

Duff on Hospitality Law

## **Hoteliers Beware – The Federal Communications Commission is Watching**

on 9.18.12 | Posted in Technology

While the majority of hotel owners and operators rely on well-established cable companies and suppliers of in-room entertainment systems, this post serves as an important reminder of the need to ensure that these traditional providers of video programming do everything necessary to comply with the many laws and regulations that apply to the provision of video programming.

In the parlance of the Federal Communications Commission (FCC), a hotel that makes multiple channels of video programming available to its guests and customers is called a “non-cable multichannel video programming distributor” or “MVPD.” Typically, a non-cable MVPD does not cross a public right-of-way to deliver video programming.

While this type of video system may not meet the definition of a cable television system under the FCC’s rules, it is nonetheless subject to many of the same restrictions and requirements as a cable television operator. In fact, the FCC just recently issued a [formal citation](#) to a hotel located in Orange County, California, for violating the FCC’s rules. In addition, the FCC issued a [Public Notice](#) reminding all non-cable MVPDs of their obligations under the FCC’s rules.

- The first obligation is to file a Notification on FCC Form 321 that the operator intends to operate on frequencies between 108 and 137 MHz and between 225 and 400 MHz – frequencies that correspond with cable channels 14-16, 25-53 and 98-99. These frequencies are also used for aeronautical communications.
- Because these systems have the potential to cause harmful interference to aeronautical communications, with potentially life-threatening results, the second obligation is to measure the systems on a regular basis to ensure that there is no excess “signal leakage.” If there is, then the non-cable MVPD must suspend operations and fix the problem. The most common cause for such “signal leakage” tends to be operators who seek to improve the signal within their facilities by “over-powering” the system or fail to properly maintain their systems (e.g. bare wires).

- Except for certain small systems, operators must file with the FCC annual measurement reports (on Form 320). In addition, operators must retain, for a period of two years, logs showing the date and location of each leakage source, the date of repair, and the probable cause of the leakage.

According to the FCC, the hotel at issue violated the FCC's rules by failing to file the Form 321 notification that it intended to use aeronautical frequencies and by operating with excessive field strength, based on measurements made by an FCC inspector outside the hotel. The FCC did not fine the hotel for these violations, but directed it to submit a plan describing the actions it had taken to correct the violation and to preclude recurrence. The FCC warned the hotel that if violations reoccurred, it would be subject to monetary forfeitures (of up to \$37,000 per day), seizure of equipment, and criminal sanctions.

One suspects that the FCC inspector will visit the hotel again and perhaps others in those markets known for active FCC enforcement (e.g., Los Angeles and other large cities or locations where FAA communications are of paramount importance).

If you would like more information about these FCC requirements and steps to ensure compliance, including suggestions for ensuring that your cable system or in-room entertainment supplier is obligated to comply that these FCC requirements and other legal obligations), please give [Greg](#) a call.

**Tags:** cable, FAA, FCC, in-room entertainment, MVPD, Telecommunications