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FCC Enforcement Monitor December 2023

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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:

- *Mobile Service Provider Enters $23.5 Million Consent Decree to Resolve Lifeline and Emergency Broadband Benefit Program Investigation*
- *Texas TV Station Receives $13,000 Penalty for Unauthorized Operation and Late License Application*
- *Radio Station License Revoked Over Eight Years of Unpaid Regulatory Fees*

Investigation Into Lifeline and Emergency Broadband Benefit Program Violations Leads to $23.5 Million Penalty for Mobile Phone Provider

A major mobile virtual network operator and mobile wireless telecommunications services provider entered into a Consent Decree with the FCC's Enforcement Bureau (the "Bureau") resolving an investigation into whether the provider violated the Commission's rules for its Lifeline and/or Emergency Broadband Benefit (EBB) programs by claiming credit for subscribers that were ineligible for these programs. These programs federally subsidize the cost of providing various services to qualifying subscribers. The company provided Lifeline telephone service as an Eligible Telecommunications Carrier (ETC) and broadband internet access service under the EBB program.

The Bureau investigated whether the phone service provider (a) improperly sought and/or obtained Lifeline or EBB financial support from the government for ineligible subscribers, or failed to de-enroll subscribers who lacked eligibility documentation or whose applications were supported by falsified tax forms; (b) sought and/or obtained Lifeline support/EBB support for subscribers who didn't use a Lifeline-supported/EBB-supported service; and (c) directly or indirectly compensated field enrollment representatives based on earning a commission, rather than being paid on an hourly basis.

Under the Commission's Lifeline rules, ETCs must satisfy specific requirements to be eligible to receive federal Lifeline dollars, and may only receive such support "based on the number of actual qualifying low-income customers listed in the National Lifeline Accountability Database that the eligible telecommunications carrier serves directly as of the first of the month." Similarly, EBB providers may claim government financial support for providing discounted broadband internet access service during the emergency period of the EBB program based on the number of qualifying low-income households that the provider serves each month.

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As part of these programs, participating providers were required to develop policies and procedures to ensure that their EBB households were indeed eligible to receive the discount benefit. For example, two criteria for EBB qualification are whether the household income falls below a certain threshold or whether at least one member of the household has experienced a documented substantial loss in income during the emergency period.

In 2020, the FCC issued a Notice of Apparent Liability (NAL) against the provider for Lifeline rule violations involving claims for ineligible subscribers. The provider submitted a written response opposing the NAL. However, following a 2021 sale of the provider, the provider reported to the FCC and the Universal Service Administrative Company that it may have indeed violated Lifeline and/or EBB program rules.

In response, the FCC issued a Letter of Inquiry (LOI) and a Supplemental LOI to obtain more information. The Bureau sought to determine whether the provider (1) claimed support for Lifeline or EBB subscribers who lacked qualifying usage of the service; (2) claimed support for Lifeline or EBB subscribers without eligibility documentation or whose applications were supported by falsified tax returns; (3) improperly certified that EBB customers had used the service; and (4) indirectly compensated Lifeline field enrollment representatives by paying on a commission basis rather than on an hourly basis.

In its responses, the provider voluntarily disclosed to the FCC that its "flawed processes with respect to determining customer usage resulted in improper Lifeline claims" for customers who had not used the service during the applicable timeframe, that it had improperly considered a subscriber's receipt of an inbound text message as establishing qualifying Lifeline usage, that it improperly claimed support for a group of customers who were enrolled in both Lifeline and EBB programs but who did not use both of those services, and that a group of field enrollment representatives apparently relied on falsified tax documents to support enrollments into the programs. After working with auditors to determine the extent of the improper claims, the provider reimbursed the Universal Service Fund over $22.6 million and reimbursed the EBB/Affordable Connectivity Program over $17.8 million. The provider further disclosed that it discovered 79 field enrollment agents employed by subcontractors who had commission-based compensation based on enrollments – a violation of the provider's contractual prohibition of commission-based compensation.

To end the investigation, the provider and the Bureau entered into a Consent Decree under which the provider must develop and implement a compliance plan, designate a compliance officer to oversee it, implement a compliance training program for employees, file compliance reports with the FCC for each of the next three years, pay the FCC's proposed $6,013,000 fine from the 2020 NAL, and pay a further $17,487,000 civil penalty to the US Treasury.

Late-Filed License Application Causes Trouble for Texas Class A TV Station

A Texas Class A TV station faces a $13,000 fine for violating the FCC's rules relating to unauthorized station operation and the untimely filing of its license application.

The station had to change channels as part of the Incentive Auction repacking process and was assigned to Phase 8 of that process, with a repack completion date of March 13, 2020. As part of that process, the station received a construction permit to build out its post-auction Channel 32 facilities that was valid for three years. The licensee claims that the station met the construction deadline and was operating on its post-auction facilities as of March 13, 2020. The licensee did not, however, file an application for a covering license notifying the FCC that construction had been completed and that the station was operating on its new channel.

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In the absence of such an application (and therefore without a corresponding license grant), the station was operated without authorization. The licensee claimed an administrative oversight led to the application being filed more than three and a half years after the completion of construction. Inadvertent or not, the FCC viewed the result as more than three and a half years of unauthorized operation.

The station filed documentation supporting its claim that the station had begun operating on its repack channel by March 13, 2020. The licensee argued that the FCC should grant its request to waive the filing deadline for the license application, thereby allowing the station to continue operation and serve viewers with its Spanish-language programming.

Section 74.788 of the FCC's Rules specifies that construction permits are valid for three years. Section 73.1745 of the Rules requires a station to hold an FCC license in order to operate. The FCC's rules and its *Forfeiture Policy Statement* set the base fine for failing to file a required form (the license to cover application) at $3,000. The guidelines also specify a base fine of $10,000 for operating a station without an FCC authorization. These amounts can be adjusted upward or downward based on "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require." Here, the FCC found no reason to adjust the base fine amounts, proposing a total fine of $13,000 and noting that the licensee is a sophisticated broadcaster who should have been well versed in FCC rules and filing requirements.

While this proceeding is ongoing, the FCC has granted the station Special Temporary Authority to continue operating the station and has reinstated its repack construction permit. The licensee has thirty days from release of the Notice of Apparent Liability for Forfeiture to seek a reduction or cancellation of the proposed fines.

Texas AM Station License Revoked Over Failure to Pay Regulatory Fees

The FCC adopted an *Order of Revocation* in which it revoked the license of a Texas AM radio station for failing to pay regulatory fees for eight years. The station's pending license renewal application was also dismissed. Section 9A of the Communications Act and Section 1.1164(f) of the FCC's Rules grant the FCC the authority to revoke authorizations for failure to pay regulatory fees in a timely fashion.

In March 2023, the FCC issued an *Order to Pay or Show Cause* to the licensee, giving the licensee 60 days to pay the delinquent fees or make a case for why the fees were not owed or should be waived or deferred. The licensee did not pay the outstanding fees and did not file a response to the *Order to Pay or Show Cause*. The Commission therefore revoked the station's license, noting that the revocation does not relieve the licensee of its obligation to pay any debt, including unpaid regulatory fees, owed to the FCC.

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