

FCC PROPOSES \$29.6 MILLION FORFEITURE FOR SLAMMING AND CRAMMING

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On February 12, 2016, the Federal Communications Commission (“FCC”) released a Notice of Apparent Liability for Forfeiture (“NAL”) against OneLink Communications, Inc. and three affiliates, TeleDias Communications, Inc., TeleUno, Inc., and Cytel, Inc. (together, the “Companies”) for apparently targeting consumers with Hispanic surnames in “an ongoing, expansive, calculated, and multi-pronged campaign to allegedly ‘win’ customers through deceit and fraud.” Specifically, the FCC found that the Companies apparently violated Section 210(b) of the Communications Act of 1934 (the “Act”), 47 U.S.C. § 210(b), for misrepresentation in connection with marketing calls to consumers and for submitting to the Commission falsified recordings as evidence; Section 1.17 of the FCC’s rules, 47 C.F.R. § 1.17, for providing false and misleading material information to the Commission; Section 258 of the Act, 47 U.S.C. § 258, and Section 64.1120 of the Rules, 47 C.F.R. § 64.1120 for slamming violations; and Section 201(b), 47 U.S.C. § 201(b) for cramming violations.

The Companies’ apparent practices included “slamming” consumers by switching their long-distance service to other carriers without consent, “cramming” unauthorized charges onto consumer bills, and fabricating audio recordings to try to justify their actions. The Companies’ apparent practices included “misrepresenting themselves to consumers including by ‘spoofing’ the Companies’ telephone number, tricking consumers into making statements or disclosing information that the Companies recorded and then used to ‘verify’ that the consumer had authorized a change in telephone service provider, charging for services that the consumer had not ordered, and submitting to the Commission false and/or misleading information.”

The FCC took action after reviewing more than 200 consumer complaints against the Companies alleging slamming and cramming violations. Staff also contacted approximately 50 complainants to discuss their complaints. Some complainants told staff that the Companies’ telemarketers asserted they were calling from a U.S. Post Office to notify the consumer about a package delivery. In several of these cases, complainants maintained that the Companies ‘spoofed’ the caller identification information to make it look as if the call was coming from an actual U.S. Post Office. When confronted with this evidence, the Companies allegedly provided fabricated audio recordings of the third party verification telephone conversations as proof that consumers had authorized the Companies to switch their long distance carriers. The FCC also asserted that the Companies had been on notice of consumers’ complaints about using fake or fraudulent third party verification recordings, deception, and misrepresentations for many years.

The FCC said the apparent unauthorized charges and deceptive calls were “unjust and unreasonable” practices under the Communications Act. Based on the evidence surrounding the apparent violations, and the egregiousness of the Companies’ conduct and substantial harm caused to consumers, the FCC proposed a total combined monetary forfeiture of \$29.6 million against the Companies. (The proposed forfeiture consists of \$5.68 million for 142 alleged

HWG REGULATORY ADVISORY
24 FEBRUARY 2016

slamming and cramming violations; \$10.56 million for 66 instances of allegedly providing false and misleading information; and a significant upward adjustment of \$13.36 million given the egregiousness of the alleged violations, the substantial harm caused to consumers, and the longstanding nature of the allegations.) The Companies will have an opportunity to respond to the allegations, but the FCC expressly noted it could move to revoke the Companies' authorizations to operate. Notably, Commissioner Ajit Pai, who has often been highly critical of certain Enforcement Bureau actions and proposed forfeiture amounts, fully supported the NAL, saying in a separate statement, "Today's case may be the worst yet. . . .That's why I'm grateful to my colleagues for agreeing with my two key requests in this matter. First: to prosecute OneLink for the full \$29.6 million forfeiture it deserves under our precedent. Second, to consider revoking OneLink's authorizations to offer telephone service in the United States once it has an opportunity to respond to this [NAL]. For conduct this egregious, the book should be thrown." Commissioner Mike O'Reilly partially dissented but did not issue a statement.

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For more information regarding the FCC's February 12, 2016 Notice of Apparent Liability for Forfeiture or Harris, Wiltshire & Grannis LLP's Communications practice, please contact **Brita Strandberg** at +1 (202) 730-1346 or by e-mail at bstrandberg@hwglaw.com, **Randall Sifers** at +1 (202) 730-1307 or by e-mail at rsifers@hwglaw.com or contact the HWG lawyer with whom you regularly work.

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