Checking the Boxes: FCC Proposes Forfeiture of Half a Million Dollars against International Prepaid Calling Card Provider

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On September 16, the Federal Communications Commission issued a Notice of Apparent Liability ("NAL") against PTT Phone Cards, Inc., ("PTT") for a litany of alleged violations of rules applicable to international telecommunications carriers in general and one applicable to pre-paid calling card providers in particular. In short, the NAL alleges that, for over three years, PTT violated "virtually all of [the] regulatory obligations" applicable to international carriers and one specifically applicable to pre-paid calling card providers. The proposed forfeiture of $493,327 was arrived at through a straightforward application of the Commission's base forfeiture amounts or penalties that the agency has recently applied for similar violations. While the Commission normally considers mitigating and aggravating factors to adjust penalties downward or upward, in the NAL it did not expressly do so, despite what it called "PTT's apparent pattern of noncompliance" and "the seriousness, duration, and scope of PTT's apparent violations." Instead, it simply proposed standard penalties for each apparent violation, giving a casebook glimpse into what awaits entities that provide international and/or calling card services without first obtaining necessary FCC authority and without making requisite filings with the Commission, contributions into applicable federal funds, and payments of federal regulatory fees.

PTT commenced providing prepaid calling services – reselling international telephone service – in January 2010. PTT did not obtain authorization to do so under Section 214 of the Communications Act of 1934, did not register as a provider of telecommunications by filing a FCC Form 499A, and failed, at least for several years to make other filings required by international telecommunications carriers and prepaid calling card providers. The NAL does not say how the FCC Enforcement Bureau became aware of PTT's operations in January 2013, but the NAL notes that PTT sold its cards through grocery stores and Internet distributors and resellers, which outlets may have led to the Bureau's discovery. A Bureau investigation commenced almost immediately, and, in April 2013, the Bureau sent a Letter of Inquiry to PTT. PTT apparently cooperated with the investigation, promptly sought Section 214 authority (although not special temporary authority while its application was pending), which the Commission granted in May 2013. Over time, extending almost to the time of the NAL, PTT sought to rectify its past failures to register and make other compliance filings. Notably, although the Commission faulted PTT in many instances for its apparent slowness in bringing itself into compliance after the Letter of Inquiry was sent, that alleged fact did not result in the aggravation of the proposed forfeitures.

While the Bureau and PTT entered into a tolling agreement – which explains why the NAL was issued more than one year after the investigation began and PTT began to make its belated compliance filings – the Commission's proposed penalties confirms the FCC's historic approach to treating carrier reporting and filing failures as continuing violations until they are cured. In addition, the proposed penalties reflect the Commission standard penalties for many carrier compliance breakdowns and illustrate how the failure to obtain Section 214 international authority, when required, can lead to a cascade of penalties. In particular, the Commission proposed penalties of:

- $100,000 for failure to obtain Section 214 authorization prior to providing international telecommunications services, an amount "[c]onsistent with Commission precedent," for which the FCC cited several recent forfeiture orders against prepaid calling companies;
- $150,000 for failure to file Form 499A (the annual Telecommunications Reporting Worksheet) for 2011, 2012, and 2013 in a timely fashion – $50,000 for each annual filing missed – again citing precedent where carriers had similar lapses;
- $30,000, or $10,000 per year (the base forfeiture amount), for failure to make timely required contributions to the Telecommunications Relay Service ("TRS") Fund for three consecutive annual contribution periods, beginning with 2011-2012, which contributions are based on the Form 499A reports;
- a $23,327 upward adjustment of the penalty for failure to make timely contributions into the TRS fund, 50% (the standard adjustment) of the unpaid contribution amount at the time PTT entered into a payment agreement with the Treasury Department;
- $30,000, or $10,000 per year (the base forfeiture amount), for failure to make timely required contributions to the Local Number Portability ("LNP") cost recovery mechanism for three consecutive annual contribution periods, beginning with 2011-2012, which contributions are based on the Form 499A reports;
- $20,000, or $10,000 per year (the base forfeiture amount), for late payments of regulatory fees – specifically the Interstate Telecommunications Service Provider ("ITSP") which international carriers must pay based on their international end user revenues as reported on their Form 499A reports -- for fiscal years 2011 and 2012;
- $48,000, or $3,000 per filing (the base forfeiture amount), for failure to timely file 16 quarterly certifications required of prepaid calling card companies from the first quarter of 2010 through the first quarter of 2014 (with the exception of the third quarter of 2013 which was timely filed);
- $12,000, or $3,00 per filing (the base forfeiture amount), for failure to timely file its 2011, 2012, 2013, and 2014 annual international telecommunications traffic reports international common carriers must file; and
- $80,000, or $20,000 per year (consistent with prior conditions), for failure to timely file its annual 2011, 2012, 2013, and 2014 customer proprietary network information ("CPNI") certifications that telecommunications carriers must make.