The New FCC Enforcement Bureau
Issues and Challenges in Compliance

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May 15, 2015
Before We Begin

FCC ENFORCEMENT ADVISORY

VIEWER DISCRETION ADVISED
Rogue Enforcer?

“We stopped opening up cases when we have no legal basis for pursuing a claim”
Thesis of This Presentation

- Under new FCC Enforcement Bureau Chief Travis LeBlanc, the Bureau has become **significantly** more inflexible, **significantly** more likely to impose penalties, and **significantly** more likely to apply broad principles rather than specific rules
  - Adjust compliance risk/benefit calculations
  - Someday soon, litigation will be worthwhile
Overview of FCC Enforcement

- Authority
  - **S 403** “full authority and power” to initiate an inquiry on its own motion
  - **S 218** may inquire into the “management and business” of carriers; carriers to provide “full and complete information”
  - **S 503(b)** authorizes forfeitures for willful or repeated violations
  - **S 503(b)(3)** hearing before the Commission or an ALJ
  - **S 503(b)(4)** Notice of Apparent Liability (NAL) and response
## Steps in FCC Investigations

<table>
<thead>
<tr>
<th>Pre-Letter of Inquiry</th>
<th>Complaints</th>
<th>FCC Field Agent Investigation</th>
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<tbody>
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<td>Self-reporting</td>
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- **Letter of Inquiry (LOI)**

- **Operator/Provider Response**

- **Supplemental LOI(s)**
  - (Supplemental Response(s))

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<tr>
<th>Conclusion of Investigation</th>
<th>Consent Decree</th>
<th>Notice of Apparent Liability (NAL)</th>
<th>Termination</th>
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FCC Investigations - Notes

- LOI is itself a Commission Order
  - Failure to respond can be a separate violation. *Google, Inc.*, 27 FCC Rcd 4012 (2012)

- LOIs are non-public
  - No other parties
  - No right to intervene. *Section 403 Inquiry re Dr. Bernard Boozer*, 4 FCC Rcd 1568 (1989)

- No time limit on investigations
  - But statute of limitations for violations (504(b)(6))
Enforcement Actions, 2014

- Unauthorized transfer of control; unauthorized operations
- Unauthorized transfer of EAS tones
- Aliens ownership cap; unjust enrichment; unauthorized transfer
- USF regulatory filings
- Wi-Fi Jamming
- USF rule violations
- Antenna construction rule violations
- Broadcasts related to financial contributors
- Compliance with public file rule
- CPNI violations
- Cramming
- Do-not-call violations
- Failure to file form 477
- Hearing aid compatibility
- Hearing aid compatibility filing
- Indecency violations
- Interference
- License application violations
- Lifeline de-enrollment
- Local licensee collaboration
- Network outage reporting violations
- Radiofrequency exposure limits
- Unauthorized marketing
- Unauthorized importation; unauthorized marketing
- TCPA violations
- Sponsorship identification violations
- Slamming
- Rural call completion
- 911 outages
Recent Trends in FCC Enforcement

- Progressively more active Bureau
- Prosecutorial focus
- Large scale actions
  - Principle-based, not rule-based
- Detailed compliance plan obligations
- New focus on “admissions” and “civil penalties”
Example: Failure to Make Regulatory Payments

- February 2015 – new policy for non-payment situations, dubbed the “treble damages” policy.

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<thead>
<tr>
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<th>OLD POLICY</th>
<th>NEW POLICY</th>
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<td>USF</td>
<td>$20K/mo plus ½ unpaid amount</td>
<td>3x unpaid amount (plus $20K/month?)</td>
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<tr>
<td>TRS</td>
<td>$10K/yr plus ½ unpaid amount</td>
<td>3x unpaid amount (plus $10K/yr?)</td>
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<td>3x unpaid amount</td>
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<td>LNP</td>
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FCC Forfeitures: Statutory Considerations

In determining the forfeiture amount, the FCC will consider “the nature, circumstances, extent and gravity of the violations” and “the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.” 47 C.F.R. 1.80(b)(4).

**Aggravating Factors**
- Egregious conduct
- Ability to pay
- Prior violations of FCC requirements

**Mitigating Factors**
- Good faith or voluntary disclosure
- Inability to pay
- History of overall compliance
The Near Future? – Section 504(a)

- “The forfeitures provided for in this chapter shall be payable into the Treasury of the United States, and shall be recoverable, except as otherwise provided with respect to a forfeiture penalty determined under section 503(b)(3) of this title, in a civil suit in the name of the United States brought in the district where the person or carrier has its principal operating office or in any district through which the line or system of the carrier runs: Provided, That any suit for the recovery of a forfeiture imposed pursuant to the provisions of this chapter shall be a trial de novo…”

- Carrier “appeals” by refusing to pay forfeiture

- FCC must prove its case in a trial de novo
  - Forfeiture approaches at risk