ADVISORY

FCC Enforcement Monitor February 2025

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HEADLINES

Pillsbury's communications lawyers have published the FCC Enforcement Monitor monthly since 1999 to inform our clients of notable FCC enforcement actions against FCC license holders and others. This month's issue includes:

- *Seven-Figure Fine Proposed for Robocaller Targeting FCC Staff*
- *FCC's Enforcement Bureau Issues Payola Warning to Broadcasters*
- *California Noncommercial TV Station Licensee Enters $25,000 Consent Decree to Wrap Up Investigation Into Multiple Rule Violations*

FCC Proposes Seven-Figure Fine for Telecom Company Accused of Allowing Bad Actors to Use Its Network to Intimidate FCC Staff

The FCC proposed a multi-million dollar fine against a voice service provider accused of failing to prevent illegal voice traffic on its network. Some of the pre-recorded calls targeted FCC staff and their families and purported to be from the FCC's "Fraud Prevention Team," which does not exist. The calls attempted to extract money from the recipients through intimidation.

Under Section 64.1200(n)(4) of the FCC's Rules, a voice service provider must take "affirmative, effective measures to prevent new and renewing customers from using its network to originate illegal calls, including knowing its customers and exercising due diligence in ensuring that its services are not used to originate illegal traffic." The rule gives voice service providers discretion as to how they police their own networks as long as the measures they put in place effectively prevent the origination of illegal traffic and ensure they know their customers. Knowing your customer involves collecting and verifying customer information, including their corporate records, government identification, and the addresses from which they will be originating their calls. The FCC has warned providers that high-volume callers merit heightened scrutiny to ensure they will not abuse the provider's network.

In a redacted Notice of Apparent Liability for Forfeiture (NAL), the FCC detailed the parties involved in the alleged scheme, including the voice service provider and two of its customers. The two customers were accepted as customers on the same day, and while they provided different names and email addresses, they both had the same physical address (a Toronto hotel) and used the same domain name. According to the NAL, on the same day they were accepted as customers and into the next day, the two entities originated automated calls that reached FCC staff and sought to connect the recipients to a live caller who, in at least one case, demanded $1,000 in gift cards to help the caller avoid jail time for "crimes against the state."

The FCC worked with the Industry Traceback Group to determine the origin of the suspected illegal robocalls. The Enforcement Bureau then subpoenaed call records from the voice service provider and learned that the two customers made nearly 2,000 calls over the two days that FCC staff reported receiving calls. The FCC's investigation revealed that the information the customers provided to the voice service provider was false and that the voice service provider did not corroborate or independently verify the customers' information, thereby failing to apply the scrutiny necessary for the company to know its customers. The FCC noted that the customers paid the provider in untraceable bitcoin, which helped to conceal their identities, but said it was not a factor in the FCC's finding of apparent rule violations.

Under the FCC's rules, common carriers, like the one involved in this case, are subject to a maximum fine of $251,322 per violation. Because the rules do not specify a base fine for allowing suspected illegal traffic on a voice service provider's network, the FCC looked to comparable violations and the number of illegal calls carried by the voice service provider. The FCC arrived at a proposed fine of $4,492,500 by applying a base fine amount of $2,500 per violation multiplied by 1,797 calls. The voice service provider has 30 days to pay that amount or to file a response seeking reduction or cancellation of it.

FCC Enforcement Advisory Urges Broadcasters to Be Aware of Payola Rules

In response to a letter from U.S. Senator Marsha Blackburn (R-TN), the FCC's Enforcement Bureau issued an *FCC Enforcement Advisory* reminding broadcasters that engaging in payola violates federal law. Specifically, the advisory seeks to ensure that broadcasters are not compelling or accepting free or reduced-fee performances by artists in exchange for more favorable airplay. Under the payola laws, station licensees and their personnel are prohibited from accepting anything of value in exchange for more favorable airplay, unless it is properly disclosed on-air.

Under the Communications Act of 1934, as amended, persons connected with a station who have accepted or agreed to accept something of value in exchange for more favorable airplay must disclose that fact to the licensee before the material is aired. The licensee must then disclose on-air that the material is sponsored and by whom.

Licensees must also exercise reasonable diligence to learn from station personnel and others with whom it works whether any of the content proposed to be aired is being aired because something of value was received by that party to facilitate airplay. Licensees of radio stations more susceptible to payola, like those with full-time music formats or whose airplay contributes to record chart rankings, may need to exercise a higher level of care under the reasonable diligence standard than stations that air only news. Payola rules prohibit any paid content aired without sponsorship identification, whether or not it is music, but music airplay has historically been the most likely subject of a payola complaint.

As the advisory notes, artists may appear for free at a station's concert or promotional event so long as the appearance complies with all FCC rules, including those that prohibit a promise of more airplay in return (unless there is adequate sponsorship identification aired with it). Failure to report the acceptance or agreement to accept something of value in exchange for more favorable airplay can subject the violator to criminal penalties, including fines and imprisonment of up to one year.

While station licensees should always be vigilant to prevent violations of the payola rules, the FCC's new emphasis on the mechanics of concert fees requires that stations involved in such concerts work closely with their counsel to avoid violations. Subsequent to release of the *FCC Enforcement Advisory*, FCC Chairman Carr sent a public letter to a large radio group demanding detailed information surrounding an upcoming concert event.

Noncommercial TV Station Agrees to $25,000 Penalty and Compliance Plan for Multiple Rule Violations

A California noncommercial TV station entered into a Consent Decree with the FCC's Media Bureau regarding its failures to timely file its license renewal application, upload documents to its online Public Inspection File, and provide complete and accurate responses in an FCC application. The Consent Decree includes a $25,000 civil penalty and requires the licensee to implement a compliance plan to prevent future violations.

On August 10, 2022, the licensee filed its license renewal application, missing the filing deadline by nine days. The licensee did not provide a reason for missing the deadline. In that application, the licensee certified that it had timely uploaded all required documentation to its Public File during the license term. After the Media Bureau investigated, however, it determined that the station's Public File was missing numerous Quarterly Issues/Programs Lists. A staff review found that during the license term, three of the lists were uploaded late and 19 were not uploaded at all. Because of this, the Media Bureau also tentatively concluded there had been a violation of Section 73.3514(a) of the FCC's Rules, which requires licensees to provide complete and accurate responses to application questions.

To conclude the investigation, the licensee agreed in a Consent Decree to pay a $25,000 penalty and implement a compliance plan to prevent future violations. Pursuant to that requirement, the licensee must appoint a compliance officer, create or adopt a compliance manual that is reviewed and updated every six months and which must include a compliance checklist and operating procedures aimed at preventing future violations, conduct compliance training for employees, submit annual compliance reports to the FCC until the station's next license renewal application is granted, and report any future violations to the FCC within ten days of discovery.

In light of the Consent Decree, the Media Bureau indicated it would grant the station's license renewal application (conditioned on compliance with the Consent Decree) for only a two year period instead of the standard eight year term, requiring the station to file its next license renewal application in in 2027 rather than in 2030.