

# Trends in Enforcement: Voluntary Disclosure

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For years, the FCC's *Forfeiture Guidelines* have provided a downward adjustment for "good faith or voluntary disclosure." That is, the FCC will lower the penalty it might otherwise assess if the licensee or telecom provider voluntarily comes forward to disclose the violation to the Commission. This author has always felt that the Commission fails to give sufficient weight to this factor, and therefore misses the chance to encourage companies that are "under the radar" to come forward to correct a violation.

Three recent FCC enforcement actions have involved the voluntary disclosure element. In this post, we will take a look at each, to see if anything has changed in the FCC's approach to voluntary disclosure.

First, we begin with the statute. Section 503(b)(2)(E) requires the Commission, when assessing a forfeiture, to consider "the nature, circumstances, extent and gravity of the violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require." This standard is repeated in Section 1.80(b)(8) of the Commission's rules. Section 1.80 further lists specific criteria the Commission will consider to increase or decrease the forfeiture in specific cases. Among its "downward adjustment" criteria is the violator's "good faith or voluntary disclosure." Three cases in the past two months have dealt with the voluntary disclosure element of FCC forfeitures: **Unipoint Technologies**. In Unipoint Technologies, the FCC had proposed a forfeiture of \$179,000 for violations of the FCC's carrier registration rules and associated payment and reporting obligations. The \$179,000 figure was reached by adding the informal base forfeiture amounts the Commission has used for each associated violation to reach the total forfeiture. Unipoint sought reduction of the forfeiture for, among other reasons, its voluntary disclosure of the violations.

In the [Forfeiture Order](#), however, the FCC rejected these claims. The Commission did not dispute that Unipoint brought the violations to the FCC's attention, but it nevertheless concluded that a downward adjustment was not warranted. The Commission declared that a downward adjustment is appropriate,

only if two conditions are met: (1) the disclosing company has taken corrective measures *prior* to a Commission inquiry or initiation of an enforcement action; and (2) there cannot have been a lengthy delay between the time that the company learned of the violation and the time it brought the violation to the Commission's attention.

The Commission concluded that Unipoint's actions were not prompt enough, and noted that, when it did come forward via a Section 214 application, it did not request temporary authorization to cure its violation quickly, and did not disclose the prior operation for another four months. Due to Unipoint's dilatory conduct, the Commission refused to make a reduction in the forfeiture amount.

**Radio License Holding XI, LLC.** In [Radio License Holding](#), the FCC affirmed its proposal to assess a

\$44,000 forfeiture for 11 violations of the Commission's sponsorship identification rules. The respondent, Radio License Holding (Radio License) contended, among other things, that it discovered the violations and "took prompt action to correct the problem" before receiving the FCC's inquiry.

The Commission declined to reduce the forfeiture for two reasons. First, it noted that, while Radio License "resumed compliance" after discovering the violations, it did not disclose them to the FCC. Second, the Commission faulted Radio License for failing to take corrective action with regard to the prior violations, such as by making announcements that the previous broadcasts were sponsored stories, not news broadcasts.

**Rubard, LLC d/b/a Centmobile.** Finally, in December, the FCC released a [Consent Decree](#) with Rubard, LLC d/b/a Centmobile (Centmobile) for violations of the FCC's carrier registration rules and associated payment and reporting obligations. This action was a Consent Decree, so fewer facts surrounding the investigation and potential violations are disclosed. However, the action is notable because the target entity was a start-up dial-around provider of international telecommunications services. Per the Consent Decree, the entity operated for approximately 13 months before voluntarily coming forward to seek an international 214 and register with the Commission. This seems to be an unusually short time period to prompt an enforcement action -- Unipoint, for example, operated for nearly three years before filing for authorization. Moreover, Centmobile came forward before an FCC inquiry, and appears to have been prompt in correcting its violations (it filed its first 499-A, for example, only seven weeks late).

Nevertheless, the Centmobile agreed to a voluntary contribution of \$185,000. This appears to be the undiscounted fine the FCC would impose for (1) failing to register as a carrier (\$100,000) and (2) failing to file a CPNI certification (\$25,000), plus \$15,000 each for four failures to file the quarterly prepaid card provider certifications. (The FCC has not set a base forfeiture for the quarterly certifications, but \$15,000 would be in the range it might assess.) In other words, it does not appear that Centmobile received *any* downward adjustment for its voluntary disclosure to the FCC.

\* \* \* These cases indicate that the Commission has not softened its stance on voluntary disclosures, and, if anything, has been less hospitable to those who come forward voluntarily. The lesson appears to be that the best way to reduce a forfeiture is to correct any violations as early as possible. If one does this, it will have fewer violations to resolve, and thus will pay a lesser amount. Even the entity that comes forward to disclose its violations is likely to pay the same amount (or close to it) for each violation. I'm not sure that's the message the FCC intends to send, however.