

The US Federal Communications Commission (FCC or Commission) continues to flex its enforcement muscles, most recently focusing on companies that would block or hamper consumer access to free Wi-Fi services.

Just last year the FCC raised eyebrows by using a provision of the Communications Act, heretofore applied to limit use of phone bill call detail information, to find that two companies – [YourTel and Terracom](#) – failed to protect all “proprietary information” they may have collected on customers. This week, the FCC’s Enforcement Bureau (EB) Chief, Travis LeBlanc, unequivocally emphasized to hospitality venues, e.g., hotels, convention centers and other commercial establishments, that Wi-Fi blocking is a “disturbing practice [that] must come to an end.” This action, when combined with the FCC’s recent penchant for record-setting fines, should cause any venue that wants to require customers to use its own Wi-Fi services to take notice.

On Monday, November 2, in a 3-2 vote split along party lines, the FCC proposed a US\$718,000 penalty against M.C. Dean, Inc., claiming that the company “apparently interfer[ed] with and disabl[ed] the operation of consumers’ Wi-Fi devices at the Baltimore Convention Center” (BCC). In its [Notice of Apparent Liability for Forfeiture](#) (NAL), the Commission claims that M.C. Dean – the exclusive provider of Wi-Fi access at the BCC – charged BCC visitors and exhibitors up to US\$1,095 per event for Wi-Fi access. After receiving a complaint, the FCC Enforcement Bureau’s field agents investigated and EB staff found that the company was, in fact, blocking personal Wi-Fi access both inside BCC and in vehicles passing the center as well.

The action against M.C. Dean is just the most recent of several actions showing the Commission’s laser beam focus on businesses that engage in Wi-Fi blocking. In fact, in a [news release](#) issued the same day, the Commission asserted that this is the third such action – also citing a [Consent Decree](#) between the Bureau and Smart City Holdings, LLC.

What Exactly Is Wi-Fi Blocking and Why Is the Commission So Focused On It?

According to the FCC, Wi-Fi blocking occurs when someone who operates Wi-Fi equipment “intentionally disrupts the lawful operation of neighboring Wi-Fi networks, including through the indiscriminate use” of technologies intended “to disrupt a Wi-Fi device’s link to a Wi-Fi network other than the operator’s network.” As a result, the person trying to sign on to a personal Wi-Fi hotspot is unable to establish or maintain a connection with a network other than the one provided by the Wi-Fi equipment operator blocking the signals. Because Wi-Fi is unlicensed spectrum that operates in a “spectrum commons” environment, the FCC believes this kind of blocking “threatens to disrupt” the status quo and “violates the Act.”

The heightened level of enforcement focused on Wi-Fi blocking was further confirmed by the same-day release of an action against [Hilton Hotels](#) for allegedly failing to produce information in response to an EB Letter of Inquiry investigating potential Wi-Fi blocking violations. In a related [news release](#) issued the same day, the Commission urged “hotels, convention centers, and other commercial establishments to review their practices to ensure that there is no unlawful blocking of Wi-Fi communications.”

Indeed, at the beginning of the year, the EB warned in an [Enforcement Advisory](#) that:

No hotel, convention center, or other commercial establishment or the network operator providing services at such establishments may intentionally block or disrupt personal Wi-Fi hot spots on such premises, including as part of an effort to force consumers to purchase access to the property owner’s Wi-Fi network. Such action is illegal and violations could lead to the assessment of substantial monetary penalties.

What Is the Takeaway?

Since assuming his role as Chief of the FCC’s largest bureau, Travis LeBlanc has repeatedly stated that he is interested in solving 21st Century consumer problems. And the Enforcement Advisory foreshadowed just that, asserting that “[i]n the 21st Century, Wi-Fi represents an essential on-ramp to the Internet.” In light of the FCC’s aggressive enforcement stance on this issue, hotels and other hospitality venues should immediately review their Wi-Fi policies.

Further, the action reconfirms the continuing trend in vigorous enforcement activity that has not just been limited to Wi-Fi blocking, but a variety of consumer issues.

Our Communications Practice

Spanning 44 offices in 21 countries, our firm has substantial experience interacting with the FCC on technology policy and enforcement. We have a comprehensive communications team including former high-level FCC officials and former FCC enforcement staff, former senior US Executive branch level officials, as well as long-time practitioners before the FCC. Our lawyers can assist in advising clients on any potential FCC enforcement issue.

Contact

Koyulyn K. Miller

T + 1 202 457 5321

E koyulyn.miller@squirepb.com

Paul C. Besozzi

T +1 202 457 5292

E paul.besozzi@squirepb.com

Monica S. Desai

T +1 202 457 7535

E monica.desai@squirepb.com

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations nor should they be considered a substitute for taking legal advice.

© Squire Patton Boggs.

All Rights Reserved 2015