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# FCC Enforcement Monitor December 2020

By Scott R. Flick, Warren A. Kessler, and Simone A. Wood

## HEADLINES

*Pillsbury's communications lawyers have published FCC Enforcement Monitor monthly since 1999 to inform our clients of notable FCC enforcement actions against FCC license holders and others. This month's issue includes:*

- *Texas Wholesaler Fined $22,000 for Using Signal Jamming Device*
- *Florida Broadcaster Hit with $125,000 Penalty Over Allegations of Antenna Lighting and Contest Rule Violations*
- *FCC Announces Pirate Radio Enforcement Will Target Property Owners and Managers*

**Texas Wholesale Company in a Jam: Illegal Signal Blocking Device Leads to $22,000 Fine**

In a recent Memorandum Opinion and Order, the FCC upheld a $22,000 fine against a consumer goods wholesaler based in Dallas for operating a prohibited cellular signal blocking device, referred to as a signal jammer.

Signal blocking devices can significantly disrupt emergency calling capabilities, and consumer communications more generally, and are therefore banned under the Communications Act and FCC rules. Section 301 of the Communications Act prohibits radio transmissions without prior FCC authorization, and Section 333 prohibits willful or malicious interference with any licensed or authorized radio communications. Additionally, Section 302(b) prohibits the manufacture, import, sale, shipment, or use of devices capable of causing harmful interference to authorized radio communications. Sections 2.805 and 15.1(c) of the FCC's Rules, implementing Section 302(b), require radio frequency devices to be authorized by the FCC before operation.

In response to a complaint from a cellular company, FCC investigators made an on-site visit in April 2017 to examine interference issues reportedly caused by a signal jammer. The cellular company claimed that the jammer was likely located on the premises of a Dallas-area wholesale business that, according to the company, had a history of causing interference from the use of signal jammers. When the investigators arrived, however, they found no jamming device in use. In discussions with the investigator, the wholesale business owner admitted to operating a signal jammer to prevent employees from using their mobile phones while at work, acknowledged that in February 2017 a representative of the cellular company had warned the wholesaler against using such devices, and claimed that the device had been discarded prior to the investigator's arrival. The owner refused to relinquish the device and instead offered to sell the signal jammer to the investigator. After declining the offer, the investigator issued a Notice of Unlicensed Radio Operation, informing the wholesaler that the use of a signal jammer is illegal.

In July 2017, the Enforcement Bureau issued a Notice of Apparent Liability (NAL) and proposed a $22,000 fine against the wholesaler for use of a signal jamming device. The wholesaler responded to the NAL, denying that the investigator asked the owner to retrieve the device from the trash, and arguing that the Bureau misapplied the law in calculating the proposed fine amount. The Bureau considered and rejected the wholesaler's arguments and imposed the $22,000 fine.

In May 2018, the wholesaler filed a Petition for Reconsideration challenging the fine, citing its history of compliance and offer to surrender the device, and denying that the owner offered to sell the jammer to the investigator. In the recent Memorandum Opinion and Order, the Bureau again considered and rejected the wholesaler's arguments. Applying its procedural rules, the Bureau noted that the Petition raised new facts and arguments that could have been raised in response to the NAL, and therefore dismissed them as procedurally barred, denying the request for a reduction of the fine. The Bureau also noted that, even if it were to consider the new facts and arguments presented, it would dismiss the arguments on the merits due to the lack of any compliance history with the FCC as a non-license/authorization holder, insufficient evidence regarding relinquishment of the jamming device, and conflicting statements regarding the offer to sell the jamming device to the investigator. The wholesale company now has 30 days from the release of the Memorandum Opinion and Order to pay the full $22,000 fine.

**Florida FM Broadcaster's Tower Lighting and Contest Rule Troubles Lead to $125,000 Penalty**

The Enforcement Bureau entered into a Consent Decree with the licensee of Panama City and Tallahassee-area FM stations to resolve two investigations into contest and tower lighting violations.

The Communications Act and FCC rules regulate on-air contests conducted by television and radio stations to protect the public against misleading and deceptive practices. Section 73.1216 of the FCC's Rules provides that a licensee must "fully and accurately disclose the material terms" of a contest it broadcasts, and conduct the contest "substantially as announced and advertised." Under Section 73.1208, broadcasters must disclose if program material was previously taped, filmed, or recorded where "time is of special significance," or "an affirmative attempt is made to create the impression that it is occurring simultaneously with the broadcast."

Part 17 of the FCC's Rules, along with Federal Aviation Administration (FAA) regulations, set forth monitoring and notice obligations regarding tower lighting systems. The rules require the owner of an antenna structure to immediately notify the FAA of any lighting outages or other lighting malfunctions. Tower owners must also notify the FCC within 5 days of any change to the tower's height or ownership.

The Enforcement Bureau's Investigations and Hearings Division received two complaints in September and October 2018 claiming that contests aired on the licensee's Panama City FM station violated the FCC's rules. Specifically, the complaints alleged that one contest relied on pre-recorded phone calls with fake contestants which the station aired during an afternoon show as though it were live programming. The complaints alleged that the second contest was conducted as though it were a live scavenger hunt but, in an effort to retain listeners, the station had the contestants fraudulently continue the contest even after the station had committed to award one contestant the winning prize. In response to these allegations, the licensee only acknowledged that it was unable to confirm whether they were in any way inaccurate.

In a separate investigation involving the licensee, an anonymous complaint alleged that a broadcast tower in the Tallahassee area had not been properly lit for more than a year. In September 2019, the FCC's Enforcement Bureau began investigating and discovered that the party registered as the tower's owner was no longer in business. The investigator identified the current FM station licensed to operate from the tower and followed up directly with the station manager and licensee's counsel to discuss the tower's status. In the course of these communications, the licensee admitted and provided supporting evidence to the investigator of its failure to: (1) monitor the antenna's lighting system over a 453-day period, (2) immediately notify the FAA of a lighting outage on the tower, and (3) notify the FCC of its acquisition of the tower in 2012.

To resolve these investigations, the licensee entered into a Consent Decree with the Enforcement Bureau under which it must pay a $125,000 civil penalty, implement a five-year compliance plan, and certify that all antenna structures registered to it comply with the Part 17 rules.

### FCC's Pirate Radio Enforcement Targets Property Owners and Managers

The Enforcement Bureau issued Notices of Illegal Pirate Radio Broadcasting to the owners and managers of three properties in New York City after investigations of unauthorized radio broadcast operations occurring at their respective properties. Pursuant to new authority granted by the PIRATE Act, the FCC has begun targeting property owners and managers that knowingly permit pirate radio operations from their properties.

Despite the FCC's past warnings to landlords and attempts to cooperate with property managers to address illegal broadcast operations, unauthorized operations have persisted. This ultimately led Congress to pass the PIRATE Act earlier this year to strengthen the FCC's enforcement tools. Under Section 511 of the PIRATE Act and Section 1.80 of the FCC's Rules, the Commission may impose fines of up to $2 million against individuals or entities that knowingly permit pirate radio operations on their property. Additionally, the PIRATE Act permits the FCC, without first having to issue a Notice of Unlicensed Operation, to propose a penalty against any person that "willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting." Under its new authority, where the Enforcement Bureau has reason to believe a property owner or manager is permitting illegal broadcasts from its premises, the Bureau will issue a Notice of Illegal Pirate Radio Broadcasting, thereby providing that party a chance to remedy the situation before enforcement action is taken.

On December 17, 2020, in response to complaints of illegal FM broadcast operations at three locations in New York City, the Enforcement Bureau issued Notices of Illegal Pirate Radio Broadcasting to notify the parties of the FCC's investigation and the financial penalties they may face for permitting pirate radio operations on their properties. The notices, addressed to the respective property owners and managers, stated that FCC investigators confirmed radio signals were emanating from their properties without an FCC license. The owners and managers were warned they face a fine of up to $2 million if the FCC determines they continued to permit illegal broadcasts from their properties following the warning.

The property owners and managers now have 10 business days to (1) respond with evidence demonstrating that pirate radio broadcasts are no longer occurring on their property, and (2) identify the individual(s) involved in the illegal broadcasts. If the parties fail to respond to the notice altogether, the FCC may still determine that the parties had sufficient knowledge of the illegal broadcasts to warrant enforcement action, including substantial fines.