

## FCC ENFORCEMENT UPDATE

April 4, 2007

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Enforcement

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

### Highlights

- **Children's Programming.** *The Commission entered into a record-setting \$24 million consent decree with a television licensee regarding the requirement to serve the educational and informational needs of children.*
- **Broadcast Renewals.** *The Media Bureau proposed forfeitures totaling more than \$1 million against more than 230 broadcast stations in connection with their renewal applications.*
- **CPNI.** *The Enforcement Bureau proposed forfeitures totaling \$1 million against 10 common carriers for failure to comply fully with the annual customer proprietary network information ("CPNI") compliance certification requirement.*
- **FCC Enforcement Priorities.** *In her annual presentation to the Commission in January 2007, Enforcement Bureau Chief Kris Monteith highlighted four areas: (1) homeland security and public safety; (2) consumer protection; (3) a level playing field to promote competition; and (4) efficient and responsible use of the public airwaves.*

### Children's Programming Enforcement

- As part of an order granting the transfer of control of Univision, the Commission entered into a \$24 million consent decree regarding Univision's compliance with the rule requiring television stations to serve the educational and informational needs of children over the course of a license term. Univision had been counting so-called "telenovelas" as "core" programming serving the educational and informational needs of children on its 24 television stations.
  - This enforcement action is unprecedented. It is nearly three times more than the highest prior enforcement action in Commission history, a \$9 million Notice of Apparent Liability ("NAL") against a common carrier for failing to file certain interconnection agreements.
  - It is not clear at this point to what extent this consent decree will serve as a guide in other cases. The Commission likely had particularly strong leverage in the negotiations here because of the pending transfer of control.
  - As part of the consent decree, Univision agreed to a compliance plan that, among other things, involves designating a Children's Television Compliance Officer, establishing an Educational/Informational Television Programming Advisory Committee, and following special procedures for compliance.
  - Commissioner Adelstein has called for the FCC to be proactive in ensuring that all television licensees comply with the children's programming requirements.

### **Broadcast Renewal Enforcement**

- As part of its review of renewal applications, the Media Bureau issued more than 230 NALs totaling more than \$1 million. The vast majority of the enforcement actions (totaling roughly \$800,000) involved broadcasters who filed their renewal applications late and, in some instances, engaged in unauthorized operation as a result. Other common areas of violations included children's television commercial limits, children's television reports, EEO requirements and public inspection file requirements.
- Because of pending indecency (and, more recently, sponsorship identification) complaints and investigations, the Commission has held many television network affiliate renewals for several years in order to keep the statute of limitations for any forfeiture from expiring. In 2005, the Commission began to allow such stations to obtain renewal if needed for a sale provided the station agreed to enter into an agreement to toll the statute of limitations for any subsequent forfeiture. More recently, apparently as part of a backlog reduction effort, the Commission has been willing to enter into tolling agreements more generally with stations subject to indecency or sponsorship identification renewal "holds."

### **CPNI Enforcement**

- The Enforcement Bureau issued 10 NALs for \$100,000 each against small common carriers that had not executed CPNI compliance certifications in full compliance with the rules.
  - The fact that the carrier executed a compliance certification or described compliance with the underlying substantive requirements was not enough in many of these cases. The Bureau insisted on a certification (and accompanying explanatory statement) that complied fully with the rule.
- The Bureau also issued a \$97,500 forfeiture order against a data broker that had not complied with a subpoena issued as part of the Bureau's CPNI investigations.

### **Unauthorized Transfer of Control Enforcement**

- The Enforcement Bureau entered into a \$200,000 consent decree relating to the unauthorized transfer of control of two broadband personal communications service licenses and numerous fixed microwave licenses. Some of the unauthorized transfers of control resulted in the entity's loss of eligibility for Designated Entity benefits.

### **Unauthorized Operation Enforcement**

- The Enforcement Bureau entered into a \$100,000 consent decree with a cellular licensee for failure to file a timely renewal application and unauthorized operation after the license term expired.
- The Bureau entered into a \$32,000 consent decree with a major retailer regarding unauthorized operation of satellite earth stations. The Bureau also issued three NALs totaling \$32,400 regarding unauthorized earth station operation.
- The Bureau issued four \$10,000 NALs, three forfeiture orders totaling \$20,500 and approximately 40 warnings regarding pirate radio broadcasters. The Bureau issued eight other NALs totaling \$60,100 and four forfeiture orders totaling \$13,700 for various unauthorized operations.

### **E911 Enforcement**

- The Enforcement Bureau entered into a \$75,000 consent decree regarding Phase II E911 compliance.
- In denying several E911 waivers, the Commission referred four Tier I and Phase II carriers to the Enforcement Bureau for possible enforcement action.

### **Tower Enforcement**

- The Enforcement Bureau entered into a \$14,000 consent decree with a wireless carrier regarding compliance with historic preservation rules relating to tower construction.
- The Bureau issued one \$25,000 NAL and two \$10,000 NALs against broadcast stations for non-compliance with RF radiation rules applicable to communications towers.
- The Bureau issued five NALs totaling \$56,000 and two forfeiture orders totaling \$21,200 involving tower lighting and related violations.
- The Commission affirmed four \$10,000 forfeitures involving violations of the RF radiation rules.

### **Equipment Enforcement**

- The Enforcement Bureau issued three NALs totaling \$52,000, a consent decree for \$5,600, four forfeiture orders totaling \$110,000 and 21 citations relating to equipment marketing rules.

### **Television Disabilities Enforcement**

- The Enforcement Bureau entered into three consent decrees totaling \$74,000 with television stations regarding their provision of information in an emergency for persons with hearing disabilities.

### **Other Notable Actions**

- **Confidentiality**. The Enforcement Bureau rejected a request by the recipient of a Letter of Inquiry to keep its response confidential, even in the absence of a Freedom of Information Act request, finding that the confidentiality request did not identify the specific information for which confidential treatment was sought and was overbroad. This case serves as a useful reminder that requests for confidentiality to the Enforcement Bureau should not simply be perfunctory.
- **EAS**. The Enforcement Bureau issued four NALs totaling \$39,000 and four forfeiture orders totaling \$40,600 for violations of the Emergency Alert System rules.
- **Other Broadcast Enforcement**. The Enforcement Bureau took several enforcement actions relating to the public inspection file, main studio, contest, non-commercial underwriting and broadcast of telephone conversation rules.
  - The Bureau is investigating a contest where a participant died from drinking too much water as part of her participation. While apparently no rule violation is involved, this case underscores the importance of a common sense approach to compliance with the contest rule and other requirements.
- **Cable Public File**. The Enforcement Bureau entered into a \$25,000 consent decree with a cable operator regarding compliance with the cable public inspection file rule.

- **Retransmission Consent.** In connection with ruling on complaints that parties to retransmission consent negotiations have not negotiated in good faith, the Media Bureau has begun encouraging the parties to request binding arbitration by the Bureau. Even where it found that a cable operator failed to negotiate in good faith, the Bureau did not take any enforcement action; it simply ordered the parties to negotiate.
- **Telemarketing.** The Commission issued 37 citations for violations of the junk fax rules.
- **Universal Service.** The Commission debarred two companies from participation in the schools and libraries universal support mechanism (“E-Rate Program”) due to their fraudulent activities. It limited the debarment to a shorter period than it otherwise would have been because of the companies’ cooperation with the Department of Justice.
- **Payphone Compensation.** In a formal section 208 formal complaint case, the Commission awarded \$2.8 million in damages (plus interest) to a payphone services provider for violation of payphone compensation rules by a carrier.

### **What’s Ahead?**

- **Indecency.** A decision by the United States Court of Appeals for the Second Circuit on some of the Commission decisions involving the use of expletives should be forthcoming soon. The Third Circuit has not yet scheduled oral argument in the Super Bowl/Janet Jackson case.
- **Sponsorship Identification.** The Commission is considering a consent decree totaling \$12 million with four major commercial radio licensees regarding sponsorship identification requirements in the music “pay-for-play” context.
- **GAO FCC Enforcement Review.** The Government Accountability Office is conducting a broad review of the FCC’s enforcement program. Depending on the results, this could impact the manner in which the FCC conducts its enforcement activities.