

The New FCC Enforcement Bureau

Issues and Challenges in Compliance

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May 15, 2015

Before We Begin

FCC ENFORCEMENT ADVISORY

**VIEWER
DISCRETION
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Rogue Enforcer?



“We stopped opening up cases when we have no legal basis for pursuing a claim”

Thesis of This Presentation

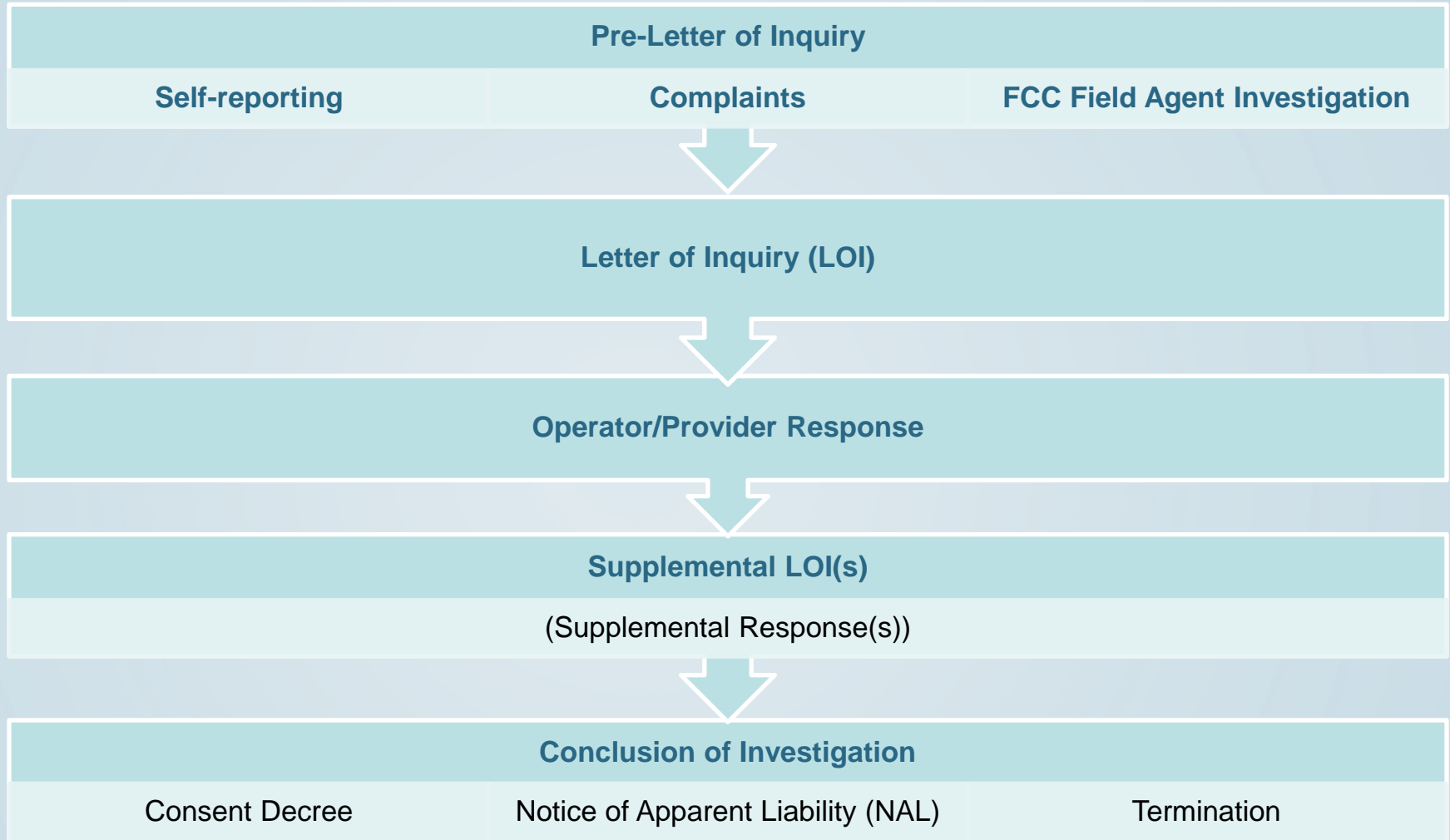
- Under new FCC Enforcement Bureau Chief Travis LeBlanc, the Bureau has become **significantly** more inflexible, **significantly** more likely to impose penalties, and **significantly** more likely to apply broad principles rather than specific rules
 - Adjust compliance risk/benefit calculations
 - Someday soon, litigation will be worthwhile

Overview of FCC Enforcement

- **Authority**
 - **S 403** “full authority and power” to initiate an inquiry on its own motion
 - **S 218** may inquire into the “management and business” of carriers; carriers to provide “full and complete information”
 - **S 503(b)** authorizes forfeitures for willful or repeated violations
 - **S 503(b)(3)** hearing before the Commission or an ALJ
 - **S 503(b)(4)** Notice of Apparent Liability (NAL) and response



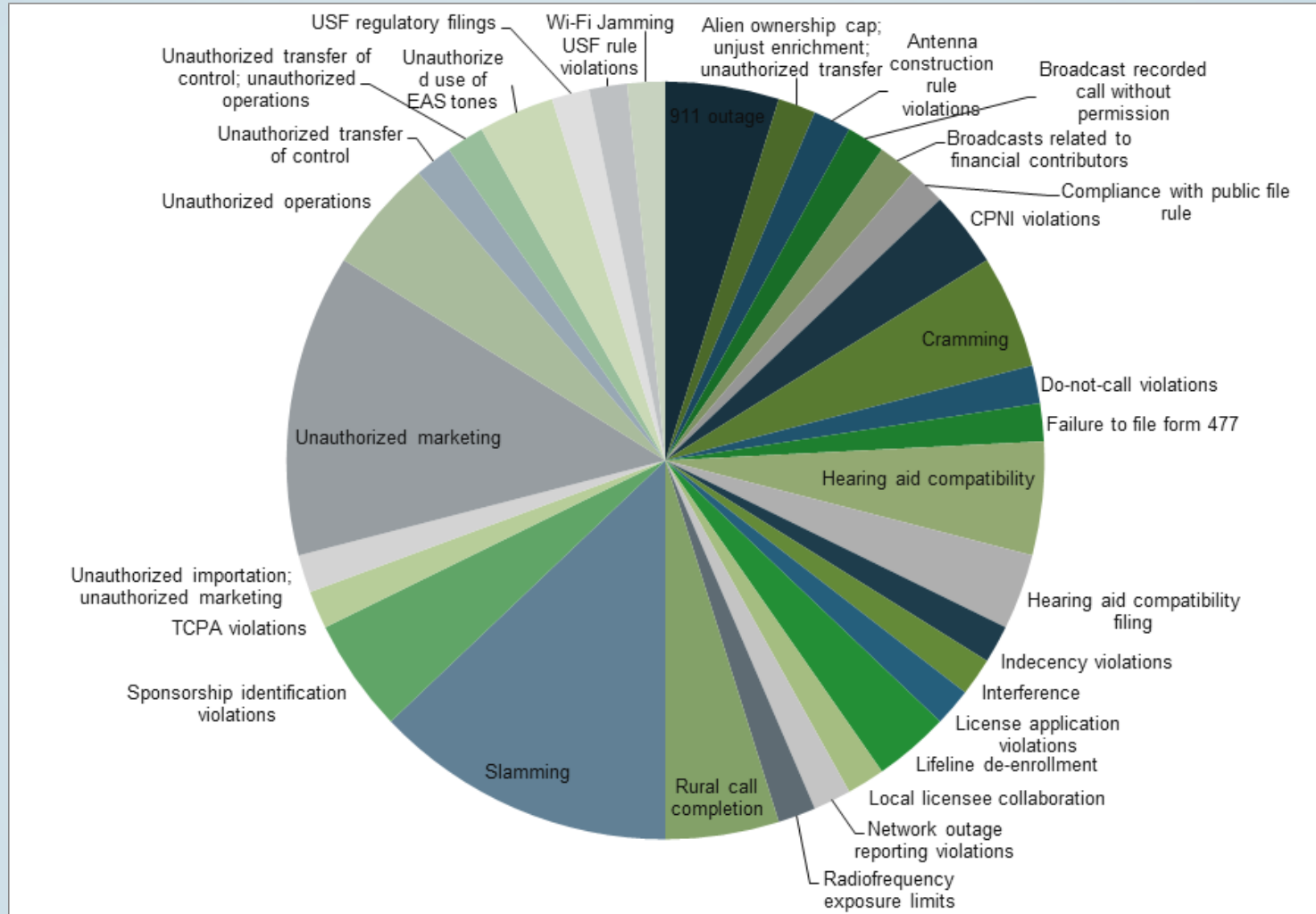
Steps in FCC Investigations



FCC Investigations - Notes

- LOI is itself a Commission Order
 - Failure to respond can be a separate violation. *Google, Inc.*, 27 FCC Rcd 4012 (2012)
- LOIs are non-public
 - No other parties
 - No right to intervene. *Section 403 Inquiry re Dr. Bernard Boozer*, 4 FCC Rcd 1568 (1989)
- No time limit on investigations
 - **But** statute of limitations for violations (504(b)(6))

Enforcement Actions, 2014



Recent Trends in FCC Enforcement

- Progressively more active Bureau
- Prosecutorial focus
- Large scale actions
 - Principle-based, not rule-based
- Detailed compliance plan obligations
- New focus on “admissions” and “civil penalties”



Example: Failure to Make Regulatory Payments

- February 2015 – new policy for non-payment situations, dubbed the “treble damages” policy.

	OLD POLICY	NEW POLICY
USF	\$20K/mo plus ½ unpaid amount	3x unpaid amount (plus \$20K/month?)
TRS	\$10K/yr plus ½ unpaid amount	3x unpaid amount (plus \$10K/yr?)
NANPA	\$10K/yr	3x unpaid amount
LNP	\$10K/yr	3x unpaid amount
Reg Fees	\$10K/yr	3x unpaid amount
499-A/Q	\$50K/form	\$50K/form
Registration Form	\$100K	\$100K

FCC Forfeitures: Statutory Considerations

In determining the forfeiture amount, the FCC will consider “the nature, circumstances, extent and gravity of the violations” and “the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.” 47 C.F.R. 1.80(b)(4).

Aggravating Factors

- Egregious conduct
- Ability to pay
- Prior violations of FCC requirements

Mitigating Factors

- Good faith or voluntary disclosure
- Inability to pay
- History of overall compliance

The Near Future? – Section 504(a)

- “The forfeitures provided for in this chapter shall be payable into the Treasury of the United States, and shall be recoverable, except as otherwise provided with respect to a forfeiture penalty determined under section 503(b)(3) of this title, in a civil suit in the name of the United States brought in the district where the person or carrier has its principal operating office or in any district through which the line or system of the carrier runs: **Provided, That any suit for the recovery of a forfeiture imposed pursuant to the provisions of this chapter shall be a trial de novo...**”
 - Carrier “appeals” by refusing to pay forfeiture
 - FCC must prove its case in a trial de novo
 - Forfeiture approaches at risk

Questions?



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