

# WILKINSON ) BARKER ) KNAUER ) LLP

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## FCC ENFORCEMENT UPDATE

Retransmission Consent

*This edition summarizes notable new FCC-related enforcement matters during the third quarter of 2016. Questions or comments may be addressed to David H. Solomon at 202-383-3369 or [dsolomon@wbklaw.com](mailto:dsolomon@wbklaw.com).*

Cramming

### [Retransmission Consent](#)

- The Media Bureau entered into a Consent Decree with a major television group owner regarding the Commission's rule prohibiting television licensees from negotiating retransmission consent agreements on behalf of non-owned stations. While the company did not admit liability, the Consent Decree includes a finding that the company engaged in such negotiations on behalf of 36 non-owned stations. The company agreed to make a \$9.495 million "settlement payment" and to implement a compliance plan.

911/Network Outages

### [Cramming](#)

- The Enforcement Bureau entered into a Consent Decree with a major wireline carrier regarding the inclusion of unauthorized third-party charges for purported directory assistance service. The Drug Enforcement Administration had referred the matter to the Bureau in connection with an investigation of a drug and money laundering operation involving the third parties at issue. The carrier agreed to pay a civil penalty of \$950,000 and agreed to a compliance plan that, among other things, includes refunds to customers and termination of third-party billing, with certain exceptions. The carrier agreed to an admission of facts, but not to an admission of liability. The accompanying News Release indicated that the refunds are expected to total \$6.8 million.
- Following up on Notices of Apparent Liability ("NALs") issued in 2013 and 2014, the Commission released Forfeiture Orders against three related carriers totaling \$11 million for slamming, cramming, and misleading marketing. It reduced the overall amount proposed in the NALs by \$1.75 million based on factual uncertainty regarding one issue.

Unauthorized Transfer of Control and Unauthorized Operation

### [911/Network Outages](#)

- The Enforcement Bureau entered into a Consent Decree with a wireless carrier regarding compliance with the 911 service reliability and network outage notification and reporting rules. The carrier admitted liability, agreed to a compliance plan, and agreed to pay a \$2.4 million civil penalty. The Bureau indicated that, in assessing the civil penalty, it took into consideration the fact that four of the five outages took place in remote locations in Alaska.

Universal Service

### [Unauthorized Transfer of Control and Unauthorized Operation](#)

- The Enforcement Bureau entered into a Consent Decree with a major railroad company relating to the unauthorized transfer of control or assignment of 30 wireless licenses and unauthorized operation of more than 100 wireless licenses. The company agreed to pay a \$1.2 million civil penalty, admitted liability, and agreed to a compliance plan. The company had disclosed the violations to the Commission after an internal audit.
- The Media Bureau entered into a Consent Decree with a television group owner in connection with a possible violation of the prohibition on unauthorized transfers of control. The issue arose in connection with the company's efforts to obtain an injunction to enforce a Shared Services

Felony Convictions

Other Notable Actions

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Agreement and Joint Sales Agreement regarding a station that had been sold to a third party subject to a Bureau-imposed condition that the agreements would no longer apply. The FCC and Department of Justice opposed the injunction effort, and the FCC stated its intention to initiate a proceeding to determine whether the company's licenses should be revoked. As part of the Consent Decree, the company agreed to make a \$700,000 "settlement payment." The Consent Decree did not include a compliance plan and it included an express statement that the company did not admit liability.

- The Enforcement Bureau entered into a Consent Decree terminating an investigation regarding a nationwide wireless carrier's operation of microwave stations it acquired from other entities at variance from the stations' authorizations. The company agreed to pay a \$450,000 civil penalty, admitted liability, and agreed to a compliance plan. The Consent Decree settled a prior \$640,000 NAL.

## Universal Service

- **E-rate:** By a 3-2 vote, the Commission released a \$106,425 NAL against a major carrier for alleged violations of the lowest corresponding price ("LCP") rule applicable to the E-rate program. Commissioner Pai dissented on the basis that the Commission improperly treated the alleged violations as continuing for statute of limitations purposes until they were cured. Commissioner O'Rielly also dissented, without a statement. In recent years, the Commission has been signaling its intent to pay increased attention to the LCP rule. This is the Commission's first enforcement action regarding that rule.
- **Lifeline:** The Enforcement Bureau entered into a Consent Decree with a carrier regarding several thousand improper Lifeline certifications on tribal lands in Hawaii. The carrier agreed to repay the Universal Fund \$825,000 and to withdraw its pending appeal regarding approximately \$918,000 in previously frozen Lifeline reimbursements. The Consent Decree also included a Compliance Plan and an admission of liability but no penalty or other payment to the United States Treasury.
- **Failure to File Forms:** The Enforcement Bureau released a \$100,000 NAL against a carrier for failure to file two Telecommunications Reporting Worksheets (Form 499).

## Felony Convictions

- The Enforcement Bureau entered into a Consent Decree with a major equipment manufacturer and an affiliate regarding failure to report felony convictions on wireless license applications. The companies agreed to pay a \$175,500 civil penalty, admitted liability, and agreed to a compliance plan. In the order adopting the Consent Decree, the Bureau stated that the companies' failure to disclose the felonies was "particularly troubling" because the convictions (involving the Foreign Corrupt Practices Act) "included misdeeds involving foreign telecommunications regulators," but that a Consent Decree was appropriate based on the "totality of the circumstances," including that the companies corrected the applications on their own initiative and fully cooperated with the investigation.

## Other Notable Actions

- **Unlicensed RFID Readers:** The Enforcement Bureau entered into a Consent Decree with a small energy data company for operating Radio Frequency Identification readers near railways to monitor traffic without required licenses. The company admitted liability, agreed to pay a \$195,000 civil penalty, agreed to relinquish its one FCC licenses, and agreed to a contingent compliance plan in the event it obtains an FCC license in the next three years.
- **Equipment Marketing:** The Enforcement Bureau entered into a Consent Decree regarding the marketing of an Unlicensed National Information Infrastructure ("U-NII") Wi-Fi router that permitted operation with higher powers than permitted by the rules through user manipulation of country codes. The company admitted liability,

agreed to pay a \$200,000 civil penalty, and agreed to a compliance plan. Among other things, the compliance plan involves a commitment to take steps to support the development of software by third-parties, including open-source software for use with its routers, even though the FCC's rules do not address such matters. In this connection, the order adopting the Consent Decree referred to "Commission policy to foster innovation by enabling novel uses of technology" and the accompanying News Release spoke positively about this commitment. This action suggests an interest by the Enforcement Bureau in using Consent Decrees to further policy goals that may not be directly related to the alleged violations at issue.

- **Caller ID Spoofing:** The Enforcement Bureau released NALs of \$25,000 each against two individuals for allegedly falsifying or faking their phone number with the intent to cause harm to the ex-wife of one of the individuals as part of a campaign of harassment and stalking of her, in violation of the Truth in Caller ID Act of 2009 and the FCC's implementing rules.
- **Consent Decree Violation:** The Enforcement Bureau entered into a Consent Decree with a carrier resolving an investigation into whether the carrier violated a prior Consent Decree by not timely making full payment and violated the same set of rules (various filing and payment rules) that were the subject of the prior Consent Decree. The carrier admitted liability, agreed to a Compliance Plan, and agreed to pay a \$75,000 civil penalty in installment payments and to pay an additional \$175,000 if it does not make the Consent Decree payments or violates the relevant rules at issue.
- **900 Calls:** The Enforcement Bureau denied a 2008 formal complaint alleging that a wireless carrier violated sections 201(a) and 201(b) of the Communications Act by having a policy of not transmitting calls from its subscribers to pay-per-call 900 services.