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Honesty is the Best Policy: FCC Imposes $1.7 Million Fine for Submitting Misleading Information in Inmate Calling Services Deal

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Stressing the importance of receiving truthful and accurate information, the Federal Communications Commission (“FCC”) reached a $1.7 million settlement with inmate calling services provider Securus Technologies, Inc. and related entities (“Securus”) to resolve allegations that Securus submitted misleading information to the FCC in support of a pending transfer of control. Although the settlement cleared the way for the transfer’s approval, the FCC held up the deal for months while it investigated statements made by Securus representatives. As a result, the FCC’s action supports the adage that “haste often makes waste” in telecommunications-related deals and that submitting misleading information to the FCC can come with significant consequences.

Federal regulations prohibit FCC regulatees from submitting misleading material information or omitting material information in order to mislead the FCC. In addition, transfer of control applicants must ensure the continuing accuracy and completeness of their FCC filings. In support of an application to transfer control of licenses as part of a planned acquisition, Securus’s CEO and other executives submitted a letter to FCC Chairman Pai requesting his help in expediting approval for the deal. The letter indicated that Securus already had received all necessary approvals from state regulators for the transaction. However, the FCC subsequently determined that a number of state regulators had not yet approved the transfer when Securus submitted the letter. Although Securus argued that it meant to limit its statements to certain state regulators specified in its acquisition agreement, the FCC found the letter facially inaccurate and misleading.

In addition to paying $1.7 million to resolve the investigation, Securus agreed to a number of boilerplate settlement compliance conditions, including appointing a compliance officer, developing compliance procedures/training programs, and submitting periodic compliance reports. The FCC also required Securus to ensure that its future FCC filings are reviewed and approved by internal legal counsel before submission, a somewhat rare settlement condition. The compliance conditions will apply not only to Securus, but also to any successor company following the transfer of control. Importantly, despite finding the Securus letter facially inaccurate, the settlement did not contain an admission of liability, which was often a requirement for settlements under prior FCC leadership.

Chairman Pai stated that the fine reflected the seriousness of candor when dealing with the FCC and should serve as a strong deterrent. The Chairman further noted that the misrepresentations submitted by Securus in order to expedite approval of the deal ended up having the opposite effect by resulting in months of investigation and delays. Meanwhile, Commissioner Clyburn and Commissioner Rosenworcel filed a joint dissent criticizing the settlement and fine as negligible compared to the deal’s value and setting a dangerous precedent of approving a transaction where an applicant misled the FCC. Consequently, even if a lack of candor does not completely derail a transaction, submitting misleading information to the FCC may result in significant delays and enforcement penalties. FCC regulatees therefore should seek legal counsel when necessary to ensure the truthfulness and accuracy of their agency filings.