

FCC Enforcement Monitor

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HEADLINES

Pillsbury's communications lawyers have published 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:

- *FCC Cracks Down on Call Spoofing Operations with Multimillion-Dollar Fine*
- *New Jersey Utility Company Investigated for Improper Use of Private Land Mobile Radio*
- *FCC Issues Repeated Notices to Florida LPFM Licensee Over Transmitter Issues*

Call Me Maybe? FCC Proposes \$37.525 Million Fine for Illegal Spoofing Operation

In response to the growing menace of "spoofed" calls, the FCC issued a \$37.525 million Notice of Apparent Liability for Forfeiture ("NAL") to an Arizona telemarketer alleged to have made over 2.3 million spoofed calls over the past two years.

Section 227(e) of the Communications Act ("Act") generally prohibits "**call spoofing**," the practice of causing a false number to appear on a caller ID display to disguise the caller's identity. Section 227(e) of the Act and Section 64.1604 of the FCC's Rules make it unlawful to knowingly transmit misleading or inaccurate caller ID information "with the intent to defraud, cause harm, or wrongfully obtain anything of value." Further, the Telephone Consumer Protection Act ("TCPA") and Section 64.1200 of the FCC's Rules prohibit marketing calls to numbers listed in the National Do-Not-Call-Registry ("DNR"). Consumers can add their home and mobile phone numbers to the DNR in order to avoid unwanted telemarketing calls.

The FCC was tipped off to the Arizona company's spoofing operation by a whistleblower who had formerly worked in the company's telemarketing phone room. According to the employee, the company purchased a call directory and plugged the directory's numbers into a telemarketing platform that would dial the numbers. The company then modified its caller ID information to display the phone numbers of prepaid phones it had purchased from a big box store. To avoid suspicion, the company regularly searched the Internet for complaints associated with the prepaid phone numbers and removed from rotation any numbers that had garnered a large amount of complaints. If a consumer tried returning a telemarketing call originating from a prepaid phone, company policy instructed employees to hang up on or otherwise avoid complaining customers. In addition to the prepaid phones, the company also used unassigned numbers and numbers assigned to unrelated private citizens. As an example, the NAL describes an innocent consumer whose number was spoofed by the company and who received several calls a day for months from consumers attempting to complain about the company's calls.

The FCC began its investigation by subpoenaing the company's call records from the telemarketing platform. According to the NAL, the company made 2,341,125 calls using 13 separate phone numbers. Unsurprisingly, none of the 13 numbers were actually assigned to the company. However, the FCC was able to match these numbers to dozens of complaints filed with the Federal Trade Commission from DNR registrants who had received unwanted calls.

According to the whistleblower, the company's illicit behavior earned it nearly \$300,000 per month. The FCC alleges that the company's spoofing and sophisticated prepaid phone operation show the company knew that what it was doing was wrong and sought to evade law enforcement and civil suits by hiding its connection to the illegal marketing scheme.

Pursuant to Section 227(e) of the Act and Section 1.80 of the FCC's Rules, the FCC may impose a fine of up to \$11,278 for each spoofing violation. Previously, the FCC has applied a base fine of \$1,000 per call in large-scale spoofing operations. Out of the total 2,341,125 spoofed calls, the Enforcement Bureau was able to specifically examine and confirm the nature of 37,525 calls, and thus proposed a fine of \$37,525,000.

In addition to the NAL, the FCC also issued a separate Citation and Order that cites the company for violating the Telephone Consumer Protection Act, as many of the call recipients were registered with the DNR. The FCC uncovered 45 instances where the company dialed DNR registrants; however, it may not impose a monetary fine against parties not regulated by the FCC until: (1) the FCC issues a citation to the violator; (2) the FCC provides the violator a reasonable opportunity to respond; and (3) the violator continues to engage in the cited conduct. The Citation and Order warns the company that any future violations could result in hefty fines.

The past year has seen several enforcement actions aimed at large scale robocall and spoofing operations. The FCC asks consumers to report any illegal calls or text messages, and advises against answering calls from unknown numbers or giving out personal information.

A Failure to Communicate: FCC Investigates New Jersey Utility Company for Private Land Mobile Radio Violations

The FCC's Enforcement Bureau issued a Notice of Violation ("NOV") to a large New Jersey utility company for operating its Private Land Mobile Radio ("PLMR") in an unauthorized manner and failing to regularly transmit station identification information.

PLMR is a radio communication service often used for industrial operations, public safety activities and ground transportation. PLMR licensees number in the hundreds of thousands, and stations are generally required to share frequencies with other PLMR stations.

Section 1.903(a) of the FCC's Rules requires PLMR stations to be "used and operated only in accordance with the rules applicable to their particular service[.]" In addition, Section 90.425(a) of the FCC's Rules requires PLMR stations to transmit a station identification message once every 15 minutes during periods of ongoing operation.

Following a complaint of harmful interference, the Enforcement Bureau began monitoring the utility company's PLMR transmissions. The company is the licensee of a voice-only PLMR station that operates at various locations across New Jersey. The Enforcement Bureau discovered the licensee was using the station to transmit data messages, even though the station was only authorized for voice operations. The agent also found that the station failed to regularly transmit its call sign.

The FCC issued a Notice of Violation to the utility company seeking additional information regarding the violations. The company must respond to the FCC within 20 days with a complete explanation of each violation and all corrective actions it has taken or plans to take to address each of the violations. The FCC will then consider these responses as it considers further enforcement action against the company.

All Summer Long: Florida Licensee's Transmitter Troubles Lead to Second NOV in Months

The licensee of a Low Power FM ("LPFM") station in southern Florida received its second NOV of the summer for operating at variance from the station's authorization.

Under Section 73.845 of the FCC's Rules, an LPFM licensee must maintain and operate its broadcast station in accordance with its FCC authorization. A broadcast authorization details a station's operational requirements, including the station's transmitter type, location, antenna height, and power. Section 73.875 requires FCC authorization prior to the construction of a new tower or a change to a station's coordinates. Any change in antenna height more than two meters above or four meters below a station's authorized height also requires prior approval.

The licensee's woes started in April when FCC agents began investigating it for operating at odds with its authorization. The FCC issued the station an NOV in early June for transmitting nearly four miles away from its authorized location with an unauthorized antenna at an unauthorized height.

In the weeks between the initial investigation and the issuance of the NOV, the station applied for a construction permit to move to the "new" coordinates. However, the FCC did not grant the application until after issuance of the first NOV. In late June, the licensee subsequently applied for, and was granted, a license to cover the construction permit.

Only weeks later, the FCC caught the licensee transmitting from an entirely different location, this time 12 miles from its new authorized transmitter site. In a September NOV, the station was once again cited for transmitting from an unauthorized location at an unauthorized height.

The licensee has 20 days to respond to the most recent NOV. The licensee must provide, under penalty of perjury: (1) an explanation of the facts and circumstances surrounding the violation; (2) a description of the licensee's corrective actions; and (3) a timeline for completion of these actions. The FCC will then use all relevant information to determine what, if any, enforcement action it will take against the licensee for the violations.