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FCC Enforcement Monitor

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Headlines:

- *FCC Revokes Company's Authorizations for Failure to Pay Regulatory Fees*
- *Failure to Disclose Felonies in License Applications Yields $175,000 Fine*
- *Cable Operator Settles Investigation into Unlawful Billing for $2.3 Million*

Pay Up or Shut Down: Failure to Pay Regulatory Fees Leads to License Revocation

In a rare move, the FCC revoked the domestic and international 214 authorizations of a Florida telecommunications company to provide facilities-based and international telecommunications services.

Section 9 of the Communications Act directs the FCC "to assess and collect regulatory fees" to recover costs of certain FCC regulatory activities. When a required payment is not made or is late, the FCC will assess a monetary penalty. Further, Section 9(c)(3) of the Act and Section 1.1164(f) of the FCC's Rules permits the FCC to revoke authorizations for failure to make timely regulatory fee payments. Under Section 1.1917 of the Rules, a non-tax debt owed to the FCC that is 120 days delinquent is transferred to the Secretary of the Treasury for collection.

In December 2008, the company was authorized to provide facilities-based and resold international telecommunications services. In October 2014, the FCC sent the company a Demand Letter notifying the company of delinquent regulatory fees for fiscal year 2014 and demanding payment. The company failed to respond to the Letter and, as required by Section 1.1917 of the Rules, the FCC transferred the FY 2014 debt to the Secretary of the Treasury. As of July 1, 2016, the company had unpaid regulatory fees of $711.40 for FY 2014, and $3,025.34 for FY 2012. According to the FCC, the company does not appear to have any current customers.

In July 2016, the FCC issued an Order to Pay or Show Cause, instructing the company to demonstrate within 60 days that it paid the regulatory fees and penalties in full, or show why the payment was inapplicable or should be waived or deferred. The Order also explained that failure to comply could result in revocation of the company's international and domestic authorizations. The company neither responded to the Order nor made any payments.

Citing the company's failure to either pay its regulatory fees or show cause to remove, waive, or defer the fees, the FCC revoked the company's international and domestic authorizations. The Revocation Order explicitly stated that such revocation did not relieve the company of its obligation to pay the delinquent fees or “any other financial obligation that has or may become due resulting from the authorizations held until revocation.”

Companies Settle Investigation Into Subsidiaries’ Failure to Disclose Felony Convictions in Wireless Applications With $175,000 Fine

Two engineering corporations, on behalf of themselves and their subsidiaries, entered into a Consent Decree with the FCC to end an investigation into the subsidiaries’ failure to disclose two corporate felony convictions in several wireless license applications.

Section 1.17(a)(2) of the FCC’s Rules requires applicants for wireless licenses to provide the Commission with information that is complete and factually correct. Further, applicants must not “omit material information that is necessary to prevent any factual statement that is made from being incorrect or misleading.” FCC Forms 601 and 603 specifically ask whether the applicant, any party to the application, or any party directly or indirectly controlling the Applicant has ever been convicted of a felony. The FCC has emphasized that even large companies “whose primary lines of business are not subject to the Commission’s jurisdiction must file complete and accurate wireless license applications.”

Between 2007 and 2015, the subsidiaries filed numerous wireless license applications. In those applications, one of the subsidiaries failed to disclose that its direct parent had pleaded guilty to a felony charge in 2007 for obstruction of justice in connection with a 2001 civil litigation case. Further, that subsidiary and each of the corporations’ other subsidiaries failed to disclose that their ultimate parent company had pleaded guilty to violating provisions of the Foreign Corrupt Practices Act relating to bribes and kickbacks paid to foreign government officials to secure government contracts in places such as Argentina, Bangladesh, and Nigeria.

The FCC found the failure to disclose these convictions “particularly troubling because the underlying acts included misdeeds involving foreign telecommunications regulators.” Ultimately, however, the FCC concluded settlement was appropriate “based on a totality of the circumstances”, which included the corporations’ corrections of the subsidiaries’ wireless applications on their own initiative and their subsequent cooperation with the FCC’s investigation. The corporations agreed to pay a $175,000 civil penalty and to implement a compliance plan to ensure compliance with the FCC’s Rules governing the making of truthful and accurate statements.

FCC Issues Largest Fine Ever to Cable Operator to Settle Investigation of Unauthorized Charges

The FCC entered into a Consent Decree with one of the country’s largest cable operators to resolve an investigation into whether the cable operator charged customers for services and equipment they did not ask for.

Section 623(f) of the Communications Act and Section 76.981(a) of the FCC’s Rules prohibit “negative option billing,” which is the practice of charging subscribers for services or equipment that they did not affirmatively request. This affirmative request requirement cannot be satisfied by a subscriber’s mere failure to refuse a cable operator’s offer to provide new services or equipment. The FCC considers this practice equivalent to placing unauthorized charges on customers’ telephone bills, known as “cramming”.

The FCC opened an investigation into the cable operator’s compliance with the prohibition on negative option billing in December 2014 after receiving “numerous complaints” that the operator charged customers for equipment and services they did not order. As part of its investigation, the FCC issued two subpoenas, the first in January 2015 and the second in October 2015.

The customer complaints alleged that the cable operator added charges for new products to their bills without authorization, including charges for premium channels, additional set-top boxes, DVRs, and cable modems. Some customers explained that they were billed despite specifically declining offers to upgrade or acquire new products. Other customers stated that new charges simply showed up on their bills without any warning. Many customers described spending significant amounts of time on the telephone with customer service representatives and at the cable operator's service locations attempting to get refunds, and alleged that customer service representatives exhibited "unhelpful or abusive behavior."

For example, a Washington, D.C. customer complained that the cable operator charged the customer for Showtime for over a year without the customer requesting it. The customer explained that the incorrect charge went unnoticed because the customer simply looked at the total amount owed on the bill and paid it. The customer further explained that when a service representative was contacted to remove the charges, the representative said they could only remove charges on the account for the past six months.

The cable operator asserted that the vast majority of charges discussed in the complaints were authorized, and that it took corrective action—including issuing refunds—where appropriate. It also claimed that its internal customer account audit and reconciliation process is designed to catch ordering errors and to automatically provide refunds.

Despite the cable operator's explanations, the FCC found there was evidence that the cable operator violated the rules against negative option billing. The cable operator disputed the FCC's determination, and contended that the "Negative Option Billing Laws are not *per se* prohibitions," and are instead meant to target only "affirmatively deceptive conduct." Nevertheless, the cable operator agreed to settle the Investigation by paying a $2.3 million fine, the largest ever issued to a cable operator by the FCC. In addition, the cable operator must implement a five-year compliance plan to, among other things, (i) establish procedures to obtain customers' affirmative informed consent prior to charging them for new services; (ii) send customers order confirmations separate from any other bill for newly added services; (iii) enable customers to block the addition of new services or equipment to their accounts; (iv) implement a detailed program for redressing disputed charges; and (v) limit adverse actions (such as referring an account to collections or suspending service) while a disputed charge is being investigated.

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

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