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ENFORCEMENT UPDATE

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

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SPOOFING/ROBOCALLING

The FCC proposed a \$116,156,250 fine against an individual and his company in connection with an apparent robocall/access stimulation (i.e., traffic pumping) scheme involving nearly 10 million robocalls. The Notice of Apparent Liability alleges that the robocaller specifically targeted calls to toll free numbers because he received financial compensation for each of those calls as part of an improper access stimulation arrangement with his local exchange carrier.

The Enforcement Bureau issued orders demanding that seven voice service providers show cause as to why the FCC should not remove them from the Robocall Mitigation Database for failure to take key robocall mitigation steps. Removal would require all intermediate providers and terminating voice service providers to cease carrying the companies' traffic.

The Enforcement Bureau ordered eight voice service providers to stop carrying traffic regarding a known robocall scam marketing auto warranties. The Enforcement Bureau also notified all U.S. voice service providers that they may block calls or cease to accept traffic from these eight providers. The robocalls were coming from Roy Cox, Jr., Aaron Michael Jones, their Sumco Panama companies, and international associates. This robocall operation is also the target of an ongoing investigation by the FCC's Enforcement Bureau and a lawsuit by the Ohio Attorney General.

DATA PRIVACY

FCC Chairwoman Rosenworcel sent letters to the top 15 mobile service providers requesting information about their geolocation data practices. The letters asked providers about how long and why they retain geolocation data, safeguards they have in place to protect the data, and their processes for sharing geolocation data with law enforcement and others. Chairwoman Rosenworcel released the providers' responses, along with a statement that she had asked the FCC's Enforcement Bureau "to launch a new investigation into mobile carriers' compliance with FCC rules that require carriers to fully disclose to consumers how they are using and sharing geolocation data."

RURAL DIGITAL OPPORTUNITY FUND AUCTION

The FCC proposed \$4,353,773.87 in fines against 73 applicants in the Rural Digital Opportunity Fund auction (Auction 904) for apparently violating Commission requirements by defaulting on their bids between July 26, 2021 and March 10, 2022. The FCC alleges that the applicants unlawfully defaulted on their respective bids by withdrawing applications in certain areas, or by failing to meet deadlines and requirements to which they agreed when they participated in Auction 904.

CHILDREN'S PROGRAMMING

The FCC issued a Notice of Apparent Liability covering multiple broadcast television licensees that allegedly violated rules limiting commercial matter in children's programming by airing program-length commercials distributed by Sinclair Broadcast Group. In this case, a commercial for Hot Wheels Super Ultimate Garage typically was aired on eleven occasions during eight 30-minute-long episodes of Team Hot Wheels. The Commission concluded that airing "a commercial for a Hot Wheels-themed toy during a Hot Wheels-themed show fits squarely within the Commission definition regarding what constitutes a program-length commercial." The FCC proposed a combined forfeiture of \$3,374,000, including \$2,652,000 for Sinclair.

TELECOMMUNICATIONS RELAY SERVICE FUND

The Enforcement Bureau entered into a Consent Decree terminating its investigation into an Internet Protocol Captioned Telephone Service provider's failure to collect self-certifications that contained required language, failure to obtain compliant self-certifications before requesting compensation from the TRS Fund, and submission of twenty-two requests to the TRS Fund Administrator that included inaccurate information despite being represented, under penalty of perjury, as accurate. The company agreed to implement a comprehensive remediation plan to collect compliant self-certifications from all registered users and pay a \$400,000 civil penalty.

EMERGENCY BROADBAND BENEFIT PROGRAM

The FCC issued a Notice of Apparent Liability against a broadband service provider and its CEO proposing a \$220,210 penalty for apparent violation of the federal wire fraud statute and the Commission's rules in connection with their participation in the Commission's Emergency Broadband Benefit Program. The FCC alleges that the company made misrepresentations to gain Commission authorization to be a participating provider in the EBB Program and then used that authorization to defraud consumers. Although the company never filed for or received disbursements from the EBB Program, it promised consumers that they would receive EBB Program-discounted broadband services and devices in exchange for online electronic payments to the company, but the company never delivered the broadband services or devices.

ACCESSIBILITY

The Enforcement Bureau issued a Notice of Apparent Liability for Forfeiture, or NAL against a 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 proposed a penalty of \$153,000 against a telecommunications service provider for failing 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.

EQUIPMENT AUTHORIZATION

The FCC issued a Forfeiture Order assessing a \$685,388 fine against a seller of audio and video electronics and accessories for unlawfully marketing thirty-two models of wireless microphones that did not comply with the FCC equipment authorization rules and emissions power and spectrum band requirements. The FCC significantly increased the base forfeiture amount, citing the company's repeated, continuous, and more than a decade-long marketing of noncompliant radio frequency devices.

The Enforcement Bureau issued a citation and order against a purveyor of wellness products that it alleges was unlawfully marketing radio frequency devices without FCC authorization. The Enforcement Bureau directed the company to comply with the Commission's equipment authorization requirements for these devices, and to cease any marketing of unauthorized radio frequency devices or face potential monetary forfeiture and other sanctions.

OTHER NOTABLE MATTERS

FAILURE TO RESPOND TO INVESTIGATION/CPNI

The Enforcement Bureau issued a Notice of Apparent Liability proposing a \$100,000 penalty against a company for failing to adequately and promptly respond to an inquiry as part of the Bureau's investigation into an alleged security flaw in the company's "My Mobile Account" app, which may have permitted unauthorized access to consumer proprietary network information. The Enforcement Bureau alleges the company provided an incomplete and delayed response to its initial formal inquiry, and failed to respond timely to a subsequent FCC order to respond with specific details.

UNAUTHORIZED OPERATION

The Enforcement Bureau issued a Notice of Apparent Liability proposing a \$20,000 fine against a telecommunications service provider for operating without an authorization under Section 214 of the Communications Act, failing to report several pro forma changes in the company's ownership structure, and failing to update its pending application to reflect these ownership changes.

LOW POWER FM

The FCC issued a \$25,000 fine against a Low Power FM licensee for failing to operate the Station in accordance with the terms of its FCC authorization and the applicable LPFM technical rules, for failing to make the Station available for inspection, and for failing to maintain EAS equipment.

PIRATE RADIO

The Enforcement Bureau's regional offices issued numerous notices of illegal pirate radio broadcasting, particularly in New York and Florida.

FTC MATTERS

DATA PRIVACY

The FTC filed a lawsuit in U.S. District Court against data broker Kochava Inc. alleging that Kochava's sale of geolocation data from hundreds of millions of mobile devices, described as the "unfair sale of sensitive data," violates the FTC Act's prohibition on "unfair or deceptive acts or practices in or affecting commerce." The FTC's complaint asserts that this data allows tracking of consumers' movements to and from sensitive locations, including locations associated with medical care, reproductive health, religious worship, mental health care, homeless and domestic violence shelters, and addiction recovery. The complaint seeks an injunction against future violations of the FTC Act.

