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FCC Proposes Fine of Nearly $100,000 against Chevron Subsidiary for Failure to Timely Renew Two Licenses and for Operating without Authorization

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Earlier this month the FCC gave some indication just how costly it can be to fail to renew a spectrum license in a timely fashion and keep operating. On November 2, 2012, the Commission issued a Notice of Apparent Liability ("NAL") against Union Oil Company of California ("UOCC"), a subsidiary of Chevron Corporation ("Chevron") proposing to impose a fine of $96,200 against the company for alleged violations involving two stations in Alaska's Cook Inlet Basin, one a Private Land Mobile Radio station ("PLMR") and the other an Aeronautical and Fixed Advisory ("UNICOM") station. The total proposed forfeiture is almost four times the combined base forfeiture amount – $26,000 – for the two alleged violations associated with the two licenses, operating without a license ($10,000 per license) and for failure to file required forms to continue operating after expiration ($3,000 per license).

Several factors caused the FCC to increase the proposed forfeitures significantly above the base amounts. First, the Commission noted that the operator's parent company, Chevron, is "a multi-billion dollar, global enterprise" and "highly profitable." The Commission proposed the nearly $100,000 fine to create a deterrent against violation of its rules governing proper licensing of stations and to avoid the perception that the FCC's fines, for large enterprises, are "simply a cost of doing business." Second, the Commission noted that the stations had been operated for six and eight years before UOCC obtained an STA in November 2011, putting an end to the unauthorized operation. (The Wireless Bureau referred the matter to enforcement after UOCC sought the temporary authority.)

The Commission expressly declined to adjust the proposed forfeiture amount downward on the grounds that the violations resulted from a lack of knowledge of the existence of the expired licenses or from a change in license management personnel. In response to the Enforcement Bureau's Letter of Inquiry which preceded the NAL, UOCC explained that one license expired less than a week after Chevron acquired UOCC at a time when responsibility for management of the licenses was being transitioned. The other license expired 18 months prior to the acquisition and was never added to the Chevron internal tracking database. The Commission said that no adjustment to the proposed forfeitures in these circumstances would be appropriate because both UOCC and Chevron are "sophisticated licensees" with significant resources and whatever problems may have occurred around the time of the acquisition do not explain the multi-year periods of operation without a

license. The Commission also found fault with the licensee taking five weeks after discovering in 2011 the licenses were expired to seek temporary authority.

This NAL is notable for a number of reasons. For starters, the Commission looked to the size of the parent company as basis for significantly increasing the proposed forfeiture above the base amount. Further, although the FCC can only look back one year under the statute, the FCC took into account operation that occurred almost entirely prior to the limitations period to increase the proposed forfeiture. (The NAL was issued only a few days before the first anniversary date of UOCC obtaining an STA, which ended the period of unlawful operation.) Moreover, the NAL treats the failure to renew on time as a continuing violation, by citing as one of the two violations the failure to file required forms or information. While not the first time the Commission has interpreted the concept of a continuing violation in this manner, it serves as a reminder that the passage of time may not cure filing violations. In addition, the NAL suggests that close tracking of license expiration dates and what licenses are being assigned or transferred when transactions occur is highly recommended, especially for larger enterprises, or significant fines may ensue. Finally, the NAL underscores that a failure to seek temporary authority promptly when unauthorized operation is discovered may, in effect, be an aggravating factor; just several weeks is liable to be considered too long by the Commission.

The UOCC NAL seeks to educate licensees in general expressly, as enforcement-related releases often do. The Commission reminded licensees that if they “find themselves out of compliance with the licensing requirements [they] should immediately cease unauthorized operation or seek temporary operating authority.” In short, when a license expires, without holding affirmative authority to continuing operating, an entity’s continued operation of the station violates the Act and Commission’s Rules, plain and simple. The FCC also reiterated that “all licensees are responsible for knowing the terms of their licenses and for filing a timely renewal application if they seek to operate beyond that term.” To underscore the point, the NAL explains that “administrative oversight or inadvertence is not a mitigating factor.”

UOCC has until December 2, 2012, to challenge the proposed forfeiture or to pay it. We would expect a challenge to be forthcoming. We’ll be following what happens next.