

WILKINSON) BARKER) KNAUER) LLP

ENFORCEMENT UPDATE

This update includes notable FCC enforcement actions during the second half of 2023 that may be of interest to telecom, media, and tech companies. The FCC continued to prioritize enforcement actions involving robocalls, pirate radio, and protecting federal funds. In addition, the FCC took new actions focused on privacy, radiofrequency interference, and orbital debris.

Looking forward, the FCC's Enforcement Bureau Chief has emphasized that, while the Bureau will continue to prioritize robocalls and pirate radio operations, issues involving privacy, data protection, and national security will be top concerns for the Enforcement Bureau in 2024. The FCC's Digital Discrimination Order also indicated a primary role for the Enforcement Bureau in monitoring and developing protections against discrimination in the provision of broadband services.

Questions or comments may be addressed to Suzanne Tetreault at 202-383-3375 or STetreault@wbkllaw.com, Jeffrey Gee at 202-383-3409 or JGee@wbkllaw.com, or Jennifer Tatel at 202-383-3344 or JTatel@wbkllaw.com.



FCC MATTERS

SPOOFING/ROBOCALLING

PIRATE RADIO

FEDERAL FUNDS

911 OUTAGES

PRIVACY

INTERFERENCE

ORBITAL DEBRIS

EQUAL EMPLOYMENT
OPPORTUNITIES

FCC MATTERS

SPOOFING/ROBOCALLING

Combating illegal robocalls remained a top enforcement priority in 2023. In August, the Enforcement Bureau issued a cease-and-desist letter to One Owl Telecom, Inc. The letter noted that the company was closely connected through common owners and officers to two entities that previously received cease-and-desist letters - Illum Telecommunication Limited and One Eye LLC. One Eye LLC was the subject of the FCC's first-ever "roboblocking" order, which ordered all downstream voice service providers to cease accepting traffic from One Eye. One Owl, the Enforcement Bureau asserted, simply continued these illegal calls under a reorganized entity. The cease-and-desist letter was followed by an Initial Determination Order in September. That Order found that One Owl apparently violated the FCC's robocalling rules, giving the company one last opportunity to comply before ordering downstream providers to stop accepting One Owl's traffic.

In December, the Enforcement Bureau issued cease-and-desist letters against two unrelated companies, Solid Double and CallWin, for originating illegal robocalls. The Bureau gave both companies 14 days to resolve the issues or face additional action, including potential blocking of all of their outgoing traffic.

In addition to issuing cease-and-desist letters, the FCC released a forfeiture order affirming a nearly \$300 million forfeiture against a group of companies that engaged in a complex auto warranty robocall sales lead generation scheme, which placed over five billion spoofed calls to consumers without their consent. The FCC also released a forfeiture order affirming a \$116 million forfeiture against Thomas Dorsher and companies under his control for making prerecorded voice message calls to toll free numbers.

The FCC also initiated proceedings in October to remove twenty providers from the Robocall Mitigation Database. Removal from the database would require all intermediate providers and terminating voice service providers to cease carrying the companies' traffic, effectively blocking all traffic originating from the removed companies. The FCC's follow up actions remain pending.

PIRATE RADIO

The FCC continued to prioritize enforcement actions against unlicensed "pirate" radio stations, particularly targeting the owners of properties used by pirate radio operators. The Bureau sent notices of illegal pirate radio broadcastings to property owners in New York, Oregon, California, as well as nine separate property owners in the Boston area. The notices warned the property owners that they risked significant financial penalties if they continued to permit such operations on their properties. The FCC also targeted the pirate operators themselves, affirming previously proposed fines of \$2.3 million and \$80,000 for pirate broadcasts in Queens, New York, and La Grande, Oregon, respectively, and new fines of over \$6 million against three pirate radio operators in New York.

FEDERAL FUNDS

The FCC took several actions focused on protecting the various funding programs administered by the FCC. In connection with the Rural Digital Opportunity Fund Phase I Auction (Auction 904), for instance, the FCC issued a notice of apparent liability proposing \$22,446,000 in total fines against two Auction 904 applicants that defaulted on their bids for support.

The FCC also continued to impose significant penalties for failing to make required filings in connection with the Universal Service Fund ("USF"). FCC rules require carriers subject to USF assessments to file annual and quarterly worksheets of their relevant revenues and USF assessment calculations. In the second half of 2023, the FCC issued four significant enforcement actions involving failures to make complete and accurate filings.

In July, the FCC proposed a \$1 million fine against Enhanced Communications Group, LLC for failing to respond to USAC directives to support its annual worksheets and failing to file accurate annual worksheets and a \$400,000 fine against Westel, Inc. for its failures to file annual and quarterly telecommunications reporting worksheets, as well as its failure to respond fully to an Enforcement Bureau Letter of Inquiry. In September, the FCC proposed a \$308,451 fine against Stage 2 Networks, LLC for failing to file quarterly and annual worksheets, update information with the Commission, and respond to Enforcement Bureau inquiries. In November, Peace Communications, LLC received a notice of apparent liability for a \$50,000 forfeiture for failing to file a quarterly worksheet

The FCC took additional enforcement actions to settle apparent violations of rules surrounding the Lifeline and Emergency Broadband Benefit ("EBB") low-income assistance programs. In September, the Enforcement Bureau amended a prior consent decree with a wireless provider, requiring it to pay an additional \$7.5 million to resolve issues regarding the submission of claims for ineligible Lifeline subscribers due to non-usage. In November, the Bureau entered into a consent decree with another wireless provider to resolve the Bureau's investigation into Lifeline and EBB violations. The provider agreed to implement a compliance plan and pay a \$17 million civil penalty, and also agreed to pay the forfeiture proposed in an earlier notice of apparent liability for prior apparent violations of the Lifeline rules.

911 OUTAGES

The Enforcement Bureau's focus on national security and public safety issues was reflected in two actions addressing outages in 911 service. The FCC's rules require telecommunications carriers to transmit all 911 calls to the appropriate entities and notify those entities of outages. In July, the Enforcement Bureau entered into a consent decree with telecommunications provider to resolve an investigation into a 911 service outage. The company agreed to implement a compliance plan and pay a \$24,000 civil penalty. In October, the FCC released a notice of apparent liability in which it proposed a \$867,000 forfeiture against another telecommunications provider for a 911 outage. While the NAL acknowledged that not every 911 outage is a violation of the rules, the FCC took the position that it could find violations where a company does not "reasonably" design and operate its systems to detect and eliminate network problems in order to reliably transmit all 911 calls under reasonably foreseeable conditions.

PRIVACY

In July, the FCC proposed a \$20 million forfeiture against a mobile service provider for apparent violations of FCC rules protecting consumer data. The FCC's rules require carriers to authenticate customers' identity before providing online access to Customer Proprietary Network Information ("CPNI") to the consumer. In its notice of apparent liability, the FCC alleged that the provider apparently relied upon readily available biographical information and account information to control online access to CPNI, lowering the level of protection offered to the consumers' data.

In December, the Enforcement Bureau, on behalf of the Privacy and Data Protection Task Force, issued an Enforcement Advisory warning consumers and telecommunications service providers of the increased threat of fraudulent SIM swapping. The Advisory particularly warned about schemes in which bad actors convince wireless carriers to transfer customer mobile service and telephone number ("SIM fraud") and schemes in which the bad actor poses as a customer to open a new account with a different wireless provider, then requests the customer's phone number to be ported to the new account ("porting out"). The Advisory reminded carriers of their duties to protect their customers' data, including by properly authenticating customers prior to disclosing CPNI and by providing customer notifications of account changes.

INTERFERENCE

Notably, the Enforcement Bureau took two actions in September addressing interference caused by individual uses of surveillance cameras. In one case, Enforcement Bureau issued a Citation and Order to an individual in Maryland, ordering her to cease use of a surveillance camera that was causing interference to satellite radio services. The Bureau separately issued a Citation and Order to an individual in Pennsylvania, ordering him to cease use of a surveillance camera that was causing interference to wireless services. In both cases, the cameras at issue did not have an FCC equipment authorization identifier or any other labeling required by the FCC's rules.

ORBITAL DEBRIS

In October, the FCC took a first of its kind enforcement action involving orbital debris. The Enforcement Bureau entered into a Consent Decree resolving its investigation into space debris associated with satellite operations. As part of their FCC licensing, satellite operators commit to orbital debris mitigation plans to minimize the risk of space debris to other space operations. The satellite operator agreed to enter into a compliance plan and pay a \$150,000 penalty to resolve the matter.

EQUAL EMPLOYMENT OPPORTUNITIES

In October, the Enforcement Bureau proposed a notice of apparent liability against Rocking M Media, LLC and Melia Communications, Inc. for apparent violations of the FCC's broadcast EEO rules. The FCC's broadcast EEO rules require broadcast stations to engage in broad recruitment efforts for every full-time job vacancy in their employment operation units, analyze their EEO recruitment programs to ensure their effectiveness, and retain records and file period reports documenting compliance. In the NAL, the Enforcement Bureau proposed a \$25,000 forfeiture for Rocking M's apparent failures to timely upload annual EEO Public File Reports to the appropriate online public inspection files and station websites, broadly recruit for certain vacancies, analyze their EEO program, and maintain their recruitment records.