

WILKINSON) BARKER) KNAUER) LLP

October 3, 2018

Spofed Caller ID

Unauthorized Wireless Data Service

Unauthorized Transfer of Control

Pirate Radio

Equipment Marketing

Other Notable Actions

FCC ENFORCEMENT UPDATE

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

[Spofed Caller ID](#)

- The Commission imposed an \$82.1 million fine against a telemarketer for placing more than 21 million robocalls using falsified caller ID. This sum reflected the full amount proposed in a 2017 Notice of Apparent Liability (“NAL”). The Commission also proposed a \$37.5 million fine against a different telemarketer for making 2.3 million telemarketing calls using falsified caller ID.

[Unauthorized Wireless Data Service](#)

- The Commission released a \$534,500 NAL against two companies for using radiolocation service licenses to provide unauthorized wireless data transmission services. The NAL states that the companies provided such unauthorized service by intentionally altering the settings of wireless equipment to operate outside of authorized frequency bands.

[Unauthorized Transfer of Control](#)

- The Enforcement Bureau entered into a Consent Decree with a major hotel chain regarding the unauthorized transfer of control of 65 non-common carrier radio licenses in connection with its merger with another major hotel chain. The company agreed to make a “civil payment” of \$504,000, admitted liability, and agreed to a Compliance Plan.

[Pirate Radio](#)

- The Commission released a \$144,334 Forfeiture Order (the statutory maximum) against a pirate radio operator and the owner of the property from which he was broadcasting. Commissioner O’Rielly said that the forfeiture “should be much higher” and expressed his support for pending legislation that would increase the statutory forfeiture amount for pirate radio. He also said that taking enforcement action against intentional violations by landlords is a “vital step” towards ending pirate radio and suggested that the Commission’s enforcement against pirate radio operators would be more effective if it did not issue Notices of Unlicensed Operations prior to issuing NALs.

[Equipment Marketing](#)

- The Enforcement Bureau entered into Consent Decrees with eight companies regarding the marketing of LED signs used in digital billboards without the required equipment authorization, user manual disclosures, and/or labeling. The companies agreed to pay civil penalties of \$14,000-\$115,000, admitted liability, and agreed to Compliance Plans. (Earlier this year, the Bureau had entered into similar Consent Decrees with 10 companies, with penalties ranging from \$15,000 to \$61,000.)

1800 M Street, NW
Suite 800N
Washington, DC 20036
Tel. 202.783.4141
www.wbklaw.com

WILKINSON) BARKER) KNAUER) LLP

- The Enforcement Bureau entered into a Consent Decree resolving an investigation into whether a retailer advertised and sold noncompliant audio/video transmitters intended for use with unmanned aircraft systems (drones) on its various websites in violation of the Commission’s equipment marketing and amateur radio operator rules. The company agreed to pay a civil penalty of \$35,000, admitted liability, and agreed to a Compliance Plan.
- The Enforcement Bureau released an Enforcement Advisory noting that it has observed that a “growing number of conventional retailers and websites” advertise and sell low-cost, two-way VHF/UHF radios that do not comply with FCC rules. The Bureau reminded the public that such radios – used primarily for short-distance, two-way voice communications – must be authorized by the FCC prior to being imported, advertised, sold, or operated in the United States. The Bureau noted that there is an exception to the FCC authorization requirement for devices that are capable of operating only on amateur frequencies.

Other Notable Actions

- **Formal Complaint Rules:** The Commission adopted an order streamlining and consolidating procedural rules governing formal complaints against common carriers filed under Section 208 of the Act, pole attachment complaints filed under Section 224 of the Act, and formal complaints concerning advanced communications services and equipment filed under Sections 255, 716, and 718 of the Act. Among other things, the Commission amended the rules (1) to clarify that motions to dismiss formal Section 208 complaints are permissible, but that such motions do not suspend filing deadlines unless the staff so orders, and (2) to set a non-binding 270-day “shot clock” for deciding formal complaint cases not already subject to a statutory deadline or regulatory shot clock.
 - In a footnote, the Commission “clarif[ied]” the rule regarding treatment of informal complaints against common carriers to delete reference to the Commission’s “disposition” of such complaints “because the Commission’s practice is not to dispose of informal complaints on substantive grounds.” Commissioner Rosenworcel dissented to the order based on her view that this footnote constituted a change in “longstanding agency practice.” Chairman Pai said that he was “grateful to the career staff” of the Enforcement Bureau for “correcting misinformation that has been peddled about this item” – for example, by making clear that the modification to the informal complaint rules “would not have any impact on how the Commission deals with informal complaints” but “merely clarified existing practice which has been in effect since 1986.”
- **Unauthorized Discontinuance:** The Media Bureau issued two NALs totaling \$30,000 against a licensee of three broadcast translator stations for unauthorized discontinuance of service on 10 occasions and for operating at lower power than authorized on four occasions. The Media Bureau indicated that it would grant pending renewal applications (for a shorter term for two of the stations) “upon resolution of the forfeiture proceeding.” This appears to tie renewal to payment of the proposed forfeitures, and thus appears to be in tension with section 504(c) of the Communications Act, which prohibits the Commission from using an unpaid NAL “to the prejudice” of the person receiving the NAL unless a court has issued a final order requiring payment.
- **EEO Enforcement:** The Commission voted to transfer responsibility for EEO audits and enforcement regarding broadcasters and Multichannel Video Programming Distributors from the Media Bureau to the Enforcement Bureau. It said that such transfer will result in “more effective enforcement” of the EEO rules. The transfer has not yet occurred.
- **Wireless Roaming:** The Commission denied a formal complaint regarding voice and data roaming rates of a nationwide wireless carrier.