

FCC ENFORCEMENT UPDATE

January 3, 2018

This edition summarizes notable FCC-related enforcement matters since October 1, 2017. Questions or comments may be addressed to David H. Solomon at 202-383-3369 or dsolomon@wbklaw.com.

Sponsorship ID

[Sponsorship ID](#)

Universal Service Fund

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Other Notable Actions

- The Commission issued a \$13.37 million Notice of Apparent Liability for Forfeiture (“NAL”) against Sinclair Broadcast Group for failing to make required sponsorship identification disclosures regarding programming that a cancer institute paid Sinclair to broadcast. The programming was broadcast more than 1,700 times and included programming in the form of news segments that aired during the local news as well as some longer-form programming. The news segments had no sponsorship ID disclosures. The longer segments disclosed that the program was sponsored or paid programming with an on-screen graphic of the cancer institute. The Commission found this disclosure inadequate because it did not make clear from whom the station received payment.
 - This is more than three times higher than any prior sponsorship ID enforcement action.
 - Commissioners Clyburn and Rosenworcel both dissented on the basis that the proposed fine was “a mere slap on the wrist” (Clyburn) that “cuts the company a break” (Rosenworcel). Commissioner Rosenworcel said the Commission should seek the highest permissible fine. Commissioner Clyburn suggested Sinclair was receiving “special treatment,” and Commissioner Rosenworcel said the Commission “offer[s] unreasonable and suspicious favor” to Sinclair. The Chairman responded that the proposal of the dissenting commissioners to increase the proposed forfeiture to more than \$82 million “deviates so wildly from our precedent that it will no doubt strike reasonable people as suspicious.” He said he “will leave it to others to speculate as to why they wish to punish this particular company in this particular way.”

[Universal Service Fund](#)

- The Commission released a Consent Decree resolving an investigation into whether a major carrier complied with the E-rate rules in connection with a fraudulent scheme conducted by an employee of the New York City Department of Education (“NYC DOE”) in 2002 to 2008 without the “knowledge or agreement” of the NYC DOE or the carrier. The carrier agreed to return \$17.3 million to the Universal Service Fund, to surrender any claims and appeal rights regarding (according to the accompanying News Release) more than \$100 million in E-rate funds, implement a Compliance Plan, and pay approximately \$350,000 to the U.S. Treasury to settle a related Department of Justice investigation. The company did not admit liability.
 - The Consent Decree had been adopted five months earlier, but release was delayed to allow for a global settlement with the Department of Justice.
 - Consistent with another Commission-level Consent Decree earlier this year, the order adopting the Consent Decree: (1) cites section 4(i) of the Communications Act as authority to enter into the Consent Decree and “affirmatively find[s] it necessary to adopt a consent decree to execute our function of enforcing violations of the Communications Act and our Rules”; and (2) “make[s] clear that, as the resolution of a particular dispute with the consent of both parties, this consent decree has no precedential effect on third parties.”

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- Commission Clyburn (the only Democratic Commissioner at the time of adoption) dissented, criticizing the Commission for settling for “a fraction of [the] harm and impos[ing] no penalty whatsoever.” The Chairman responded that the Consent Decree was negotiated by the Enforcement Bureau under the prior Chairman, that each Commissioner’s office had been briefed by the prior Chairman’s office, that Commissioner Clyburn’s office expressed “no concerns whatsoever” about the agreement at that time, and that “there is contemporaneous written evidence of this.”
- The Commission entered into Consent Decrees settling five NALs released in 2013 regarding Lifeline reimbursement for ineligible subscribers. The NALs involved situations where the companies allegedly over-recovered from the USF amounts ranging from approximately \$10,000 to \$40,000, with proposed forfeitures ranging from \$1.58 million to \$22.4 million. In the first of the five NALs (released three months prior to the others), then-Commissioner Pai had said he was “especially pleased that my colleagues agreed to my request to increase fiftyfold the proposed forfeitures.”
 - Each of the companies agreed to pay a “settlement amount” far below the originally proposed forfeiture: \$1 million instead of \$22.4 million; \$750,000 instead of \$8.75 million; \$425,000 instead of \$11.7 million; \$100,000 instead of \$1.58 million; and \$55,000 instead of \$9.456 million. In explaining why the Consent Decrees served the public interest, the orders adopting the Consent Decrees noted that USAC had recovered the overpayments for ineligible duplicate support. The companies also stipulated they had sought reimbursement for subscribers who had improperly certified eligibility, and agreed to a Compliance Plan.
 - Commissioner Clyburn approved in part and dissented in part. She approved the Consent Decrees because “waste, fraud and abuse must not be tolerated in any of our Universal Service programs.” She dissented because “the Enforcement Bureau under this Chairman continues to show bias. It essentially gives hall passes to large, well-known corporations when wrongdoing is found, while it fines little-known small businesses and individuals substantial sums of money for harms which are often substantially narrower. . . . Any wrongdoing committed by a provider that has accepted an obligation to serve the public should be fairly and consistently met with forfeitures and negotiated settlements that are more than a mere slap on the wrist. Large corporations simply view relatively meager fines as a mere nuisance expense. My wish for the season? That we stop this seemingly preferential trend that consistently benefits one class of provider, and that the Commission’s rules are vigorously and fairly enforced for all.”
- The Enforcement Bureau released a \$100,000 Forfeiture Order against a carrier that did not timely file USF worksheets. The carrier had not responded to the NAL released 15 months prior to the Forfeiture Order.

Misrepresentation

- At the same time as granting a transfer of control of a holding company that owned an inmate-calling service provider, the Commission entered into a Consent Decree settling allegations that material information submitted to the FCC was inaccurate or misleading and that material information had been omitted. The Commission stated that the companies “attempted to persuade” the Chairman to act more quickly on the transfer applications by relying on “inaccurate and incomplete information known to be incorrect,” specifically, by reporting that all necessary state approval had been obtained when they had not been. The Commission referred to the company’s behavior as “egregious,” “cavalier,” and “unacceptable”; the Chairman referred to the behavior as misrepresentation. The Commission found that, in light of the Consent Decree, the behavior did not raise substantial and material qualifications questions. In the Consent Decree, the companies agreed to pay a \$1.7 million penalty and to implement a Compliance Plan relating to the requirements of sections 1.17 and 1.65 of the Commission’s Rules to provide accurate and updated information to the Commission. The companies did not admit liability.
 - Commissioners Clyburn and Rosenworcel issued a Joint Dissenting Statement regarding both the transfer of control and the Consent Decree. Among other things they objected to the “relatively small” penalty, which they referred to as “more like a pat on the back” than a “slap on the wrist.” They also stated that the Commission had never previously granted a transfer of control when “a company has made misrepresentations during the review process.”

Slamming/Cramming

- The Commission released a \$3.9 million Notice of Apparent Liability for Forfeiture (“NAL”) against a carrier for 37 instances of unauthorized changes of long-distance carriers (slamming) and unauthorized charges (cramming) involving 27 consumers and deceptive marketing. A portion of the proposed forfeiture related to the company’s submission of two false third party verification recordings to the Enforcement Bureau (approximately \$380,000) and failure to submit other required information to the Bureau (\$25,000).

Unauthorized Operation

- The Commission released a \$404,166 Forfeiture Order against an individual for unauthorized operation on frequencies licensed to the New York City Police Department, maliciously interfering with police communications, and transmitting false distress calls. The individual had not responded to the NAL.

Unauthorized LPTV Relocations

- At the same time as granting assignment applications, the Media Bureau entered into a Consent Decree regarding the assignors’ use of minor modification rules to relocate LPTV stations in a manner that required major modification applications and related issues regarding the provision of accurate information and updating information. The assignors agreed to pay a \$1.5 million civil penalty, relinquish certain licenses and authorizations, and dismiss certain applications. The assignees agreed to modify certain licenses. Both the assignors and assignees admitted the underlying facts and agreed to Compliance Plans relating to the LPTV rules.

Other Notable Actions

- **Broadcast Rules:**
 - The Commission entered into a Consent Decree with a TV licensee and ordered the Media Bureau to grant a short-term (two-year) renewal in a situation involving: (1) extended periods of silence, (2) noncompliance with the children’s television programming requirements; (3) unauthorized operation; (4) failure to provide an appropriate signal over the licensee’s community of license; and (5) noncompliance with requirements to upload on a quarterly basis its online public file issues/programs lists, children’s commercial limits certifications, and children’s television programming reports, as well as failure to upload a statement certifying the broadcast of local public notice announcements regarding the pendency of its renewal application. The licensee agreed to make a \$100,000 “settlement payment,” admitted to the underlying facts, and agreed to a Compliance Plan.
 - The Media Bureau entered into a Consent Decree with an FM licensee and ordered a short-term (two-year) renewal in a situation involving: (1) public file violations; (2) a related incorrect renewal application certification; and (3) periods of silence. The licensee agreed to pay a \$20,000 civil penalty, stipulated that it violated the rules at issue, and agreed to a Compliance Plan.
 - The Media Bureau released a \$20,000 NAL against a major radio licensee for EEO violations at five stations that were the subject of an EEO audit. The alleged violations related to recruitment, self-assessment, record-keeping, reporting, and public file obligations.
- **Regulatory Fees:** The Media Bureau issued an “Order to Pay or to Show Cause” ordering an AM licensee either to pay \$70,000 in delinquent regulatory fees owed for several years or explain why such payment is not required. The Bureau said that failure to pay or provide an adequate explanation may lead to license revocation.
- **Equipment Marketing:**
 - The Enforcement Bureau entered into a Consent Decree with a manufacturer of audio/visual transmitters

intended for use with drones regarding compliance with the FCC's equipment marketing and amateur radio rules. The company admitted liability, agreed to a Compliance Plan, and agreed to pay a \$180,000 civil penalty.

- The Enforcement Bureau entered into a Consent Decree with a manufacturer and distributor of broadband wireless systems regarding the company's marketing of non-compliant Unlicensed National Information Infrastructure devices that allowed users to modify device settings in a way that could cause harmful interference to weather radar systems used by air traffic controllers. The company admitted liability, agreed to a Compliance Plan, and agreed to pay a \$95,000 civil penalty.
- The Enforcement Bureau also released a \$25,000 NAL against a lighting company that marketed two technically compliant consumer-grade fluorescent lighting models without affixing the FCC logo to the equipment. The Bureau applied upward adjustments to the \$14,000 base forfeiture amount for the two apparent violations because: (1) the company continued to market the devices for six months after becoming aware of the violations, thus apparently intentionally violating the rules; (2) the company had marketed the two models and a third one that was outside the statute of limitations for the NAL without the proper label for at least eight years; and (3) the company had high net sales and gross profits. The Bureau said that it usually applies a downward adjustment in equipment labeling or disclosure cases where the devices complied with the technical rules but did not do so here because the company continued to market the devices for six months after learning of the violation and had "more than sufficient opportunity" to develop a compliance program during the two decades the rules had been in place.