



By Raul Magallanes

## Successfully Navigating FCC Enforcement Proceedings

The satellite industry is no stranger to enforcement actions by the U.S. Federal Communications Commission (FCC). These actions typically take the form of fines for failure to obtain or maintain required authorizations or otherwise comply with FCC directives. Here, we provide a brief overview of FCC enforcement proceedings and recommendations on successfully navigating them.

### Common Enforcement Proceedings

Any rule violation is a potential candidate for an enforcement proceeding. However, there are some patterns that can be observed in past enforcements affecting the satellite industry:

- Failure to renew FCC authorizations before expiration
- Failure to secure FCC consent prior to transfers of control
- Failure to modify existing authorizations to reflect operational changes
- Failure to comply with other FCC regulatory requirements such as universal service and privacy rules.

### How Does the FCC Conduct an Investigation?

There is no one unique way for the FCC to begin an investigation. The FCC most commonly initiates investigations after a company self-discloses a possible violation. Other times, the FCC initiates investigations as a result of doing its own research and monitoring or upon receiving a complaint from a third party.

The FCC typically begins an investigation by sending a Letter of Inquiry (LOI) to a company. The LOI will include a series of questions which must be answered by an officer of the company and returned to the FCC within 30 days of receipt. The FCC may continue issuing LOIs to elicit more information. At this point, the LOI recipient may decide to engage the FCC in settlement discussions or simply

allow the process to continue.

Once the LOI phase is complete, and if no settlement is pursued, the FCC may issue a Notice of Apparent Liability (NAL) publicly alleging that a violation has occurred and directing the recipient to pay a fine.

In calculating fines, the FCC follows baseline amounts according to law and then adjusts the amounts based on the situation at hand. For instance, the FCC may adjust a fine upwards if evidence exists of intentional wrongdoing, substantial harm, or repeated violations. On the other hand, the FCC may adjust a fine downwards for reasons of voluntary disclosure, a history of compliance or inability to pay.

The NAL recipient will have 30 days to take action either by paying the fine or by seeking a reduction of the fine. In a successful request for reduction or dismissal of the fine, the NAL recipient will have to make arguments that are sufficiently compelling to merit the lessening of the fine.

It also is possible for settlement talks to begin at this point. In a typical settlement, the NAL recipient will agree to make a “voluntary contribution” to the U.S. treasury. Because the investigation is halted as a result of the settlement, the FCC likely will make a finding of no wrongdoing. However, the NAL recipient will be required to make a commitment to take corrective action and implement internal policies to ensure future compliance.

The important thing to remember is that any company that finds itself in the middle of an enforcement proceeding can take measures to minimize the negative consequences. Of crucial importance is an attitude of candor and due diligence from the beginning.

In responding to an LOI, one should be careful not to omit information or offer information that could be interpreted as misleading. If no investigation is underway but the company has internal knowledge of a violation, it is advisable to make a voluntary disclosure since this step is viewed favorably within FCC quarters.

Finally, proposing a settlement early in the investigation can save everyone time and money. ▮

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