

April 7, 2016

FCC ENFORCEMENT UPDATE

This edition summarizes notable new FCC-related enforcement matters during the first quarter of 2016. Questions or comments may be addressed to David H. Solomon at 202-383-3369 or dsolomon@wbklaw.com.

[Slamming/Cramming](#)

- The Commission issued a Notice of Apparent Liability for Forfeiture (“NAL”) proposing a \$29.6 million forfeiture against four co-owned long distance resellers for alleged violations regarding slamming (unauthorized changes in long distance carrier), cramming (unauthorized charges on telephone bills), and providing false and misleading information to the Commission in the form of falsified audio “verification” recordings and accompanying letters to the Enforcement Bureau.
 - As described by the Commission: “[T]he Companies, acting through their telemarketers, apparently engaged in deceptive marketing to obtain information from the consumers that the Companies then used to fabricate audio recordings as evidence of consumer ‘authorization.’ In many cases, the Companies claimed to be calling the consumers from a U.S. Post Office or elsewhere under the pretext of notifying the consumer about a package delivery. The Companies then provided fabricated audio recordings to the Commission as purported proof that consumers had authorized the Companies to switch their long distance carriers.”
 - The Commission said that, “in light of the Companies’ egregious misconduct and the demonstrated harm to consumers,” the Commission also will consider revoking the companies’ FCC authorizations after they have an opportunity to respond to the NAL.
 - Commissioner Pai strongly supported the Commission’s action, describing the companies’ conduct as “appalling” and saying that this “case may be the worst yet. . . . For conduct this egregious, the book should be thrown.” He expressed gratitude to his colleagues for agreeing with his requests to propose \$29.6 million and to consider revoking the companies’ authorizations. Commissioner O’Rielly approved in part and dissented in part without a statement.
- The Commission issued a \$1.68 million cramming Forfeiture Order against two related companies and their individual owner, the same amount proposed in a 2012 NAL. The Commission rejected arguments by the individual owner that the Commission improperly pierced the corporate veil to make him jointly and severally liable with the companies. The Commission also issued a cramming Forfeiture Order against a long distance reseller for \$1.6 million, the same amount proposed in a 2014 NAL.

[Universal Service](#)

- The Commission issued a Forfeiture Order against the same companies subject to the \$1.68 million cramming Forfeiture Order and their individual owner for failure to contribute to the Universal Service Fund and other FCC regulatory programs in the amount of \$1.758 million, the same amount proposed in a 2012 NAL.

[Junk Faxes](#)

- The Commission issued a \$1.8 million Forfeiture Order for sending unsolicited faxes, the same amount proposed in a 2014 NAL.

Slamming/Cramming

Universal Service

Junk Faxes

Open Internet/Privacy

Sponsorship ID

Other Notable Actions

Open Internet Privacy

- The Enforcement Bureau entered into a Consent Decree regarding a nationwide wireless carrier's failure to disclose to consumers that it was inserting Unique Identifier Headers ("UIDH") into consumers' Internet traffic over its wireless network and whether such action violated the privacy protections applying to common carriers in Section 222 of the Communications Act (at a time prior to the Commission's reclassification of broadband as a common carrier service) or the open Internet transparency rule. The Bureau did not make any findings of violations and the company did not admit any violations. The company agreed to pay a fine of \$1.35 million and also agreed to a Compliance Plan providing, among other things, that it would not share the UIDH with a third party to deliver targeted advertising without prior opt-in approval and that it would generate UIDHs using methods that comply with "reasonable and accepted security standards."

Sponsorship ID

- The Enforcement Bureau entered into a Consent Decree with a radio station regarding the sponsorship identification rules in connection with the broadcast of a single announcement on the station 178 times. The licensee agreed to pay a \$540,000 civil penalty, which the Bureau described as the largest payment in FCC history for a single-station violation of the sponsorship identification rules. The licensee also admitted liability and agreed to a Compliance Plan.

Other Notable Actions

- **Broadcast Violations:** The Commission released an \$89,200 Forfeiture Order against a Class A Television licensee for failing to permit inspection of the station on two occasions, failing to maintain a fully staffed main studio, and operating for eight years at a location 0.2 miles away from its authorized location. In imposing the full forfeiture amount proposed in the NAL, the Commission indicated that the "egregious failures" to make the station available for inspection coupled with the eight years of unauthorized operation "would militate against any reduction of the forfeiture even if the licensee had a substantial inability to pay."
- **Unauthorized Operation:** The Enforcement Bureau entered into a Consent Decree with a business radio licensee for operation on 11 unauthorized frequencies. The Consent Decree settled a \$66,000 NAL from 2012. The licensee admitted liability, agreed to a Compliance Plan, and agreed to pay a \$50,000 civil penalty.
- **Pirate Radio:** The Enforcement Bureau issued an Enforcement Advisory warning that unauthorized radio broadcasting is illegal. The Advisory also stated that landlords or advertisers, including nightclubs, concert promoters and local merchants, could be subject to FCC enforcement or other legal actions if they provide support for pirate radio. The Chairman and the Commissioners jointly sent letters to various local, regional, and national organizations (including organizations representing advertisers and property managers), distributing the Advisory and seeking their assistance regarding pirate radio. Commissioner O'Rielly issued a statement praising the Advisory, and referring to the Advisory as a "turning point" in the fight against pirate radio.
- **Children's Television Reports:** The Media Bureau released a \$20,000 NAL against a television station for failing to file with the Commission its quarterly children's programming reports for four of the eight years in its license term (\$17,000) and failing to report those violations in its renewal application (\$3,000). The Media Bureau indicated that it learned of the apparent violations from a review of the station's online public inspection file.
- **Cellphone Jamming:** The Enforcement Bureau settled three NALs previously issued by the Commission for operation of cellphone jamming devices. The Consent Decree payment amounts were reduced from the amounts in the NALs – \$126,000 to \$28,000, \$144,000 to \$20,500, and \$29,250 to \$9,500.