

July 10, 2018

FCC ENFORCEMENT UPDATE

This edition summarizes notable FCC-related enforcement matters since April 1, 2018. Questions or comments may be addressed to David H. Solomon at 202-383-3369 or dsolomon@wbklaw.com.

Spoofer Caller ID

[Spoofer Caller ID](#)

- The Commission released a \$120 million Forfeiture Order for violations of the Truth-in-Caller ID Act by a telemarketer using spoofed caller identification on nearly 100 million robocalls. This is the highest fine in FCC history. Commissioner O’Rielly dissented in part based on his view that the Commission did not prove one of the three separate factors that each can justify a Truth-in-Caller ID Act finding.

Rural Call Completion

[Rural Call Completion](#)

- The Enforcement Bureau entered into a Consent Decree with a nationwide wireless carrier regarding compliance with rural call completion requirements. The company agreed to pay a \$40 million civil penalty, agreed to a Compliance Plan, and admitted to (1) violating the rule prohibiting the insertion of “false ring tones” and (2) not correcting problems with its Intermediate Providers’ delivery of calls to consumers in certain rural areas. Commissioner Clyburn issued a statement criticizing the Consent Decree for not being stronger.

Environmental and Historic Preservation Rules

[Environmental and Historic Preservation Rules](#)

- The Enforcement Bureau entered into separate but related Consent Decrees with a nationwide wireless carrier and its wireless infrastructure contractor regarding compliance with the environmental and historic preservation rules. Each company agreed to pay a “settlement amount” – \$10 million by the licensee and \$1.6 million by the infrastructure company. Both companies also agreed to Compliance Plans, and neither company admitted liability.

Slamming /Cramming

[Slamming/Cramming](#)

- The Commission released a \$5.3 million Notice of Apparent Liability for Forfeiture (“NAL”) against a telephone company that apparently switched consumers from their preferred carrier without their permission (slamming), added unauthorized charges to their bills (cramming), misled consumers into believing that telemarketing calls were from the consumer’s current carrier, provided fabricated verification recordings of consumer consent to the FCC, and failed fully to respond to an Enforcement Bureau inquiry. The Commission also indicated that in the light of the company’s egregious misconduct and the nature of the apparent violations, it will consider initiating proceedings to revoke the company’s FCC authorizations after reviewing the company’s response to the NAL.
- Consistent with the requirements of the Omnibus Appropriations Act enacted in late March, the News Release for this NAL included for the first time a disclaimer that the NAL contains only allegations and that the Commission may not impose a greater monetary penalty in the case than the amount proposed in the NAL.

911 Outages

Equipment Marketing

EEO Enforcement

False and Misleading Statements

Pirate Radio

Other Notable Actions

911 Outages

- The Enforcement Bureau entered into a Consent Decree with a nationwide wireless carrier regarding two nationwide 911 service outages on the company's Voice over Long Term Evolution ("VoLTE") network. One of the outages lasted approximately five hours and resulted in calls from approximately 12,600 unique users failing. The other lasted approximately 47 minutes and resulted in failure of 2,600 911 calls. Both were "sunny day" outages that resulted from "planned network changes that inadvertently interfered with the routing of 911 calls." In addition, it "took as long as 4 ½ hours" for the company to complete required notifications of one of the outages to affected Public Safety Answering Points ("PSAPs"). The company agreed to pay a \$5.25 million civil penalty, admitted certain facts, and agreed to a detailed Compliance Plan.
 - The Consent Decree stated that the Bureau "concluded" that the company violated the network outage reporting and 911 rules but that the company disputed the Bureau's interpretation of the rules. In addition, both parties agreed that the Consent Decree "does not constitute a legal finding" regarding compliance or noncompliance with "any law."
 - The Order adopting the Consent Decree stated that Congress has "made emergency communication services a national priority," that the Commission "has repeatedly emphasized that robust and reliable 911 service must be available nationwide," and that "it is therefore incumbent" on the Commission to "ensure that telecommunications carriers provide reliable 911 service at all times." The accompanying News Release said that "[s]uch preventable outages are unacceptable."

Equipment Marketing

- The Commission released a \$2.86 million NAL regarding the marketing of 65 models of audio/visual transmitters that were intended for use with unmanned aircrafts systems (drones). The transmitters were apparently operating without authorization on frequency bands not allocated for amateur operations and, in some cases, at higher power levels than allowed. The Commission increased the proposed equipment marketing forfeiture from the \$455,000 base amount to \$2.82 million based on the fact that the alleged violations were repeated and continuous, involved intentional marketing of devices that cannot be authorized, and raised "egregious" threats to public safety. The NAL also included a \$40,000 proposed forfeiture for failure to respond fully to the LOI and failure to respond at all to a prior Citation.
 - The Enforcement Bureau released an accompanying Enforcement Advisory stating that "anyone advertising or selling" such noncompliant transmitters "should stop immediately and anyone owning such devices should not use them."
- The Commission released a \$590,380 NAL regarding the marketing of 14 models of consumer-grade electronic "personal hygiene and wellness devices" that were apparently non-compliant with the equipment marketing rules because they lacked proper equipment authorization, user manual disclosures, and/or FCC labels. The Commission increased the proposed forfeiture amount substantially above the \$98,000 base amount because the company continued to market noncompliant devices after becoming aware of the investigation and acknowledging in its response that the models needed authorization, labels, and user manuals. Commissioner O'Rielly issued a statement supporting stronger equipment marketing enforcement. He also thanked the Chairman for increasing the proposed fine here and for committing to reviewing the Commission's forfeiture policies in the future.
- The Enforcement Bureau entered into Consent Decrees with nine companies regarding the marketing of LED signs used in digital billboards without the required equipment authorization and/or labeling and user manual disclosures. Each company admitted liability and agreed to a Compliance Plan. The companies agreed to pay civil penalties ranging from \$15,000 to \$61,000. (Earlier this year, the Bureau had entered into a similar Consent Decree with an \$18,000 civil penalty.)

- Commissioner O’Rielly sent a letter to eBay and Amazon seeking their assistance in removing from the stream of commerce set-top boxes that are non-FCC compliant or that fraudulently bear an FCC logo. The letter states that such devices are “particularly problematic as they are perpetrating intellectual property theft and consumer fraud.”

EEO Enforcement

- The FCC announced that the Chairman had shared with his colleagues a proposal to transfer the staff responsible for enforcing the FCC’s EEO rules regarding broadcasters, multichannel video programming distributors, and satellite radio providers from the Media Bureau to the Enforcement Bureau. Numerous civil rights organizations had recommended that the Commission take this action so that the Commission’s EEO rules could be enforced more effectively. The Chairman said that this action will “improve the FCC’s enforcement” of the EEO rules and “strengthen” the Commission’s “commitment to fighting discrimination.”

False and Misleading Statements

- The Commission released a \$235,000 NAL regarding the submission of apparently false and misleading information in Antenna Structure Registration (“ASR”) ownership changes. Specifically, the company submitted 42 ownership change applications for towers that the company apparently did not own, sent the Enforcement Bureau during the course of an air navigation safety investigation a false and misleading email claiming ownership of a tower that it did not own, and also did not respond to an Enforcement Bureau Letter of Inquiry (“LOI”).
 - Although the Commission did not overrule prior precedent to the contrary, it treated false and misleading statements as one-time, non-continuing violations for purposes of the one-year statute of limitations. It thus proposed the maximum \$19,639 forfeiture (for entities other than broadcasters, cable operators, and common carriers) for violations of Section 1.17 of the Commission’s rules only in connection with those false and misleading statements during the past year. It also proposed the maximum \$19,639 forfeiture for failure to respond to the Enforcement Bureau’s LOI.

Pirate Radio

- The Chairman announced that the FCC’s “ramped up” pirate radio enforcement has resulted in “significant progress.” The News Release reported that since January 2017, the Enforcement Bureau has undertaken 306 pirate investigations, issued 210 Notices of Unlicensed Operation, issued an NAL for the statutory maximum penalty, entered into a settlement with a Miami-area pirate radio broadcaster to end his broadcasts and collect a fine, and referred cases to the United States Attorneys’ Offices to obtain federal court orders, which has led to four cases of pirate radio equipment being seized to date. The News Release also noted that in 2017 the FCC took more than twice as many actions against pirate broadcasters than it did the year before and that since 2017 the FCC has fined illegal broadcasters \$143,800 and proposed fines totaling \$323,688. The Chairman reiterated that “fighting unlawful broadcasts is a top enforcement priority for the FCC.”
- After the Chairman’s announcement, the Enforcement Bureau announced an additional case of pirate radio equipment seizure.
- The Enforcement Bureau released a \$25,000 pirate radio NAL against a person who had been repeatedly been warned and instructed to cease operation.

- Commissioner O’Rielly issued a statement “commending” the introduction of legislation in the House of Representatives that would increase the maximum penalty amount for pirate radio violations and otherwise increase the pirate radio enforcement tools available to the Commission.

Other Notable Actions

- **Public Inspection File:** The Media Bureau entered into a Consent Decree with a Class A television licensee regarding the station’s failure to include in its public inspection file issues/programs lists for 23 quarters, Class A certifications for 39 quarters, and children’s commercial limit certifications for 40 quarters, as well as its failure to timely file children’s television programming reports for 40 quarters. The Bureau also indicated it would grant a short-term renewal. The licensee agreed to pay a \$50,000 civil penalty (in installments), admitted failure to comply with the rules, and agreed to a Compliance Plan.
- **Satellite Licensing Requirements:** The Enforcement Bureau, International Bureau, Office of Engineering and Technology, and Wireless Telecommunications Bureau released an Enforcement Advisory that reminded satellite system operators about FCC licensing obligations.
- **Silent Radio Station:** The Commission designated two FM stations’ renewal applications for a paper hearing based on the fact that they had been off the air for extended periods of time during the license terms. The licensee of the two stations subsequently proposed donating the stations to the Multicultural Media Telecom and Internet Council, which would then sell the stations.
- **Future of ALJs:** Commissioner O’Rielly gave a speech in which he proposed eliminating FCC Administrative Law Judges. He recognized that doing so might require legislation.