Advisory

Communications

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FCC Enforcement Monitor

By Scott R. Flick and Jessica Nyman

Headlines:

- *404 Not Found: Missing Online Public File Documents Lead to $9,000 Fine*
- *Wireless Providers Pay $158 Million to Settle Mobile Cramming Violations*
- *Failure to Timely File License Renewal Application Results in $1,500 Fine*

FCC Ramps up Enforcement of Online Public File Rule with $9,000 Fine and Multiple Admonishments

This month, the FCC proposed a $9,000 fine against one TV station licensee and admonished two others for violating the online public file rule. TV stations were required to upload new public file documents to the online public file on a going-forward basis beginning August 2, 2012, and should have finished uploading existing public file documents (with certain exceptions) by February 4, 2013. Until now, the FCC had taken relatively few enforcement actions against licensees for public file documents that exist but haven't been uploaded to the station's online public file, making three cases in one month stand out.

Section 73.3526(e)(11)(i) of the FCC's Rules requires that every commercial TV licensee place in its public file, on a quarterly basis, an Issues/Programs List that details programs that have provided the station's most significant treatment of community issues during the preceding quarter. Section 73.3526(b)(2), which the FCC modified in 2012, requires TV station licensees to upload these and most other public file documents to the FCC-hosted online public file website.

On October 1, 2014, an Oregon TV licensee filed its license renewal application. An FCC staff inspection revealed that the licensee failed to upload to the online public file copies of its Issues/Programs Lists for its entire license term. The FCC concluded that the licensee missed both the August 2, 2012 and the February 4, 2013 deadlines by over two years, resulting in two separate violations. Additionally, the licensee did not disclose the online file violations in its license renewal application, creating an additional violation of the FCC's Rules. Each violation cost the station $3,000, for a total proposed fine of $9,000.

Also this month, a Honolulu licensee and a different Oregon licensee caught the FCC's attention for online public file violations. The FCC proposed fines of $9,000 and $3,000 respectively against the stations for failing to timely file all of their Children's Television Programming Reports. In addition, the FCC admonished both licensees for failing to timely upload electronic copies of their quarterly Issues/Programs

Lists by the February 4, 2013 deadline. The FCC determined that while the licensees uploaded the documents approximately 18-19 months late, they were at least uploaded prior to the filing of each station's license renewal application. Because this preserved the public's ability to undertake a full review of the stations' public file documents in connection with potentially filing a petition to deny, the FCC concluded that admonitions rather than additional fines were an appropriate response.

FCC Continues Crack Down on Cramming Violations With Two Multi-Million Dollar Settlements

The FCC announced this month that, in coordination with the Consumer Financial Protection Bureau and the attorneys general of all 50 states and D.C., it has reached settlements with two large wireless carriers to resolve allegations that the companies charged customers for unauthorized third-party products and services, a practice known as "cramming." Investigations revealed that the companies had included charges ranging from $0.99 to $14.00 per month for unauthorized third-party Premium Short Message Services ("PSMS") on their customers' telephone bills, and that the companies retained approximately 30-35% of the revenues for each PSMS charge they billed.

The FCC has held that placing unauthorized charges and fees on customers' telephone bills is an "unjust and unreasonable" practice in violation of Section 201(b) of the Communications Act. In the past year and a half, the FCC has taken 19 enforcement actions for cramming violations, resulting in $391 million in fines, payments, and restitution to consumers.

Under the terms of the consent decrees, one carrier will pay $90 million, which includes a minimum of $70 million to fund a customer redress program, a $16 million payment to state governments participating in the settlement, and a $4 million fine to be paid to the U.S. Treasury. The other carrier will pay $68 million, to include a minimum of $50 million for customer refunds, $12 million to pay state governments, and a $6 million federal fine.

The settlement agreements also include consumer protection requirements intended to reform how the companies interact with and disclose information to their customers. Among other requirements, the carriers (1) must obtain informed consent from customers prior to allowing third-party charges; (2) must offer a free service for customers to block all third-party charges; and (3) must regularly report to the FCC on compliance and refunds to customers.

Radio Station Faces $1,500 Fine for Failure to Timely File License Renewal Application

A Texas radio station licensee received a $1,500 fine this month for filing its license renewal application over a month after the filing deadline. Section 73.3539 of the FCC's Rules requires stations to file their license renewal applications "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."

License renewal applications for radio stations in Texas were due by April 1, 2013, but the licensee did not file its renewal application until May 6, 2013. The licensee did not provide an explanation for its late filing.

The FCC's Rules establish a base fine amount of $3,000 for failure to file a required form, but because the licensee filed its renewal application prior to the expiration of its current license, the FCC determined that a reduction from the base amount to $1,500 was appropriate. The FCC will, however, withhold grant of the renewal application until the licensee pays the fine.

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.

Scott R. Flick (bio)
Washington DC
+1.202.663.8167
scott.flick@pillsburylaw.com

Jessica Nyman (bio)
Washington DC
+1.202.663.8810
jessica.nyman@pillsburylaw.com

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