

FCC ENFORCEMENT UPDATE

January 7, 2008

Highlights

DTV Transition Enforcement

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Do-Not-Call Enforcement

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This edition summarizes notable FCC-related enforcement matters from October 6, 2007 through January 4, 2008. Questions or comments may be addressed to David H. Solomon at 202-383-3369 or dsolomon@wbklaw.com.

Highlights

- **DTV Transition.** *Nearly \$8 million in proposed forfeitures; more than three dozen citations.*
- **Compliance with Merger Conditions and Consent Decrees.** *A \$1.3 million consent decree for violation of a merger condition and a \$300,000 consent decree for violation of a consent decree.*
- **Unsolicited Faxes.** *Nine proposed forfeitures totaling over \$850,000.*
- **Do-Not-Call.** *A consent decree and a proposed forfeiture totaling over \$500,000.*
- **CPNI.** *Two proposed forfeitures totaling \$300,000.*
- **Sponsorship Identification.** *Two proposed forfeitures against broadcasters totaling over \$75,000.*

DTV Transition Enforcement

- The Commission issued a Notice of Apparent Liability for Forfeiture (“NAL”) proposing a \$7.7 million forfeiture for shipment of digital television (“DTV”) receivers that did not comply with the Commission rules requiring that such receivers have the capability to receive program rating descriptors, block programs from viewing when the program rating meets pre-determined user requirements, and respond to changes in the program rating system (so-called “DTV V-Chip” requirements).
- The Enforcement Bureau issued six NALs totaling nearly \$100,000 against TV receiver retailers for marketing TV receivers with analog tuners without the requisite “Consumer Alert” notifications. The Bureau also issued 38 citations for such violations.
 - The Commission is reportedly considering several additional NALs or potential consent decrees in this area for much higher amounts.
- Enforcement in this area is likely to remain a major Commission priority leading up to the February 2009 DTV analog TV cut-off date.

Merger Condition and Consent Decree Enforcement

- The Commission entered into a \$1.3 million consent decree with a wireless carrier that did not comply with a merger condition requiring that capital expenditures continued to be made with respect to certain assets required to be divested. The consent decree followed a similar settlement agreement of the same amount between the carrier and the Department of Justice.

- The Enforcement Bureau entered into \$300,000 consent decree with a broadcast network for non-compliance with a provision in a prior indecency consent decree. The new consent decree extended the compliance provisions of the prior decree for another three years.

Unsolicited Fax Enforcement

- The Commission or the Enforcement Bureau issued nine NALs proposing \$855,000 in forfeitures against companies that sent unsolicited faxes. One of the NALs was for more than \$400,000 and one was for more than \$335,000.

Do-Not-Call Enforcement

- The Enforcement Bureau entered into a \$500,000 consent decree and issued a \$20,000 NAL involving violations of the Do-Not-Call rules.

CPNI Enforcement

- The Enforcement Bureau issued a \$200,000 NAL for a carrier's lack of a customer proprietary network information ("CPNI") certification and its unlawful use of CPNI gained from another carrier. It also issued a \$100,000 NAL against another carrier for inadequate CPNI certification.
- The new requirement that carriers and Voice over Internet Protocol ("VoIP") providers file CPNI certifications with the Commission annually, beginning March 1, 2008, may lead to additional enforcement action.

Sponsorship Identification Enforcement

- The Enforcement Bureau took three enforcement actions relating to an investigation begun in early 2005 regarding programming involving political commentator Armstrong Williams: (1) It issued a \$40,000 NAL against one broadcaster that did not disclose that it had received payment (\$100 per broadcast) to air the material; (2) it issued a \$36,000 NAL against another broadcaster that did not disclose that a "political" program it aired was furnished to it for free; and (3) it admonished Williams's company for not disclosing to broadcasters that it had been paid by the U.S. Department of Education to include material in its programming.
- The Bureau took these actions against a backdrop of two recent sponsorship identification NALs against a cable operator relating to the use of video news releases ("VNRs"). Numerous VNR investigations remain pending.
- The Commission is reportedly considering a Notice of Proposed Rulemaking ("NPRM") regarding product placement sponsorship identification issues and there has also been discussion of a separate NPRM on VNR-related sponsorship identification issues.

Broadcast Renewal Enforcement

- The Media Bureau issued over \$400,000 in proposed forfeitures (and, in two cases, entered into consent decrees) in connection with its review of broadcast renewal applications. The forfeitures covered such matters as failure to file a timely renewal application and related unauthorized operation, issues/programs lists, children's television commercial limits and related record-keeping, children's television reports, and false statements or certifications. There were two NALs for \$20,000; the rest were all for lesser amounts.

HAC Enforcement

- The Enforcement Bureau issued its first NAL against a Tier III (small) wireless carrier for not having the required number of hearing aid compatible (“HAC”) handsets, in particular, for not having two models that met the inductive coupling standard. The Bureau set a base forfeiture amount of \$15,000 per non-compliant model, as compared to the \$8,000 per model base amount used in HAC labeling NALs. The Bureau also issued HAC labeling NALs of \$24,000 and \$8,000.

Other Notable Actions

- **Dealing with the FCC.** The Enforcement Bureau entered into a \$50,000 consent decree relating to false information on FCC applications. In addition, included in the Media Bureau renewal-related enforcement actions mentioned above were three NALs or consent decrees totaling \$35,000 regarding false statements or certifications. The Enforcement Bureau also issued a \$10,000 NAL for failure to permit inspection, a \$3,600 forfeiture for failure to respond to a staff inquiry and a \$17,500 forfeiture for a false certification.
- **Pirate Radio.** The Enforcement Bureau issued five NALs totaling \$57,000 against pirate radio broadcasters, as well as two forfeitures totaling \$18,450 and nearly 50 warnings.
- **EAS.** The Enforcement Bureau issued six NALs for \$8,000 each for non-compliance by broadcasters with the Commission’s Emergency Alert System (“EAS”) rules.
- **Air Safety.** The Enforcement Bureau issued four NALs totaling \$41,000 for non-compliance with the Commission’s tower lighting and related rules.
- **Public Inspection File/Main Studio Rules.** In addition to public inspection file violations addressed by the Media Bureau in the renewal context, the Enforcement Bureau issued five NALs totaling \$32,000 for violations of the public inspection file rule and two \$7,000 NALs regarding non-compliance with the main studio rule.
- **Equipment.** In addition to the DTV-related equipment NAL referenced above, the Enforcement Bureau took about \$90,000 in additional equipment-related enforcement action, including a \$63,000 NAL.