

FCC Enforcement Monitor

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HEADLINES

Pillsbury's communications lawyers have published the 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:

- *FCC Issues Six Notices of Apparent Liability to Pirate Radio Operators Across Massachusetts*
- *Affordable Connectivity Program Provider Faces \$8 Million Fine and Removal from the Program*
- *FCC Proposes \$3,000 Fine Against Massachusetts Class A Television Station for Public File Issues*

FCC Targets Pirate Radio Operators in the Boston Area

The Communications Act prohibits the transmission of radio signals without prior FCC authorization because such signals can interfere with licensed communications and pose a danger to the public by interfering with licensed stations that carry public safety messages, including Emergency Alert System transmissions. Over the past few years, the FCC has been focusing more attention on the owners and operators of illegal broadcast radio (colloquially known as “pirate radio”) facilities, targeting several in New York (as we discussed [here](#) and [here](#)) and Florida (as discussed [here](#)). Last month, it issued six *Notices of Apparent Liability for Forfeiture* (NAL) proposing fines against Massachusetts pirate radio operators under the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act). The PIRATE Act gave the FCC enhanced enforcement authority against radio pirates and has led to the recent increase in such fines.

In the Massachusetts NALs, the FCC proposed fines of \$597,775, \$120,000, \$40,000, \$40,000, \$40,000, and \$20,000, respectively, against the six pirate radio operators.

With regard to the largest proposed fine—\$597,775—the FCC noted in the NAL that the facility's owner had a long history of unauthorized operation. In 2004, FCC field agents traced radio transmissions to a residence in Randolph, MA. The transmissions exceeded the power limits for operation under Part 15 of the FCC's Rules, which permits use of certain low power radio frequency devices without an FCC license.

Over the years, FCC field agents issued verbal and written warnings to cease pirate operations, but the self-admitted owner/operator repeatedly failed to do so. In early 2005, agents found him to be transmitting above the Part 15 power limits, resulting in a \$10,000 fine in 2006. In 2017, acting on a complaint, FCC agents took field strength measurements of a new signal connected with the same operator and found it also exceeded the limits for unlicensed operation, resulting in the agents issuing an on-scene Notice of Unlicensed Operation.

Then, over the course of five days during June and July 2023, agents traced unauthorized radio transmissions to three locations in Brockton, Mattapan, and Randolph, MA. After taking field strength measurements, the agents determined that all three facilities exceeded the power limits for operation under Part 15 of the FCC's Rules. Further investigation confirmed no authorizations had been issued for operation of an FM broadcast station at or near any of the three locations, and that the same owner/operator was connected to all three pirate sites.

In the NAL against this operator, the FCC concluded that he willfully and knowingly violated the Communications Act by operating a pirate radio station, and proposed the base fine for pirate operation (\$20,000) for each of the five days of observed illegal activity, which would have resulted in a total proposed fine of \$100,000. Given the operator's history of warnings and prior violations, however, the FCC found that an upward adjustment was warranted, and it proposed the maximum permissible penalty—\$119,555—for each of the five instances of operation, leading to a proposed total fine of \$597,775. The operator has thirty days to either pay the fine or file a request presenting grounds for its reduction or cancellation.

FCC Alleges Wireless Company Violated Affordable Connectivity Program Rules and Federal Wire Fraud Statute

The FCC issued an NAL and Order Initiating Removal Proceeding to a wireless company and its principal for apparently willfully and repeatedly violating the FCC's Rules for the Affordable Connectivity Program (ACP) and the federal wire fraud statute. The NAL proposes an \$8,083,992 joint fine against the company and its principal.

The Affordable Connectivity Program, a successor to the Emergency Broadband Benefit Program, was established to increase access to the internet by providing eligible households a discount of up to \$30 per month for internet service and a one-time discount of up to \$100 to purchase a laptop computer, desktop computer, or tablet, subject to certain conditions. Program participants from Tribal lands were eligible to receive up to \$75 per month for internet service. Congress and the FCC enacted rules governing the program that include, among other things, requiring participating service providers to determine a potential customer's eligibility before registering them for service. The NAL alleges that the company sought and received ACP Tribal lands funding for customers ineligible to receive such benefits. The accompanying Order requires the company to demonstrate why it and its principal should not be removed from the ACP and prohibited from participating in the ACP or any successor program.

Under the FCC's Rules, an ACP provider must (1) verify whether a household is eligible to receive the benefit, (2) certify to the FCC under penalty of perjury that the provider has complied with all ACP statutes, rules, and orders, and (3) obtain the consumer's consent to enrollment with the provider.

The FCC concluded that the company apparently violated 47 CFR § 54.1806 by failing to confirm subscriber eligibility for the enhanced Tribal lands benefit, apparently violated 47 CFR § 54.1808 by submitting false addresses for subscribers while certifying with each monthly reimbursement request that the addresses were tied to qualified applicants, and apparently violated 47 CFR § 54.1810 by engaging in acts that "undermine the purpose, intent, and integrity of the Affordable Connectivity Program."

Because the company submitted its reimbursement requests electronically across state lines and those requests contained apparently false information, the FCC's investigation found that the company also violated 18 U.S.C. § 1343, the federal wire fraud statute.

The FCC asserted that the company copied subscriber information from another ACP provider but, instead of copying the subscribers' home and email addresses from the previous provider, changed the subscribers' home addresses to addresses on Tribal lands and email addresses to email addresses associated with the company. The physical addresses used by the company were generally not residential addresses but belonged to empty lots, office buildings, libraries, and restaurants. The company failed to respond to an FCC Letter of Inquiry (LOI) asking the company to produce documents and information confirming that the claimed subscribers lived on Tribal lands.

The FCC's ACP rules do not set out a base fine for violations, so the FCC looked to recent analogous cases to determine the appropriate fine. The NAL proposes: (1) a per-subscriber base fine of \$5,000 for the alleged violations of the rules for ACP eligibility and for seeking reimbursement for subscribers for which the company had not confirmed eligibility; (2) a base fine of \$20,000 for allegedly making misrepresentations and false certifications with regard to each reimbursement request; (3) a base fine of \$5,000 for each subscriber improperly associated with a Tribal land; (4) a \$20,000 base fine for falsely certifying compliance with the ACP Rules; (5) a \$5,000 base fine for each violation of the federal wire fraud statute; and (6) a nearly \$25,000 fine for failing to respond to the FCC's LOI.

The NAL details the relationship between the company and its principal, finding that the two are legally intertwined and therefore jointly and severally liable for the fine. Within 30 days of release of the NAL, the company must either pay the full fine amount of \$8,083,992 or respond in writing to explain why the fine should be reduced or cancelled. Also, within 30 days of release of the Order, the company must respond with "any relevant evidence demonstrating that a rule violation or other conduct warranting removal has not in fact occurred and that the company and its principal should not be removed from ACP and any successor programs."

Massachusetts Class A Television Station Licensee Receives \$3,000 Proposed Fine for Public File Violations

The FCC's Media Bureau proposed a \$3,000 fine against a Massachusetts Class A television station licensee for willfully and repeatedly violating the FCC's rules by failing to timely upload Quarterly Issues/Programs Lists and Children's Television Programming Reports to the station's Public Inspection File.

Commercial television licensees are required under Section 73.3526(e)(11)(i) of the FCC's Rules to timely upload each Quarterly Issues/Programs List to the station's Public Inspection File. Similarly, Section 73.3526(e)(11)(iii) of the FCC's Rules requires the timely upload of Children's Television Programming Reports to the Public Inspection File.

In November 2022, the licensee filed a license renewal application disclosing that the station had uploaded a Quarterly Issues/Programs List over four years late and filed six Children's Television Programming Reports late.

In the license renewal application, the licensee asserted that the late upload of the station's fourth quarter 2017 Issues/Programming List was caused by it having to rely on the station's prior licensee for the information, as the change in the station's ownership occurred in December 2017. The licensee later obtained more information from the former licensee's counsel and submitted a late-filed Issues/Programs List in December 2022.

The licensee explained that the late Children's Television Programming Reports were due to a misunderstanding, and that it mistakenly believed the filings were not required. In total, three of the Reports were uploaded over one year late, two were uploaded between one month and one year late, and one was filed one day late.

In response, the Media Bureau concluded that the licensee apparently willfully and repeatedly violated Sections 73.3526(e)(11)(i) and (iii) of its Rules because of the late uploads. It explained that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations." Specifically addressing the late-filed Issues/Programs List, the Media Bureau noted that, given the circumstances, it might have found a reasonable delay to be a "de minimis violation" but did not consider a four-year delay to be reasonable. It also asserted that the station could have simply uploaded a timely Issues/Program List that included only programming from the portion of the quarter after it acquired the station.

Considering all the circumstances, however, the NAL proposed a reduced fine of \$3,000 rather than the normal \$10,000 base fine for a Public Inspection File violation. The Media Bureau also concluded that the licensee's failings did not constitute a "serious violation" that could place the station's license renewal application in jeopardy. As a result, the Bureau indicated that it will grant the license renewal application by separate action if no further issues arise.