

FHH Telecom Law
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**FCC Fines Suspected
Data Broker**

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Just as Feds used tax evasion to put Al Capone in the slammer, the FCC has used a paperwork rule to fine a suspected data broker nearly \$100,000. Constant Readers may recall that in the Autumn of 2005, many media outlets were reporting on problems with data brokers accessing phone records. For a fee, a data broker would obtain telephone calling records – often mobile phone records – for any number that a customer requested. The privacy concerns raised by this practice were brought to the attention of many federal agencies.

In response, the FCC issued subpoenas to several suspected data brokers demanding information about their practices. At least one of the suspected data brokers decided to simply ignore the subpoenas. Although there were legal pleadings, motions to quash, and questions about the FCC's jurisdiction, in the end the suspected data broker simply did not comply with the subpoena.

Although the FCC may indeed have found a data broker who is improperly obtaining call information, there was only limited evidence confirming this fact, so the FCC was not able to conclusively prove that the suspect engaged in data brokering or violations of privacy. But because the suspect refused to turn over information to the government as required, the FCC was able to catch it on that basis rather than the substantive offense. The Commission issued a \$97,500 fine to the company. Each Commissioner individually released a statement about the fine, protection of privacy and the wrongdoings of data brokers.

It should be noted that the FCC currently has an open proceeding regarding data brokering (or “pretexting”) and has several on-going investigations. Yet, in this case, the data brokers suffer only from a fine for failing to submit paperwork.