

October 2, 2017

FCC ENFORCEMENT UPDATE

Robocalls

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

VRS Outage

[Robocalls](#)

Pirate Radio

- The Commission released an \$82.1 million Notice of Apparent Liability (“NAL”) against a company and its owner/operator for robocall-related caller ID spoofing, in violation of the Truth in Caller ID Act. The company allegedly was responsible for more than 21 million unsolicited calls and sought to hide the source of the calls by displaying false, unassigned phone numbers in the caller ID information associated with each call. The company’s owner and his staff reportedly joked and laughed about their robocalls being illegal. The Enforcement Bureau initiated the investigation in response to a complaint from a company that provides paging services to doctors, hospitals, and emergency first responders alleging that the robocalls were disrupting those customers’ numbers.
- As a follow-up to a 2014 NAL for a slightly higher amount, the Commission released a \$2.88 million Forfeiture Order against a platform provider that offers robocalling services to third-party clients for facilitating unlawful robocalls. Commissioner O’Rielly dissented, expressing a number of factual legal concerns about the order and again expressing a desire for “greater precision” in FCC enforcement.

GAO Report on FCC Enforcement

Other Notable Actions

[VRS Outage](#)

- The Enforcement Bureau and a Video Service Relay (“VRS”) provider entered into a Consent Decree resolving an investigation regarding a preventable “VRS Service Interruption” (outage) that kept some VRS calls from being made or received for three days. The company agreed to pay “a settlement” of \$252,000 to the Treasury (to be treated as a non-deductible penalty for tax purposes) and to reimburse the Telecommunications Relay Service Fund \$2.7 million for payments it received during the days its VRS service was unavailable to some callers. The company also agreed to various compliance and reporting requirements.

[Pirate Radio](#)

- The Commission released a \$144,344 NAL against three individuals allegedly involved in pirate radio operations in North Miami, Florida. The NAL followed repeated FCC warnings, a prior equipment seizure, and a prior forfeiture action. The proposed fine is the maximum fine allowable by statute for a continuing violation against an entity that is not a broadcast licensee or permittee, cable operator, or common carrier and the highest proposed pirate radio fine ever. The NAL also apparently is the first pirate radio NAL voted on by the full Commission and marks the first time the FCC has proposed finding the property owners where the transmission equipment was located apparently liable for the operation of the station. Chairman Pai stated that the Commission “send[s] a clear message to all pirate radio operators far and wide that we will use the strongest enforcement tools within our disposal to end this illegal practice.”

GAO Report on FCC Enforcement

- The Government Accountability Office (“GAO”) issued a report regarding FCC enforcement. In response to concerns expressed to GAO regarding the transparency and fairness of the enforcement process and the FCC’s emphasis on generating publicity by proposing large fines, GAO recommended that the FCC establish and publish “a communications strategy outlining its enforcement program for external stakeholders.”
- The report noted that the FCC, unlike other agencies such as the FTC or SEC, does not publish an enforcement manual or similar document outlining its enforcement policies and practices.
- The report said that a public communications strategy could, among other things, “(1) clarify aspects of the enforcement process that are not transparent or are confusing to stakeholders, and (2) promote clear, fair, and consistent enforcement.” It said that such a strategy could include “clearly identifying the rights and obligations parties have in the enforcement process, and where and how to obtain additional information regarding questions about the enforcement process, or to report any abuses....”
- The report separately noted that the FCC has recently developed an internal enforcement handbook that “contains and organizes previously disparate policy guidelines and added additional guidelines.” The handbook “sets explicit timelines for major case milestones” and also provides a “case priority rating system to improve efficient use of resources.”
- The report also concluded that “without meaningful program performance goals and measures, FCC lacks important tools for assessing and reporting on the progress of its enforcement efforts and determining whether it should make further changes to its program,” and recommended that the FCC establish and publish quantifiable performance goals and related measures for its enforcement program.

Other Notable Actions

- **Universal Service Fund:** In response to a report from the GAO addressing waste, fraud, and abuse in the Lifeline program, the Chairman issued a variety of instructions to USAC to address the issues, including referring to the Enforcement Bureau instances it discovers of substantial improper enrollments or subscriber certifications. The Chairman testified before a Senate committee that Lifeline is a “top” FCC enforcement priority.
- **Broadcast Renewal Hearing:** The Commission designated for hearing the license renewal application of an FM station. The station apparently had broadcast only one day each year in an effort to avoid automatic cancellation of its license pursuant to Section 312(g) of the Communications Act, which provides for expiration of a broadcast station’s license if it fails to operate for 12 consecutive months. The Commission said the hearing would focus on whether the station’s licensee fulfilled its public interest obligations sufficiently to justify renewal of the station’s license. The Commission said the hearing would be before the full Commission rather than an Administrative Law Judge, and would be conducted by paper filings rather than via live testimony. The station turned in its license rather than proceed with the hearing.
- **Cable Program Carriage:** Reversing an Initial Decision of an Administrative Law Judge (“ALJ”), the Commission determined that a program provider had not met its burden of demonstrating that a cable operator had unlawfully discriminated against it on the basis of affiliation or non-affiliation. Commissioner Clyburn dissented on the basis that the Commission should have deferred to the ALJ. Commissioner O’Rielly, who supported the order, said the process in this case suggests that the ALJ function is “not working as intended” and “may no longer be the most efficient means to complete our work.”
- **Miscellaneous Broadcast Violations:** The Commission released a \$66,000 NAL against an FM radio station regarding apparent violations of Emergency Alert System rules, the local public inspection file rule, various technical rules, and failure to respond to three Enforcement Bureau Notices of Violation and a warning letter.

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- **Children's TV Programming:** The Media Bureau entered into a Consent Decree with a TV station regarding various children's programming requirements, specifically, its failure to (1) display the "E/I" symbol throughout the duration of all Core children's educational and informational programming, (2) provide publishers of program guides information relating to such Core Programming, (3) prepare and place in its public inspection file a Children's Television Programming Report, and (4) disclose its noncompliance in its renewal application and to provide complete and accurate information in its quarterly Children's Television Programming Reports. The licensee agreed to a \$17,500 settlement payment and a Compliance Plan.
- **Equipment Marketing:** The Enforcement Bureau entered into a Consent Decree with a company that sells remote control transmitters for factory remote keyless entry and aftermarket car alarm systems for violations of the equipment authorization and equipment marketing rules. The company had come into compliance prior to the Bureau's investigation. It admitted violations, agreed to pay a \$30,000 civil penalty, and agreed to a Compliance Plan.
- **Jamming:** The Enforcement Bureau released a \$22,000 NAL against a business that was operating a jamming device that interfered with a wireless carrier's service.