

April 4, 2018

FCC ENFORCEMENT UPDATE

This edition summarizes notable FCC-related enforcement matters since January 1, 2018. Questions or comments may be addressed to David H. Solomon at 202-383-3369 or dsolomon@wbklaw.com.

Buildout and
Discontinuance Rules

[Buildout and Discontinuance Rules](#)

- Straight Path Communications (and Verizon as the buyer of Straight Path licenses) paid a civil penalty of \$614.3 million in satisfaction of a January 2017 Consent Decree between the Enforcement Bureau and Straight Path resolving alleged violations by Straight Path of buildout and discontinuance rules in connection with approximately 1,000 wireless licenses. This payment satisfies a requirement in the Consent Decree that Straight Path pay to the United States Treasury 20 percent of the sales price for its licenses if sold. This payment is in addition to the \$15 million penalty that Straight Path previously paid under the Consent Decree.
 - The News Release accompanying the payment said that this is the largest civil penalty ever paid to the U.S. Treasury to resolve an FCC investigation.

Universal Service Fund

[Universal Service Fund](#)

- The Commission released an \$18.7 million Notice of Apparent Liability for Forfeiture (“NAL”) against a telecommunications reseller for defrauding the Universal Service Fund Rural Health Care (“RHC”) Program. The NAL alleges that the company violated Section 201(b) of the Act and the RHC competitive bidding rule through, among other things, (1) its financial relationship with a program consultant, and (2) its use of documents containing forged, false, misleading, and unsubstantiated information, including material misrepresentations, to increase its receipt of payments.
 - While the Commission did not overrule any prior case law to the contrary, it calculated the proposed forfeiture amount based on the assumption that the violations were one-time rather than “continuing violations” for statute of limitations purposes.
 - The Commission also ordered the company to submit a report explaining why the Commission should not initiate proceedings to revoke the company’s FCC authorization. Commissioner Clyburn encouraged the staff to work with relevant state and federal authorities to support bringing criminal charges against the company.

Noncommercial
Underwriting Rules

[Noncommercial Underwriting Rules](#)

- The Enforcement Bureau entered into a Consent Decree with a noncommercial radio broadcaster for violations of the Commission’s underwriting rules, which prohibit noncommercial stations from broadcasting announcements that promote the products, services, or businesses of its financial contributors. The licensee admitted liability, agreed to pay a civil penalty of \$115,000, and agreed to a Compliance Plan that lasts for four years and requires the licensee to submit draft compliance documents (operating procedures, compliance manual, training materials) to the Enforcement Bureau in advance of their use. The licensee also agreed to a ban on underwriting announcements for a year.
 - The accompanying News Release said this is the largest penalty for violations of the noncommercial underwriting rules.

Pirate Radio

Appropriations
Legislation

Other Notable Actions

Pirate Radio

- Working with the U.S. Attorney's Office, the U.S. Marshals Service, and the Boston Police Department, the Enforcement Bureau seized radio transmission equipment from two radio stations in Boston that were operating illegally. Commission O'Rielly issued a statement praising the "swift and stern" action and said that "Chairman Pai's leadership in this space reaffirms that this FCC will not sit idly by while pirates flaunt our rules." He also expressed his "strong support" for legislative efforts to give the Commission increased enforcement tools to combat pirate radio, "including enhanced fines and also the ability to impose liabilities on landlords."
- As part of its stepped-up pirate radio efforts under Chairman Pai, the Enforcement Bureau issued numerous Notices of Unlicensed Operation.

Appropriations Legislation

- The Consolidated Appropriations Act included three enforcement-related provisions:
 - A statutory provision requiring the FCC to include in press releases accompanying NALs "a disclaimer" that NALs should be treated only as allegations and that the amount in the NAL is the maximum forfeiture that can be imposed.
 - A provision in an Explanatory Statement accompanying the Act that directs the FCC to submit quarterly reports to the House and Senate Appropriations and Commerce Committees on "the status of its efforts on tracking and collecting monetary penalties assessed by the agency."
 - A provision in an Explanatory Statement accompanying the Act that directs the FCC, within 90 days of enactment, to deliver to the House and Senate Appropriations Committees a report on its efforts to resolve call completion issues and to prevent discriminatory delivery of calls to any area of the country, including information on the last year of call completion complaints and the Commission's resulting enforcement actions.

Other Notable Actions

- **Misrepresentation/Lack of Candor:** The Enforcement Bureau revoked the wireless radio licenses of an entity that did not appear for a designated revocation hearing regarding its failure to disclose in various applications that its principal had been convicted of a drug felony.
- **Unauthorized Assignments of License/Transfers of Control:** The Media Bureau entered into a Consent Decree with a broadcast radio licensee regarding a corporate reorganization that resulted in the unauthorized pro forma assignments of license or transfers of control of 86 licenses. The licensee stipulated that it violated the Communications Act and FCC rules, agreed to pay a \$15,000 civil penalty, and agreed to a Compliance Plan.
- **Inflationary Adjustments in Maximum Forfeiture Amounts:** Consistent with 2015 legislation, the Enforcement Bureau made an annual increase of approximately two percent in the maximum forfeiture amounts.
- **Unauthorized Operation/Unauthorized Equipment:**
 - The Enforcement Bureau released a \$22,000 NAL against a company that designs, develops, manufactures, and sells its Software Defined Radio technology to companies in the utilities, defense, oil and gas, and transportation industries for causing harmful interference to over 200 base stations of a nationwide wireless provider while operating without a license and with unauthorized equipment.
 - The Enforcement Bureau entered into a Consent Decree with a company that manufactures and markets fully assembled LED signs. The company agreed to pay an \$18,000 civil penalty, admitted that it violated the equipment authorization and marketing rules, and agreed to a Compliance Plan.