
FCC Enforcement Monitor

By Scott R. Flick and Jessica Nyman

Headlines:

- *FCC Again Cracks Down on Wi-Fi Blocking at Conference Centers*
 - *Licensee Faces \$27,000 Fine for Repeatedly Failing to File Kidvid Reports*
 - *Too Little Too Late: FCC Dismisses as Late (and Meritless) Antenna Structure Owner's Petition for Reconsideration*
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Turning Hotspots to Not Spots: Wi-Fi Jamming Costs Service Provider \$750,000

A telecommunications and Internet service provider entered into a \$750,000 consent decree with the FCC to resolve an investigation into whether the service provider and its subsidiaries engaged in prohibited Wi-Fi blocking. At issue was whether the service provider interfered with and disabled Wi-Fi networks that consumers had established at various conference centers where the service provider operated or managed the Wi-Fi network.

As the FCC noted in its order adopting the consent decree, consumers can establish their own Wi-Fi networks using FCC-authorized mobile hotspots and their wireless data plans to connect their devices to the Internet. Technology exists, however, that can be used to block consumers from creating or maintaining their own Wi-Fi networks. Such blocking violates Section 333 of Communications Act, which prohibits anyone from willfully or maliciously interfering with or causing interference to any radio communications of any station licensed or authorized by or under the Act.

Last June, a company that provides equipment enabling users to establish Wi-Fi hotspots as an alternative to paying for Wi-Fi service provided by the commercial venue lodged an informal complaint with the FCC against the service provider. The complainant alleged that its customers could not connect to the Internet at several convention, meeting, and hotel venues where that particular service provider operated or managed the Wi-Fi access. An FCC Enforcement Bureau investigation confirmed that the service provider automatically transmitted de-authentication frames to prevent certain Wi-Fi users from establishing or maintaining an Internet connection independent of the service provider's network.

After learning of the investigation, the service provider told its Wi-Fi network managers to stop such de-authentication and subsequently entered into a consent decree with the FCC. To resolve the investigation,

the service provider (i) admitted that it prevented certain Wi-Fi users from establishing Wi-Fi hotspots, (ii) agreed to implement procedures to ensure that its personnel will not engage in any Wi-Fi blocking activities going forward, and (iii) agreed to pay a penalty of \$750,000 to the U.S. Treasury.

A Math Lesson for the Kids: 4 Stations + 36 Late Filed Children's TV Programming Reports = \$27,000

A Pennsylvania TV licensee received four separate Notices of Apparent Liability in one day, resulting in a total proposed fine of \$27,000 for failure to timely file Children's Television Programming Reports for four of its stations.

Section 73.3256 of the FCC's Rules requires each commercial broadcast licensee to maintain a public inspection file containing specific information related to station operations. Subsection 73.3526(e)(11)(iii) of the rule requires licensees to prepare and place in their public inspection files a Children's Television Programming Report for each calendar quarter showing, among other things, the efforts made during that three-month period to serve the educational and informational needs of children. Licensees must place the Reports in their stations' public files by the tenth day of January, April, July, and October.

The licensee disclosed the late Report filings when it filed license renewal applications for four of its stations in April, admitting that it failed to timely file its Reports for eight quarters for three of the stations, and for twelve quarters for the fourth station. Accordingly, the FCC determined that the licensee willfully and repeatedly violated Section 73.3526(e)(11)(iii) of the Rules.

Because the FCC's *Forfeiture Policy Statement* sets a base fine amount of \$3,000 for failure to file a required form or information, the licensee's late filings exposed it to a potential fine of \$108,000. The FCC used its discretion, however, to adjust the base amount downwards based on the factors listed in Section 503(b)(2)(E) of the Communications Act, including "the nature, circumstances, extent, and gravity of the violation." With these factors in mind, the FCC determined that a \$6,000 fine per station would be more appropriate where the licensee failed to file for eight quarters, and proposed a \$9,000 fine for the station that failed to file for twelve quarters—still adding up to a not insubstantial proposed fine of \$27,000.

Missed It by That Much: FCC Dismisses Petition for Reconsideration Filed 4 Days Late

The FCC dismissed as untimely a Petition for Reconsideration filed by an Iowa antenna structure owner challenging an \$11,000 fine for violations of the FCC's antenna structure rules. Last summer, the FCC determined that the antenna structure owner violated Section 303(q) of the Communications Act and Sections 17.48(a), 17.51(a), and 17.57 of the Commission's Rules by failing to (i) exhibit red obstruction lighting on its antenna structure, (ii) notify the Federal Aviation Administration of a known lighting outage, and (iii) inform the FCC about a change in antenna structure ownership.

The antenna structure owner never disputed the violations, but had previously argued in its response to the initial Notice of Apparent Violation that the proposed \$14,000 fine was unenforceable under the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA). The FCC rejected that argument, explaining that its forfeiture policy complies with SBREFA, and further, that it already took into account the antenna structure owner's status as a small business in determining the appropriate fine. The FCC did, however, reduce the proposed fine to \$11,000 when it issued the Forfeiture Order.

Section 405(a) of the Communications Act, as implemented by Section 1.106(f) of the FCC's Rules, imposes a 30-day deadline to file a petition for reconsideration, beginning with the date from which public notice of the challenged action is given. The FCC published public notice of the Forfeiture Order on July 15

2014, making Thursday, August 14, 2014 the deadline to file a reconsideration petition. The antenna structure owner, however, missed the deadline by four days, filing its Petition on Monday, August 18, 2014.

The FCC explained that the time period for filing petitions for reconsideration is statutorily prescribed and that, with one narrow exception not applicable here, it cannot waive or extend the filing period. On that basis, the FCC concluded that it was required to dismiss the Petition as untimely. Rubbing salt in the wound, the FCC added that even if the Petition was not time-barred, the Commission would deny the Petition on its merits. The FCC noted that such petitions are granted only where they (i) demonstrate a material error or omission in the underlying order or (ii) raise additional facts not known or not existing until after the petitioner's last opportunity to present such matters. Stating that the antenna structure owner had failed to do either, the FCC left the \$11,000 fine in place.

If you have any questions about the content of this Advisory, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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