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ENFORCEMENT UPDATE

This edition includes notable FCC and FTC enforcement actions during the first half of 2023 that may be of interest to telecom, media, and tech companies.

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SPOOFING/ROBOCALLING

The FCC continues to take aggressive actions against illegal robocall/spoofing operations. In May, the Enforcement Bureau issued its first-ever “roboblocking” order, ordering all voice service providers to block and cease accepting traffic from international gateway provider One Eye. According to the FCC, One Eye facilitated robocall campaigns that involved the impersonation of a major financial institution and claims of “preauthorized order[s]” placed in consumers’ names. The Enforcement Bureau issued “cease and desist” letters to several companies, including SIPphony LLC, Vultik, Inc., and Avid Telecom. The letters directed the providers to investigate suspect traffic and take steps to stop illegal robocalls or risk having their traffic blocked by downstream voice providers. The FCC released a forfeiture order imposing a forfeiture of \$5,134,500 against John M. Burkman, Jacob Alexander Wohl, and J.M. Burkman & Associates LLC for making 1,141 unlawful robocalls in connection with the 2020 elections.

FOREIGN OWNERSHIP

Enforcement Bureau leadership has signaled that rules implicating foreign ownership and national security will be a high priority going forward. In late June, the Enforcement Bureau entered into two separate consent decrees settling potential violations of the FCC’s foreign ownership rules. In the first, United Wireless Holdings agreed to pay a \$15,000 penalty and commit to a compliance plan to resolve the FCC’s investigation into certain transfers involving foreign citizens. Although United Wireless previously was authorized for 100 percent foreign ownership, the company allegedly failed to seek required prior consent for subsequent ownership transfers.

The second consent decree, with DOCOMO Pacific, Inc., resolved an investigation into whether the company exceeded its previously approved foreign ownership limits. DOCOMO Pacific agreed to pay a \$50,000 penalty and committed to a compliance plan. In a break with prior compliance plan terms, DOCOMO Pacific's consent decree requires the company to submit its plan (and any future revisions of the plan) for Enforcement Bureau review. Although the terms of the consent decree do not require the Enforcement Bureau to approve the compliance plan, the Bureau may object to it

FEDERAL FUNDS

The FCC adopted an order clarifying its approach to monetary penalties for violations of rules involving payment requirements for the Universal Service Fund (USF), Telecommunications Relay Service (TRS) Fund, Local Number Portability (LNP), North American Numbering Plan (NANP), and federal regulatory fees. Specifically, the FCC vacated a 2015 Forfeiture Policy Statement in which the FCC proposed to employ a “treble damages” approach to such cases. Several parties filed petitions for reconsideration against the 2015 Forfeiture Policy Statement and the FCC never attempted to apply the proposed “treble damages” approach. Because it vacated the 2015 Forfeiture Policy Statement, the FCC dismissed the associated petitions for reconsideration as moot without addressing most of the parties’ arguments concerning the proposed forfeiture methodology. In place of the “treble damages” approach, the FCC’s new order states that it will determine forfeitures on a case-by-case basis, applying the factors set forth in the Communications Act, the FCC’s rules, and prior Forfeiture Guidelines.

On the same day it released that order, the FCC released a notice of apparent liability (NAL) proposing a \$1.4 million forfeiture against telecom provider PayG for alleged failures to make required payments to the USF, TRS, NANP, and regulatory fees. The NAL was the first enforcement action involving payment requirements since the release of 2015 Forfeiture Policy Statement. With respect to the forfeiture methodology, the FCC imposed base penalties for each failure to make required payments, with upward adjustments based on the amount of the delinquency. The FCC also noted that failures to make required payments were “continuing violations” until delinquencies are fully paid.

In a separate action, the Enforcement Bureau entered into a Consent Decree to resolve its investigation into whether GCI Communication Corp. (GCI) violated the FCC’s Rural Health Care (RHC) Program rules. To settle the matter, GCI agreed to a total settlement value of \$42,614,595, including (a) a repayment to the USF in the amount of \$26,614,595 and (b) a credit of \$16,000,000 for GCI’s withdrawal of its Applications for Review related to prior funding years. GCI also agreed to implement enhanced compliance measures in connection with its participation in the RHC Program.

Beyond the USF, the FCC has prioritized preventing waste, fraud, and abuse in other funding programs, including the Emergency Broadband Benefit (EBB) program. On January 17, 2023, the FCC released an NAL proposing a penalty of \$62,000,000 against Q Link Wireless LLC for violating rules governing the EBB program, including allegedly overclaiming support for hundreds of thousands of connected tablets.

AUCTION DEFAULTS

The Rural Digital Opportunity Fund Phase I Auction (Auction 904) conducted competitive bidding to assign up to \$16 billion in USF support to facilitate the provision of broadband service to Americans in unserved areas. In May, the FCC proposed a total of over \$8 million in fines against 22 separate Auction 904 applicants for defaulting on their bids. According to the FCC, the bid defaults prevented 2,994 census block groups in 31 states and an estimated 293,128 locations from receiving new investments in broadband infrastructure.

E-911 OUTAGES

In May, the Enforcement Bureau entered into a settlement to resolve its investigation into whether Shenandoah Telecommunications Company (Shentel) failed to deliver 911 calls during a 911 outage in April 2022 in four West Virginia counties. FCC rules require interconnected Voice over Internet Protocol (VoIP) service providers to transmit all 911 calls to 911 call centers. Beginning April 6, 2022, Shentel experienced a 911 service outage in Boone, Wyoming, Lewis, and McDowell Counties in West Virginia, where Shentel provided interconnected VoIP service. During the outage, Shentel customers who dialed 911 experienced one-way audio and could not be heard by 911 operators. The disruption was resolved on April 22, 2022. To settle this matter, Shentel implemented a compliance plan and paid a \$227,200 civil penalty.

PIRATE RADIO

The Enforcement Bureau continued to act against unauthorized “pirate” radio operations, making use of its new tools under the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act). The Enforcement Bureau put several property owners on notice of illegal pirate radio operations on their property, including in Alaska, Oregon, Oklahoma, Massachusetts, New Jersey, New York, and Puerto Rico. The Enforcement Bureau warned the property owners that they risked significant financial penalties if they continued to permit such operations on their properties. In March, the FCC issued its first enforcement actions under the enhanced penalty provisions of the PIRATE Act. The FCC proposed the maximum penalty allowable, \$2,316,034, against two pirate radio operators in Queens, New York, and an \$80,000 forfeiture against pirate radio broadcaster in La Grande, Oregon.

EAS MISUSE

The FCC has a history of taking strong enforcement action in connection with misuse of the tones associated with the Emergency Alert System (EAS) and Wireless Emergency Alert (WEA) system. The FCC added another action in January when it released an NAL proposing a penalty of \$504,000 against Fox Corporation for apparent violations of the rules that prohibit the transmission of, or causing the transmission of, false or deceptive EAS codes or EAS Attention Signals, or simulations thereof. According to the NAL, FOX allegedly transmitted the EAS tones during a FOX NFL promotional segment. The FCC’s rules prohibit any use of the EAS tones in the absence of an actual emergency, authorized test of the EAS, or qualified PSA.

PUBLIC FILE/APPLICATION VIOLATIONS

FCC enforcement matters may arise out of license renewal application examinations. In May, the Media Bureau released an NAL in connection with its review of the license renewal application for KCLN(AM), Clinton, Iowa. The Media Bureau found that KCLN’s licensee apparently failed to timely upload required materials to the Station’s online public inspection file and failed to include a link to the file on the Station’s website; made an incorrect certification in its renewal application; and engaged in unauthorized operation of the Station. While the Media Bureau ultimately decided not to designate the renewal application for a hearing, it proposed an \$11,000 monetary penalty for the apparent violations.

FTC CONSUMER PROTECTION MATTERS

PRIVACY

The FTC entered into proposed settlements with Amazon and Microsoft involving allegations related to the Children's Online Privacy Protection Act (COPPA). The FTC's complaint against Amazon alleged that the company failed to follow through on assurances that users could delete voice recordings collected from the Alexa voice assistant and geolocation information collected by the Alexa app, and instead retained some of this information and used it to help improve the Alexa algorithm. The settlement requires Amazon to pay a \$25 million civil penalty, notify users of the enforcement action, and take additional steps to create and carry out privacy policies. In the Microsoft case, the FTC alleged that the company collected and retained personal information from children using the Xbox gaming system without getting proper consent, and then unlawfully retained that information. Under the proposed settlement, Microsoft will pay a \$20 million penalty and must take steps to improve privacy protections for children using the Xbox system.

ROBOCALLING/SPOOFING

In May, the FTC filed suit seeking an injunction against a Voice over Internet Protocol provider that continued to carry hundreds of millions of unlawful robocalls despite having received warnings and inquiries from the FTC, the Industry Traceback Group, and law enforcement agencies.

