
FCC Enforcement Monitor

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Headlines:

- *FCC Takes Action against Intentional Interference and Unlicensed Operations*
 - *FCC Assesses \$25,000 Fines for Unresponsiveness*
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Licensee Cannot Escape Fine for Intentional Jamming and Unlicensed Operations

In a rather odd chain of events, the FCC recently issued a Memorandum Opinion and Order (“Order”) against an individual in Thousand Oaks, California stemming from a 2009 investigation and a 2011 Forfeiture Order. The Order rejected a petition for reconsideration of the earlier Forfeiture Order and affirmed the FCC’s decision to fine the individual for unlicensed radio operations, intentional interference with radio operations, and refusal to allow an inspection of radio equipment.

In March 2009, an agent from the FCC’s Enforcement Bureau investigated radio interference at a shopping center. The agent located an unlicensed repeater transmitter operating from a secure radio communications facility on Oat Mountain with a beam antenna pointed in the direction of the shopping center. The repeater was transmitting pulsating signals on 461.375 and 466.375 MHz, the land mobile frequencies licensed to the shopping center for its own operations. These transmissions were jamming the shopping center’s licensed land mobile operations.

During the investigation, an unidentified individual communicated with shopping center personnel on a different set of frequencies, telling them they had “plenty of warning”, that he was jamming their licensed frequencies to force them to cease use of those frequencies, and that they needed to apply to the FCC to cancel their current land mobile license and apply for a new license to operate on different frequencies. He then began transmitting NOAA weather radio on the licensed frequencies to block any use of those frequencies by the shopping center.

The agent used direction-finding equipment to locate the individual transmitting messages to the shopping center’s personnel, finding him in a car full of radio equipment parked across the street from the shopping center in a parking structure. After the area was secured by personnel from the county sheriff’s department, who identified the individual in the car, the FCC agent asked the individual for permission to inspect the radio equipment in the car. At first, the individual refused to allow an inspection, but then permitted the FCC agent to begin an inspection. He then refused to allow the FCC agent to fully inspect *all* the radio equipment in his vehicle (including a console radio, handheld radios, and a mobile radio unit).

After this investigation, the FCC issued a Forfeiture Order against the individual for \$24,000 in response to the various violations of the FCC's Rules, including engaging in unlicensed radio operations, causing intentional interference with licensed radio operations, and refusing to allow an inspection of radio equipment. The individual sought reconsideration of the fine, arguing that this was a case of mistaken identity and that he did not own or operate any equipment on Oat Mountain. He asserted that he had not violated the FCC's rules, that he did not actually refuse the inspection, and that he lacked the ability to pay the fine.

The FCC rejected the petition as procedurally defective, noting that the deadline for filing the petition with the Secretary of the FCC was July 6, 2011, and that the individual had emailed the petition to the FCC by that date, but had not submitted it to the Secretary's Office. Section 1.106(i) of the FCC's Rules states that "[p]etitions submitted only by electronic mail and petitions submitted directly to staff without submission to the Secretary shall not be considered to have been properly filed." The FCC therefore dismissed the petition as defective.

However, the FCC proceeded to note that even if the petition had been correctly filed, it would have failed on the merits, as it "reiterates arguments that were previously considered and rejected." While the individual argued that there was no evidence that he committed the violations, the FCC noted that its agent had determined that the communications to the shopping center were coming from the individual's car. The FCC also cited as further evidence the recorded communications with shopping center personnel, in which the individual admitted to intentionally jamming the shopping center's licensed frequencies. The FCC also affirmed its finding that the individual refused an inspection, given that the FCC agent began to inspect the vehicle, but was then unable to inspect all of the radio equipment in the vehicle.

While it is not clear why the individual was so determined to hijack the shopping center's licensed frequencies, the \$24,000 fine and brusque treatment of his petition for reconsideration clearly indicates that the FCC has little patience for such destructive shenanigans. Moreover, this case is a reminder that challenging an FCC enforcement action is not a simple task—you cannot obtain relief by simply sending an email petition claiming that the FCC "got it wrong." Generally speaking, petitions for reconsideration must present new facts of which the FCC was unaware when making its original decision, and the petitioner must demonstrate that it was not possible for it to have presented those facts earlier. Of course, making sure that the petition is not procedurally defective is essential in order to even get a chance to present any new facts that might change the Commission's mind.

Company's "Not Fully Responsive" Reply to Inquiry Triggers \$25,000 Fine

The FCC comes down harshly on companies that fail to provide complete responses to official inquiries. This month, the FCC again took action against a company where it found the company either did not respond to communications from the FCC or did not provide "fully responsive" answers to such communications. The FCC issued a \$25,000 Notice of Apparent Liability for Forfeiture against a seller of prepaid calling cards because the company did not produce certain information and documents in response to a Letter of Inquiry ("LOI") from the FCC's Enforcement Bureau.

The Enforcement Bureau began an investigation of the company in connection with the company's marketing of prepaid calling cards. In February 2012, the Enforcement Bureau issued an LOI, which directed the company to produce information and documents related to potential violations of the FCC's Rules. The company had 30 days to respond to the LOI, but requested and received an extension of time to respond. The company submitted its response in April 2012, but the Enforcement Bureau determined that this response was not "fully responsive" to its inquiries and that the company had failed to provide certain requested documents. The company also failed to provide a sworn statement attesting to the

accuracy and completeness of its response, as was required by the LOI. In order to obtain the missing information, the Enforcement Bureau contacted the company by email several times and also sent a letter to the company. However, the company did not respond to these communications.

Sections 4(i), 218, and 403 of the Communications Act give the FCC authority to compel carriers to provide information and documents. As a result, a company's failure to provide requested information and documents is a violation of an FCC order. The base fine for failing to respond to FCC communications is \$4,000. However, the Enforcement Bureau determined that the company's actions here were "egregious, intentional, and continuous", warranting an upward adjustment to \$25,000. The FCC also directed the company to provide a full response to the February 2012 LOI, noting that the company's failure to do so would constitute an additional and continuing violation, subject to future enforcement action, including increased fines.

If you have any questions about the content of this Advisory, please contact the Pillsbury attorney with whom you regularly work, or the authors of this Advisory.

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