by FCC agents. Most of the stations were using the FM band in locations that varied among Florida, Cleveland, Oregon and New York. Standard fines of \$10,000 were issued to those pirates. Yet one pirate forked over no booty.

While most of the pirates chose to operate in the standard FM broadcast band, one case involved unauthorized transmissions at 156.80 MHz, a frequency in the marine band channel used by ships, boats and for other operations at sea. Over a period of weeks, the Coast Guard responded to several false distress calls, and scrambled ships and aircraft to phantom emergencies. After multiple false alarms, the Coast Guard contacted the FCC to help determine the source of the false distress and mayday calls.

The FCC tracked the signal to a Largo, Florida, trailer park but, wouldn't you know it, just as they were moving in to make the bust, they got word that the local police had beat them to the punch, arresting a 16-year-old boy from the trailer park. According to the police, in the lad's room they found multiple radios, a marine battery and a whip antenna – an uncommon collection for a high school student. The kid 'fessed up to making the fake distress calls. Within six months he was doing time in the local juvie facilities for non-FCC problems. So it should not be a surprise that he failed to respond to the Commission's initial order whacking him with an \$18,000 fine for his unauthorized radio broadcast. However, upon reconsideration, the FCC recognized that the kid was locked up and had no means to pay the fine. The FCC fine was cancelled.