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# ENFORCEMENT UPDATE

This update includes notable FCC enforcement actions during the first quarter of 2024 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. At the same time, the FCC took notable actions involving retransmission consent and media ownership.

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 (adopted last November) 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@wbklaw.com, Jeffrey Gee at 202-383-3409 or JGee@wbklaw.com, or Jennifer Tatel at 202-383-3344 or JTatel@wbklaw.com.



## FCC MATTERS

### ROBOCALLS/SPOOFING

The FCC continued to make combating illegal robocalls a top enforcement priority at the start of 2024. Over the first three months of the year, the FCC's Enforcement Bureau removed thirteen providers from the Robocall Mitigation Database (RMD). All voice service providers and intermediate providers must cease accepting traffic from a company that has been removed from RMD. These orders included follow up actions in February addressing thirteen providers targeted in late 2023 with orders to show cause why they should not be removed from the RMD following allegations of providing deficient RMD certifications. Similarly, in March, the Bureau ordered the removal of voice provider BPO Innovate from the RMD after issuing an order to show cause in January finding the company deficient because (1) it failed to respond to traceback requests from the industry traceback consortium, which is contrary to its certification in the RMD, and (2) the document it filed in the RMD as its purported robocall mitigation plan did not describe the specific reasonable steps the Company has taken to avoid originating illegal robocall traffic.

The FCC also issued a cease and desist letter against a provider, Lingo Telecom, that allegedly enabled robocalls using AI-generated voice cloning to spread misinformation to voters prior to New Hampshire's primary election. The Enforcement Bureau acted in coordination with the New Hampshire State Attorney General's office, which separately issued a cease and desist order to Life Corporation, the company that allegedly generated the illegal robocalls.

## PIRATE RADIO

The FCC took several high profile actions against unlicensed "pirate" radio stations in the first quarter of 2024. In particular, in January, the FCC proposed fines totaling over $3.5 million against five Florida pirate radio operators in connection with its first "sweep" of the Miami area under the requirements of the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act).

## FEDERAL FUNDS

Even as funding for the Affordable Connectivity Program (ACP) began to wind down, the FCC continued enforcement actions to rigorously police participation in the program. In January, the FCC released two enforcement actions alleging fraud and abuse in connection with ACP funds. In one item, the FCC proposed a penalty of over $16 million dollars against ACP participant City Communications, Inc. City Communications allegedly received ACP funding for subscribers that were improperly enrolled in the program using false identifying information. City Communication also allegedly violated rules governing transfers of subscriber benefits from one provider to another and failed to respond and/or made misrepresentations to the FCC in the course of the investigation. The FCC also proposed a $14 million forfeiture against ACP participant Tone Communication Services LLC, alleging violations of the ACP rules and the federal wire fraud statute. Tone allegedly received ACP funding for subscribers that were improperly enrolled in the program using false identifying information. In addition to proposing forfeitures, the FCC began the process of removing Tone and City Communications from the ACP program.

In addition to taking enforcement actions in connection with improper claims on federal funds, the FCC Enforcement Bureau continued to emphasize compliance with the FCC's contribution mechanisms. In particular, the Bureau affirmed two $100,000 forfeitures – one against IK Communications Corporation and another against Telnexus, LLC – for failures to timely and accurately file required revenue reports on which USF fund contributions are based.

The FCC Enforcement Bureau also entered into a consent decree with Lifeline/ACP provider Air Voice Wireless, resolving an investigation into the company's participation in both the Lifeline and ACP programs. Air Voice agreed to pay a $150,000 civil penalty and implement a one-year compliance plan, which may be extended by an additional year if the FCC "reasonably" determines that the company failed to comply with any of the Lifeline or ACP rules.

## EQUAL EMPLOYMENT OPPORTUNITIES

In February, the Enforcement Bureau confirmed the $25,000 forfeiture it previously proposed against Rocking M Media, LLC and Melia Communications, Inc. for 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. The Bureau found that Rocking M had failed 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.

## RETRANSMISSION CONSENT

The FCC has made retransmission consent a priority in recent months. In addition to policy actions, including proposing new rules on retransmission consent "blackouts," the FCC's Media Bureau took enforcement actions in connection with the "good faith" negotiation requirements.

In January, the Media Bureau granted Comcast's complaint against Mission Broadcasting, Inc. ("Mission"), licensee of WPIX(TV), New York, NY.  Comcast complained that Mission violated the good faith rules by conditioning retransmission consent on Comcast's acceptance of contract terms that prohibited the filing of future retransmission consent complaints. The Media Bureau noted that the FCC had previously concluded that proposals for contract terms that foreclose the filing of complaints with the Commission are presumptively inconsistent with the good faith negotiation requirement. The Media Bureau extended this conclusion, finding that the inclusion of such a proposal may violate the rules even if it is not included in the final agreement or the other party did not object to the proposal during negotiations. In addition, the Media Bureau found that Mission, as the licensee of the station, was responsible for the violation, notwithstanding that it had designated Nexstar Media Group, Inc. ("Nexstar") to represent it in the retransmission consent negotiations. The Media Bureau proposed a $150,000 forfeiture for the violation. The Bureau calculated the forfeiture by treating the violation as a "continuing" violation that began when the violative term was proposed and ended when the parties signed the retransmission consent agreement and then doubling the resulting forfeiture in light of Mission's ability to pay.

In February, the Media Bureau followed up with an even larger proposed forfeiture against Nexstar. As in the Mission case, Nexstar allegedly proposed retransmission consent terms that prohibited the filing of future retransmission consent complaints. The negotiations at issue involved the carriage of six television stations on systems operated by Hawaiian Telcom Services Company, Inc. While the Media Bureau acknowledged that the terms were limited to complaints regarding the concluded negotiations rather than complaints concerning future actions, the Media Bureau concluded that such limitations were irrelevant because any prohibition on filing complaints with the Commission is presumptively inconsistent with good faith bargaining. The Media Bureau employed the same forfeiture calculation methodology it used in the Mission case, proposing a total forfeiture of $720,000 based on the number stations involved and the period of time over which the violation persisted.

## MEDIA OWNERSHIP

The retransmission consent complaints filed by Comcast and others also brought WPIX(TV), Mission, and Nexstar under scrutiny with respect to the FCC's broadcast ownership rules. Nexstar and Mission have a long-standing and complex set of contractual connections to one another. While Mission is not a subsidiary of Nexstar, Nexstar is considered to have a controlling financial interest in Mission for financial reporting purposes.  All of Mission's 29 full power TV stations are operated in coordination with Nexstar pursuant to a combination of agreements, including Shared Services Agreements, Joint Sales Agreements, and Local Marketing Agreements, as well as option agreements and loan guarantees. The FCC reviewed and approved these arrangements several times over the years. The parties employed similar arrangements when Mission acquired WPIX(TV) in 2020. Although the FCC reviewed and approved the arrangements at that time, upon more recent examination, the FCC found that the parties' actual practices under the arrangements, including but not limited to Mission's delegation of its retransmission consent authority for WPIX(TV), resulted in Nexstar possessing de facto control of WPIX(TV). Consequently, the FCC released a Notice of Apparent Liability against Nexstar and Mission, tentatively finding that (1) Mission's acquisition of WPIX resulted in Nexstar acquiring de facto control of WPIX through an unauthorized transfer of control; (2) Nexstar obtained undisclosed attributable interests in WPIX without FCC authorization; and (3) as a result, Nexstar was in violation of the FCC's national television multiple ownership limitations (the "National Ownership Cap"). The NAL proposed a forfeiture of $612,395 against Mission and $1,224,790 against Nexstar. The FCC also set a twelve-month deadline from either the issuance of a forfeiture order or payment of the forfeiture for Nexstar to remedy its noncompliance with the National Ownership Cap by either: (1) Mission divesting WPIX to an unrelated third party; or (2) Nexstar acquiring WPIX while simultaneously divesting a sufficient number of TV stations to comply with the National Ownership Cap.

# FTC MATTERS

## PRIVACY AND DATA SECURITY

In February, the FTC announced that it had finalized an agreement with Global Tel*Link Corporation to settle charges made last November that the company had failed to secure sensitive data of hundreds of thousands of consumers and then failed to alert all those affected by a data breach that allowed bad actors to gain access to unencrypted personal information. Under the settlement, Global Tel*Link will be required to, among other things, implement a comprehensive data security program that includes several requirements such as the deployment of “change management” measures to all of its systems to help reduce the risk of human error, use of multifactor authentication, and procedures to minimize the amount of data it collects and stores.