

FCC ENFORCEMENT UPDATE

January 9, 2013

Consumer Protection

Accessibility

CPNI

Network Access

Indecency

Other Notable Actions

This edition summarizes notable FCC-related enforcement matters during the second half of 2012. Questions or comments may be addressed to David H. Solomon at 202-383-3369 or dsolomon@wbklaw.com.

Consumer Protection

- **Prepaid Calling Cards**: The Commission issued a \$5 million Notice of Apparent Liability (“NAL”) for unjust and unreasonable practices under section 201(b) of the Communications Act relating to deceptive marketing of prepaid calling cards. The Enforcement Bureau also issued an Enforcement Advisory on the subject.
- **Slamming**: The Commission issued three NALs of more than \$1 million each for slamming. Commissioner Pai dissented in part to one of the NALs, indicating that he would have preferred a higher proposed penalty.
- **Cramming**: The Commission issued a \$1.68 million NAL for unjust and unreasonable practices under section 201(b) of the Communications Act relating to cramming and deceptive marketing of a directory assistance service to consumers who called expired toll-free numbers by mistake.
- **Junk Faxes**: The Commission issued \$1.6 million and \$608,000 NALs for violations of the unsolicited fax rules.
- **Truth in Billing**: The Enforcement Bureau entered into a \$700,000 Consent Decree with a major wireless carrier regarding compliance with the truth-in-billing rules, the ban on unjust and unreasonable practices in section 201(b) of the Communications Act, and the ban on unreasonable discrimination. The case grew out of complaints that the company switched “grandfathered subscribers” to its mandatory monthly wireless data plans even though it had promised they could retain their existing pay-as-you-go data plans.
- **Number Porting**: The Enforcement Bureau entered into a \$65,000 Consent Decree relating to local number portability rules.
- **PSAP Do-Not-Call Registry**: The Commission adopted rules implementing provisions of the Middle Class Tax Relief and Job Creation Act of 2012 that require creation of a specialized Do-Not-Call Registry for Public Safety Answering Points (“PSAPs”) to prevent the use of automatic dialing or “robocall” equipment to registered PSAP numbers. The rules include special penalties established by the statute: (1) the penalty for unauthorized disclosure of dissemination of a telephone number from the PSAP Do-Not-Call Registry shall be between \$100,000 and \$1,000,000 per incident; and (2) the penalty for uses of automatic dialing or robocall equipment to contact a telephone number on the PSAP Do-Not-Call Registry shall be between \$10,000 and \$100,000 per call.

Accessibility

- **Hearing Aid Compatibility**: The Enforcement Bureau entered into three Consent Decrees regarding compliance with HAC rules: (1) a \$515,000 Consent Decree with a manufacturer; (2) a \$65,000 Consent Decree with a Tier III wireless carrier; and (3) a \$55,000 Consent Decree with a Tier III wireless carrier with only 546 customers in six remote areas in Alaska.

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- *Telecommunications Relay Service*: The Enforcement Bureau entered into a \$900,000 Consent Decree relating to compliance with rules regarding reimbursement from the TRS fund for Video Relay Service. The Consent Decree also involved an agreement to reimburse the TRS fund approximately \$483,000.

CPNI

- The Enforcement Bureau entered into a \$970,000 Consent Decree regarding Customer Network Proprietary Information (“CPNI”) rules and toll-free number anti-warehousing rules. It also entered into \$350,000 and \$150,000 Consent Decrees regarding CPNI opt-out issues.

Network Access

- The Enforcement Bureau entered into a \$1.2 million Consent Decree with a major wireless carrier regarding compliance with requirement that (with certain exceptions) a 700 MHz C-Block licensee not deny, limit, or restrict the ability of their customers to use devices and applications of their choice on the licensee’s C-Block network.

Indecency

- The Department of Justice voluntarily dismissed its action to enforce a 2008 Commission forfeiture order finding that “Married by America” was indecent. Chairman Genachowski stated: “In the wake of the Supreme Court’s decision in *Fox v. FCC*, the Commission is reviewing its indecency enforcement policy to ensure the agency carries out Congress’s directive in a manner consistent with vital First Amendment principles.... In the interim, I have directed the Enforcement Bureau to focus its resources on the strongest cases that involve egregious indecency violations.”
- The Enforcement Bureau has begun denying or dismissing numerous indecency complaints through non-public letters. According to congressional testimony by Commissioner McDowell, since June 2012, the Bureau has reduced the backlog of indecency complaints from 1.5 million relating to 9,700 broadcasts to a half million complaints relating to 5,500 broadcasts.

Other Notable Actions

- **Marketing of Unauthorized Equipment**: The Enforcement Bureau entered into a \$265,000 consent decree with a maker of musical instruments and related devices relating to compliance with equipment marketing rules, and an \$85,000 Consent Decree with another manufacturer.
- **Jammers**: The Enforcement Bureau issued numerous Citations against entities for marketing cellphone or GPS jammers on Craigslist. The Bureau took action based on what it referred to as its “aggressive undercover operations.” It issued another Enforcement Advisory regarding jammers, as well as Spanish and Mandarin Chinese translations. It also announced that it had established a toll-free “Jammer Tip Line.”
- **Unauthorized Operation**: The Commission issued a \$179,000 NAL regarding failure to obtain international section 214 authorization, to pay into the TRS fund, and other related violations. The Commission also issued a \$96,200 NAL against a major energy company for unauthorized operation for periods of six and eight years with respect to private radio licenses it failed to renew. In increasing the proposed forfeiture from the \$26,000 base amount, the Commission emphasized the length of the unauthorized operation, the size of the company, and the fact that the company waited five weeks after discovery of the problem to file requests for Special Temporary Authority. In other actions, the Enforcement Bureau entered into a \$75,000 consent decree regarding a wireless carrier’s unauthorized operation in certain areas, and issued a \$66,000 NAL regarding a private radio licensee’s operation on unauthorized frequencies that interfered with a local 911 operations center.

- **Cable Program Carriage:** The Commission, by a 3-2 vote, affirmed in large part an ALJ decision finding that a cable operator had violated the program carriage rules through carriage of a particular unaffiliated network on a less penetrated tier than affiliated networks. The D.C. Circuit stayed the Commission's decision pending judicial review.
- **Children's Television Commercial Limits:** The Enforcement Bureau issued an Enforcement Advisory reporting on its review of cable and satellite compliance with children's programming commercial limits. The Bureau found no violations of the commercial limits and that the vast majority of operators maintained documents sufficient to verify compliance and made these files available to the public. The Bureau found, however, that over one-third of its public file inspections revealed either missing or late-filed children's programming commercial limits reports. The Bureau reminded cable and satellite operators that these reports must be placed in their public inspection files within 10 days of the end of each quarter. The same day, it issued 10 Notices of Violation against cable and satellite companies regarding children's television commercial limits public file violations and one \$25,000 NAL (which also involved additional missing material from the public inspection file).
- **Cable Signal Leakage:** The Commission issued a \$236,500 NAL against a cable operator, largely related to cable signal limit issues. It also issued Citations to three non-cable operator entities (hospitals or hotels) for violation of the cable signal limit rules.
- **Private Land Mobile Conversion to Narrowband Technology:** The Enforcement Bureau issued an Enforcement Advisory reminding private land mobile radio licensees and equipment manufacturers of the January 1, 2013 deadline for transition to narrowband technology and indicating its commitment to "aggressively" enforce the rules.
- **Forfeiture Litigation:** The Fifth Circuit held that the right of a trial de novo when the Government brings an action to enforce an FCC forfeiture order in district court does not include the right to raise legal challenges to the validity of the forfeiture order. Rather, such legal issues must be raised by filing a petition for review of the forfeiture order in a court of appeals. (Under separate case law, a forfeiture in a non-hearing case may be appealed only if the recipient pays the forfeiture.)