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ENFORCEMENT UPDATE

This edition includes notable FCC and FTC enforcement actions during the second quarter of 2022 that may be of interest to telecom, media, and tech companies.

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FCC MATTERS

ACCESSIBILITY

The Enforcement Bureau granted an informal accessibility complaint, concluding that a telecommunications provider failed to demonstrate that its visual voicemail service is accessible to and usable by individuals with disabilities (unless not readily achievable) as required by Section 255 of the Communications Act of 1934. The Order is the first of its kind, where the accessibility issue was not resolved through the Request for Dispute Assistance process, the consumer filed an informal complaint, and the Bureau granted the informal complaint. The provider petitioned for reconsideration of the Order, arguing that the consumer did not make a prima facie case and that the issue was not related to the accessibility of the visual voicemail service but was related to the customer's use of a VPN, and raising other legal defenses. That petition remains pending.

The Enforcement Bureau issued a Notice of Apparent Liability for Forfeiture, or NAL, against the same telecommunications service provider, proposing a $100,000 forfeiture penalty for failing to provide documentation in response to the accessibility enforcement investigation into its visual voicemail service. This NAL marks the first time that EB has issued an NAL in connection with an investigation conducted to resolve an accessible telecommunications consumer complaint.

ANNUAL WORKSHEET FILING

The Enforcement Bureau issued an NAL proposing a penalty of $75,000 against a telecommunications service provider for multiple failures to cooperate with USAC's verification functions. According to the Enforcement Bureau, the provider failed repeatedly to respond to directives from USAC, and to retain and provide to USAC records that justify financial and other information reported in its 2019 and 2020 Telecommunications Reporting Worksheets, in violation of section 54.711(a) of the FCC's rules.

RURAL HEALTH CARE

The Enforcement Bureau entered into a consent decree settling its investigation into whether a telecommunications carrier violated the FCC's Rural Health Care Program rules governing the determination of rural rates. The Bureau found that the carrier had failed to use any of the three rate-setting methods permitted under section 54.607 and failed to provide documents sufficient to demonstrate the process the carrier used to set its rates. To settle this matter, the carrier agreed to a total settlement value of $1,204,445.24, including (a) a repayment to the Universal Service Fund in the amount of $1,004,445.24 and (b) a civil penalty to the United States Treasury in the amount of $200,000. The carrier also agreed to implement enhanced compliance measures in connection with its participation in the Rural Health Care Program.

FOREIGN OWNERSHIP

The FCC issued an NAL against a telecommunications carrier proposing a fine of $660,639 for apparently exceeding the statutory limits for ownership by foreign individuals or entities holding equity or voting interests in FCC-issued licenses without Commission approval. The FCC found that, over the course of several years, the ownership of the company and control of its FCC licenses were transferred repeatedly to foreign individuals and entities without accurate disclosure to and review by the Commission as required by law. As a result, control of its FCC licenses and international section 214 authorization passed to foreign entities that were not vetted for compliance with the Commission's rules or subject to review by Executive Branch agencies for national security, law enforcement, foreign policy, or trade policy concerns.

LIFELINE

The Enforcement Bureau issued a consent decree settling its investigation into whether an Eligible Telecommunications Carrier providing Lifeline services in several states violated the Lifeline Program rules by: (i) seeking Lifeline support for ineligible and duplicate Lifeline accounts; (ii) seeking Lifeline support for deceased individuals; (iii) filing improper Form 497s; (iv) failing to de-enroll ineligible subscribers; (v) failing to adequately screen, train, or supervise the third-party sales agents the company used to enroll Lifeline subscribers; and (vi) failing to maintain proper procedures to ensure compliance with the FCC's rules. In 2018, the FCC issued an NAL proposing a forfeiture totaling $63,463,500 in connection with these apparent violations of the Lifeline Program rules. To settle this matter, the company agreed to a consent decree with the FCC and a settlement with the Department of Justice involving (1) a previously-paid repayment amount of $15,063,935.45 to the Universal Service Fund; (2) an additional repayment amount of $1,487,249.99 to the Universal Service Fund; and (3) a payment of $67,050 to the United States. The company also agreed to implement enhanced compliance measures in connection with its participation in the Lifeline Program.

PROHIBITED COMMUNICATIONS RULE

The Enforcement Bureau issued an NAL proposing a forfeiture of $100,000 against a broadband service provider for repeatedly engaging in prohibited communications of its bidding and bidding strategies during the Commission's Rural Digital Opportunity Fund Phase I Auction (Auction 904), and its failure to timely report such prohibited communications. The Bureau found that, the broadband provider repeatedly communicated its bidding, bidding strategies, and bidding results to a third party in violation of section 1.21002(a) and failed to report these communications to the FCC in violation of section 1.21002(e) within the required five-day reporting window.

OTHER NOTABLE MATTERS

SPOOFING/ROBOCALLING

The Enforcement Bureau continues to sign memoranda of understanding ("MOUs") with state attorneys general for robocalling investigations, with agreements now in place with 36 states plus the District of Columbia. According to the FCC, these MOUs establish critical information sharing and cooperation structures to investigate spoofing and robocall scam campaigns, and partnering with states can provide critical resources for building cases and preventing duplicative efforts in protecting consumers and businesses nationwide.

FCC Chairwoman Jessica Rosenworcel also signed a MOU on combatting robocalls with the Canadian Radio-television and Telecommunications Commission Chairperson and Chief Executive Officer Ian Scott.

RESISTING COOPERATION WITH ENFORCEMENT BUREAU INVESTIGATION

The FCC denied applications for review and associated requests for stay of investigation filed by a radio broadcaster. The FCC issued a letter of inquiry to determine whether the broadcaster had continued to operate its radio station after being informed that its license had expired. The broadcaster did not respond to the letter of inquiry but instead filed a motion to quash and a stay motion. The Enforcement Bureau denied these motions and the broadcaster filed an application for review and a renewed motion for stay with the FCC. The FCC denied the application for review and renewed stay motion and directed the broadcaster to respond to the letter of inquiry.

UNAUTHORIZED TRANSFER OF CONTROL AND VIOLATION OF A CONSENT DECREE

The Enforcement Bureau entered into a consent decree with a holding company with subsidiaries that use wireless radio licenses in connection with their operation of golf and country clubs, business clubs, sports clubs, and alumni clubs throughout the United States. The company had entered into a consent decree with the Bureau in 2019 to resolve an investigation pertaining to unauthorized transfers of control and assignments of licenses in the wireless radio service. In its 24-month compliance report under that consent decree, the company disclosed multiple instances of noncompliant conduct, including the acquisition and sale of wireless radio licenses without prior FCC approval, providing incorrect information in Commission filings, and failure to report instances of noncompliance as required by the consent decree. To settle this matter, the company and the FCC entered a new consent decree in which the company agreed to establish a compliance plan and pay a civil penalty of $275,000.

INTERRUPTING PUBLIC SAFETY COMMUNICATIONS

The FCC issued an NAL against an individual for interfering with radio communications of the United States Forest Service while it attempted to combat the 1,000-acre Johnson Fire near Elk River, Idaho. During the FCC's investigation, the individual admitted that, between July 17, 2021, and July 18, 2021, they made unauthorized radio transmissions on government frequencies, in violation of Sections 301 and 333 of the Communications Act, as well as Sections 1.903A and 97.101D of the FCC's rules. The FCC proposed a monetary penalty of $34,000, which is the largest fine of its type.

FTC MATTERS

MISREPRESENTATION OF INTERNET SPEEDS

The FTC and the state of California reached a settlement with an Internet service provider in a May 2021 suit alleging that the provider violated the FTC Act and state law by misrepresenting Internet speeds that would be provided and by charging consumers for higher and more expensive service levels than the company did or could provide. The settlement, among other things, requires the provider to disclose at or before the point of sale the speeds that a particular new customer is likely to receive based on their location, and how those speeds may impact the use of certain content and services. Specific to California, the settlement requires the company, among other things, to pay $8.5 million in investigation and litigation costs along with $250,000 to be distributed to California consumers harmed by the practices, and to deploy fiber-optic Internet service to 60,000 residential locations in California over four years, which the settlement agreement estimates as requiring a $50 to $60 million investment.

ROBOCALLING

The FTC approved a proposed consent decree with a VoIP provider alleged to have facilitated unlawful telemarketing robocalls by continuing to provide VoIP services to customers it knew or should have known were using those services to deliver prerecorded robocalls with spoofed Caller ID to numbers on the Do Not Call Registry. The settlement includes a $3,356,190 judgment that is suspended based on inability to pay. It also, among other things, prohibits the provider from providing service without having automated procedures in place to block calls that display unassigned, invalid, or unauthenticated numbers, and requires the company to screen potential customers.