

April 11, 2017

FCC ENFORCEMENT UPDATE

This edition summarizes notable FCC-related enforcement matters under new Chairman Ajit Pai. Questions or comments may be addressed to David H. Solomon at 202-383-3369 or dsolomon@wbklaw.com.

Enforcement Process/ Policy

[Enforcement Process/Policy](#)

- Chairman Pai announced that Consent Decrees settling Commission-level Notices of Apparent Liability (“NALs”) or Forfeiture Orders would be acted upon by the Commission rather than the Enforcement Bureau. This ends a practice instituted by Chairman Martin and continued by Chairmen Genachowski and Wheeler permitting the Enforcement Bureau (rather than the full Commission) to act on such Consent Decrees.
- Commissioner O’Rielly suggested an “Enforcement Amnesty Window” for self-reporting of non-intentional violations that do not involve direct harm to consumers, such as missing licensing and other deadline errors and other “minor licensing errors.” He also said that “our enforcement staff should move away from headline grabbing and eye popping penalties that will never be collected.”

Telecommunications Relay Service

[Telecommunications Relay Service](#)

- The Commission entered into a Consent Decree with two related companies settling (for a lower amount) an \$11.9 million Forfeiture Order and two other pending investigations relating to verification of TRS customers and reimbursement from the TRS Fund. The companies agreed to pay a \$3 million civil penalty, to make \$6.1 million in reimbursements to the TRS Fund, and to implement a five-year Compliance Plan. The companies did not admit liability. The order adopting the Consent Decree indicated that “as the resolution of a particular dispute with the consent of both parties, this consent decree has no precedential effect on third parties.” In a statement, Commissioner O’Rielly thanked his colleagues for making this point. He also indicated that he is “not certain” that section 4(i) of the Communications Act provides “direct authority” for Consent Decrees and suggested that further clarity from Congress “would be welcome and appreciated.” (Section 4(i) – upon which the Commission has historically relied for its authority to enter into Consent Decrees – gives the Commission authority to take action as “may be necessary in the execution of its functions.”)

Children’s Television Act

[Children’s Television Act](#)

- The Commission entered into a \$45,000 Consent Decree with a Class A television licensee regarding compliance with the education/informational programming requirements of the Children’s Television Act as well as electronic public inspection file and license renewal application requirements. The licensee admitted liability and agreed to a Compliance Plan. The Commission also indicated that the licensee would receive only a short-term (two-year) renewal.

Broadcast Indecency

[Broadcast Indecency](#)

- The Media Bureau entered into a \$10,000 Consent Decree with a radio licensee in the renewal context. The licensee did not admit liability or agree to a Compliance Plan. The accompanying order found that the broadcasts “are of a nature that could support a forfeiture,” but did not quote any of the language at issue.

Other Notable Actions

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- **Private Land Mobile Radio:** In the Enforcement Bureau's only NAL to date under Chairman Pai, the Bureau proposed a \$13,000 forfeiture against a taxi company for violating the Commission's narrowbanding rules, failing to transmit station identification, and failure to respond to a prior Notice of Violation. The Bureau referred to the narrowbanding rule violations as "egregious" and deserving of a "significant" penalty.
- **Broadcast Political File:** The Media Bureau set aside orders that had admonished 10 television stations for political file violations and, at the same time, had "clarified" that additional materials must be included prospectively. The Media Bureau indicated that the matters were more appropriately addressed by the Commission and returned the underlying complaints to pending status. (Then-Commissioner Pai and Commissioner O'Rielly had criticized the Media Bureau for issuing the original decision on delegated authority and said the decision would need to be revisited in the new administration.) The Media Bureau also entered into a \$13,500 Consent Decree with a television licensee that had failed to put any required documents in its electronic public inspection file, and released a \$7,000 NAL against a TV licensee that failed to include certain documents in its electronic public inspection file.
- **Unauthorized Transfer of Control:** The Media Bureau entered into an \$8,000 Consent Decree with the licensee of radio stations that had entered into a time brokerage agreement that they stipulated constituted unauthorized transfers of control. Specifically, the Consent Decree noted that while the licensee maintained a management presence at the stations' main studio, it did not maintain a staff presence. The licensee agreed that, in the future, it will ensure a full-time presence of both management and staff employed by the licensee.
- **Section 214 Revocation:** The Enforcement Bureau and the Wireline Competition Bureau (at the division levels) released an order to show cause whether the domestic section 214 authorizations of four related companies should be revoked because they apparently ceased providing telecommunications service after surrendering their international section 214 authorizations without filing for Commission approval of discontinuation of domestic service.