

FCC ENFORCEMENT UPDATE

July 15, 2008

Highlights

DTV Transition Enforcement

Telephone Consumer Protection Act Enforcement

USF and Related Enforcement

Hearing Aid Compatibility (HAC) Enforcement

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This edition summarizes notable FCC-related enforcement matters from April 11, 2008 through July 14, 2008. Questions or comments may be addressed to David H. Solomon at 202-383-3369 or dsolomon@wbklaw.com.

Highlights

- **DTV Transition Enforcement.** Over \$2.7 million in new enforcement.
- **Telephone Consumer Protection Act Enforcement.** \$1.7 million in proposed forfeitures.
- **USF and Related Enforcement.** Over \$1.1 million in new enforcement.
- **HAC Enforcement.** Over \$260,000 in new enforcement.

DTV Transition Enforcement

- **Labeling.** The Commission issued two Notices of Apparent Liability (“NALs”) totaling \$464,000, and the Enforcement Bureau entered into five Consent Decrees totaling \$236,000, involving retailers’ compliance with labeling requirements for analog-only television receivers. In addition, the Enforcement Bureau issued 16 Citations for failure to provide appropriate labeling on analog-only television receivers.
- **V-Chip.** The Enforcement Bureau entered into two Consent Decrees totaling over \$2 million regarding non-compliance by manufacturers with digital V-Chip rules. In addition, the Commission entered into a \$335,000 Consent Decree settling a prior \$7.7 million NAL. (The reason for the substantial reduction from the original amount was that the company explained in response to the NAL that the facts were not as bad as originally suggested.)

Telephone Consumer Protection Act Enforcement

- **Unsolicited Faxes.** The Commission or the Enforcement Bureau issued 19 NALs proposing forfeitures totaling \$1.7 million for the transmission of unsolicited faxes. Additionally, the Commission or the Enforcement Bureau issued nine Forfeiture Orders totaling more than \$1.4 million.
- **Do-Not-Call.** The Enforcement Bureau issued two \$20,000 NALs involving violations of the Do-Not-Call rules.

USF and Related Enforcement

- **Non-Payment.** The Commission issued a \$924,212 NAL regarding Telecommunications Reporting Worksheets, payments into the Universal Service Fund (“USF”), and related matters. The Enforcement Bureau entered into two Consent Decrees totaling \$209,400 settling similar issues prior to an NAL, and also a \$25,000 post-NAL Consent Decree. Finally, the Commission issued a \$436,765 Forfeiture Order.
- **E-Rate Fraud.** The Enforcement Bureau debarred three individuals and suspended five others for adjudicated fraud relating to the schools and libraries (“E-Rate”) USF program.

Hearing Aid Compatibility Enforcement

- The Enforcement Bureau issued six NALs totaling \$190,000 against wireless carriers for not having the required number of hearing aid compatible (“HAC”) handsets. The Bureau also entered into five Consent Decrees totaling \$78,000 regarding HAC compliance issues.

Formal Complaint on Retention Marketing Granted

- Cable operators filed a formal Section 208 complaint against a Bell Operating Company (“BOC”) alleging that the BOC’s use of information it received in the local number porting process to try to convince its customers to remain with the BOC violated the Communications Act. Ultimately, the Commission held that the practice was an unlawful use of proprietary information of other carriers in violation of Section 222(b) of the Act.
- The procedural history of the case was unusual. The Enforcement Bureau accepted the case on its Accelerated Docket. According to press reports, the Bureau drafted a decision in favor of the complainants but the Chairman directed the Bureau to come out the other way and also to recommend a broader rulemaking proceeding on retention marketing practices of both telecommunications carriers and cable operators. The Bureau then issued such an order. The Commission rejected the Bureau’s decision by a 4-1 vote, with the Chairman issuing the first dissent of his chairmanship. According to press reports, the ultimate Commission order was based on the Bureau’s original draft in favor of the complainants.

Maximum Monetary Forfeitures Adjusted for Inflation

- The Commission increased the maximum forfeiture amounts to account for inflation. New maximum amounts are as follows, with previous amounts in parentheses:
 - **Common Carrier**: \$150,000 per violation or per day of continuing violation/\$1.5 million for a continuing violation (was \$130,000/\$1.325 million).
 - **Broadcast/Cable**: \$37,500 per violation or per day of continuing violation/\$375,000 for continuing violation (was \$32,500/\$325,000). Special broadcast indecency maximum remains \$325,000/\$3 million.
 - **Others**: \$16,000 per violation or per day of continuing violation/\$112,500 for continuing violation (was \$11,000/\$97,500).

Indecency Enforcement

- In the context of a renewal case, the Media Bureau found that a radio routine about “putt[ing] your balls” in “Hooter’s Tees,” and “grab[bing] a handful of Hooter’s T’s,” to the extent the references alluded to female breasts or testicles, was not sufficiently graphic or explicit to constitute indecent material when presented in the context of references to golf balls and tees.

Broadcast Renewal Enforcement

- The Media Bureau issued over \$220,000 in proposed forfeitures and Consent Decrees in connection with its review of broadcast renewal applications. The largest NAL was for \$20,000. The enforcement actions 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, and failure to publicize children’s television reports.

Other Notable Actions

- **International Traffic Exchange.** The Commission issued a \$1.3 million NAL for failure to file required international traffic agreements and amendments, and related violations.
- **Pirate Radio.** The Enforcement Bureau issued four NALs totaling \$40,000, four Forfeiture Orders totaling \$47,000 and over 25 warnings against pirate radio broadcasters.
- **EAS.** The Enforcement Bureau issued an \$8,000 NAL, four Forfeiture Orders totaling \$26,500 and a \$4,000 Consent Decree settling a prior NAL regarding compliance with the Emergency Alert System (“EAS”) rules.
- **Air Safety.** The Enforcement Bureau issued two NALs totaling \$25,000 and two Forfeiture Orders totaling \$20,000 for non-compliance with tower lighting and related rules.
- **Equipment.** The Enforcement Bureau issued \$33,000 in NALs, \$7,000 in forfeitures, and four Citations about equipment compliance unrelated to the DTV transition. The Bureau also negotiated a Consent Decree totaling \$29,400 regarding compliance issues with wireless broadband network devices.
- **Unauthorized Transfer of Control.** The Enforcement Bureau entered into a \$30,000 Consent Decree regarding unauthorized transfer of control of private radio aviation licenses.
- **Environmental Rules.** The Enforcement Bureau entered into a \$16,500 Consent Decree regarding historic preservation compliance and issued a \$10,000 NAL regarding radio frequency (“RF”) radiation.