

# FCC Enforcement Monitor

## March 2025

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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:*

- *Puerto Rico Broadcaster Agrees to \$4,500 Consent Decree for Unauthorized LPTV Operation*
- *Eleventh Circuit Rejects FCC's Rationale for Broadcast Ownership Fine*
- *FCC Proposes \$325,322 Fine for Miami Radio Pirate*

#### **Unauthorized Operation Leads to \$4,500 Consent Decree for Puerto Rico LPTV Station**

The licensee of a Puerto Rico LPTV station and the FCC's Media Bureau entered into a Consent Decree to resolve an investigation into whether the licensee engaged in unauthorized operation.

The LPTV station was displaced by the FCC's broadcast Incentive Auction and subsequent spectrum repack. The licensee filed a displacement application to move to Channel 14, and a construction permit was granted in July 2018 with a July 2021 expiration date. Because land mobile operations can be affected by TV transmissions on Channel 14, the construction permit contained a condition that the station "identify and substantially eliminate objectionable interference" and required the station to submit documentation showing "that objectionable interference will not be caused..." Section 73.617(b)(2)(ii) of the FCC's Rules requires TV permittees for new operations on Channel 14 to take steps prior to construction to identify potential interference.

When construction of the station was completed, the licensee filed an application to license the facility which contained a statement that the station complied with the special condition in the construction permit, but did not provide any technical proof to support that statement. The station then began operations prior to receiving FCC approval to do so. Media Bureau staff requested an amendment to supplement the "no objectionable interference" exhibit at the time the application was filed, and again in October 2024 when no amendment was received in response to the first request. Responding to the second request, the licensee submitted an exhibit demonstrating there would be no objectionable interference, and then filed for Special Temporary Authority (STA) to continue operating while the license application was pending.

Section 73.1745(a) of the FCC's Rules and Section 301 of the Communications Act require that a station have an FCC license in order to operate. The FCC found that in the absence of either an STA or a license, the station had been operating without authorization for over three years.

Recognizing the unique situation and the licensee's history of compliance with the FCC's rules, however, the Bureau agreed to enter into a Consent Decree under which the licensee acknowledged that it violated Sections 73.617(b)(2) (ii) and 73.1745(a) of the Rules and Section 301 of the Act, agreed to pay a civil penalty of \$4,500, and committed to implement and maintain a compliance plan, including appointing a compliance officer, creating a compliance manual, training its employees, and submitting annual compliance reports to the Commission until the grant of its next license renewal application.

In adopting the Consent Decree, the Bureau agreed to grant the licensee's currently pending license application conditioned upon payment of a \$4,500 civil penalty and the licensee's compliance with the terms of the Consent Decree.

### **Eleventh Circuit Partially Vacates FCC Forfeiture Order Against TV Broadcaster**

A three-judge panel of the U.S. Court of Appeals for the Eleventh Circuit partially vacated an FCC forfeiture order fining a television broadcaster for violating the FCC's multiple ownership rule regarding network affiliation changes. The Court affirmed the FCC's finding that the broadcaster violated the rule, but vacated the FCC's \$518,283 fine. The case involved the broadcaster's acquisition of a CBS network affiliation for an Alaska television station, which the FCC declared resulted in the broadcaster controlling two of the top-four-rated stations in a market in violation of 47 C.F.R. § 73.3555 Note 11.

The broadcaster entered the market in 2016, acquiring the local NBC-affiliated station and later buying a second station with no major network affiliation. In July 2020, the broadcaster acquired the network affiliation of the local CBS station (ranked second in the market at the time) and placed the CBS network affiliation on its previously non-affiliated station. This led the FCC to conclude that the broadcaster had improperly combined the market's first and second-rated stations without obtaining a waiver of the FCC's multiple ownership rules to do so.

The broadcaster challenged the FCC's determination, arguing that its non-affiliated station had already become a top-four station before the acquisition, citing July 2020 Comscore data, and that the CBS affiliation acquisition had therefore not created a top-four combination, but merely continued one. The FCC disagreed, however, relying on June 2020 Nielsen data that placed the station fifth at the time of the CBS transaction.

In its decision, the Court reviewed the broadcaster's claims under the Administrative Procedure Act, which requires that agency decisions be reasonable and reasonably explained, and not arbitrary and capricious. The Court first considered the broadcaster's argument that "the FCC exceeded its statutory authority in issuing Note 11." The FCC contended that the argument was not properly before the Court as the broadcaster did not raise that argument in the administrative proceedings. The Court agreed that it could not consider the argument because it had not been raised during agency proceedings as required by Section 405(a) of the Communications Act. Despite the broadcaster urging the Court to excuse the failure under a futility exception, the Court declined to do so, explaining that the FCC had not previously rejected such arguments, and the broadcaster could have petitioned for reconsideration if it wanted to later raise the issue.

Second, the Court examined whether the FCC's decision was "reasonable and reasonably explained." The Court rejected the broadcaster's argument that it already owned two top-four stations at the time of the transaction, and that the transaction therefore did not "result in" a prohibited combination. It was undisputed that the broadcaster owned the top-rated station in the market. Whether the other station was fourth or fifth-ranked at the time of the CBS transaction depended on whether the FCC was correct in relying on June 2020 Nielsen ratings (showing the station as fifth), or should have accepted the broadcaster's July 2020 Comscore data (showing the station as fourth). The FCC concluded that because the July Comscore data included post-transaction dates, it was not the "most recent" data available as of the transaction date. The Court found "it was not arbitrary and capricious for the FCC" to rely on the June 2020 Nielsen ratings, while also rejecting the broadcaster's claim that the affiliation acquisition was not at all the "functional equivalent" of a license transfer (which made it subject to Note 11).

Third, the broadcaster asserted that it lacked fair notice that Note 11 applied to the type of transaction at issue—namely, an acquisition of a network affiliation rather than an affiliation “swap.” The Court rejected this argument, finding that the plain text of Note 11 explicitly covers acquisitions of network affiliations. The Court reasoned that any ambiguity created by the FCC’s earlier Second Report and Order referencing affiliation swaps did not contradict the plain language of Note 11, and thus concluded that the broadcaster had fair notice of what conduct was prohibited.

Fourth, the broadcaster asserted that the FCC’s enforcement action violated the First Amendment and Section 326 of the Communications Act by interfering with programming decisions. The Court rejected this claim as well, explaining that the rule against ownership of two top-four stations is content neutral, and that precedent indicated broadcast ownership rules are subject to only rational basis review rather than higher levels of First Amendment scrutiny. Asserting that Note 11 regulates structural ownership and not program content, the Court found no constitutional violation, stating that because “Note 11 is rationally related to the FCC’s interest in promoting competition, its application ... does not violate § 326 or the First Amendment.”

Although it upheld the FCC’s finding of a violation, the Court questioned the fine itself. While the Court concluded that the FCC has statutory authority to impose penalties, it concluded that the FCC failed to provide adequate notice in the Notice of Apparent Liability that it would base the penalty on a finding of “egregiousness,” as it did not raise the matter of egregiousness until the final forfeiture order. The broadcaster was therefore denied an opportunity to respond. The Court also agreed with the broadcaster that the FCC had failed to adequately explain its consideration of whether the broadcaster had acted in good faith. As a result, the Court vacated the \$518,283 fine and remanded the case to the FCC for further proceedings. In a concurring opinion, Judge Brasher, joined by Chief Judge Pryor, questioned whether the adoption of the Note 11 affiliation restrictions did in fact exceed the FCC’s statutory authority, but agreed that the question had not been properly raised for the Court to consider.

### **Repeat Offender Faces \$325,322 Fine for Florida Pirate Radio Broadcasts**

The FCC issued a Notice of Apparent Liability (NAL) proposing a \$325,322 fine against a Miami individual under the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act). The PIRATE Act gave the FCC enhanced authority to take enforcement action against pirate radio operators and against landlords and property owners who knowingly and willfully allow pirates to broadcast from their property. Illegal broadcast operations can pose a danger to the public by interfering with licensed stations carrying public safety messages, including Emergency Alert System transmissions.

According to the NAL, the individual had a history of involvement in pirate radio broadcasts dating back to at least 2018, and had received an earlier NAL from the FCC in 2024. The 2024 NAL explained that FCC field agents found an illegally operating facility eight times between May 2018 and March 2023. On several of those dates, the field agents traced the station’s signal to the individual’s residence in Miami. The FCC ultimately issued the 2024 NAL proposing a \$120,000 fine. The individual never responded, prompting the FCC to issue a Forfeiture Order imposing the full \$120,000 fine.

According to the 2025 NAL, FCC agents from the Miami office again found illegal transmissions coming from the individual’s residence. On at least four separate dates, FCC field agents used direction-finding techniques to trace the source of the broadcasts to the operator’s Miami home. The agents measured the field strength of the pirate signal and determined it exceeded the limits for unlicensed operation under Part 15 of the FCC’s Rules and that no station was licensed to operate on the detected frequency in that area. The FCC’s investigation further tied the individual to the illegal transmissions, noting that he announced a musical performance sponsored by the illegal operation and included his personal phone number, that in several of his personal social media pages he referred to himself as the facility’s DJ, and linking his phone number records and driver’s license address to the residence used for the transmissions.

Under the PIRATE Act, the FCC may impose a fine against any person “who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting.” In this case, the FCC proposed a base fine of \$20,000 for each of the four days of apparent violations. Citing the operator’s intentional conduct and history of violations, the FCC then concluded that an upward adjustment was warranted, proposing an additional \$20,000 for each of the four days. It then further upped the ante by concluding that the operator’s conduct on the last two dates represented intentional violations as they occurred after the 2024 Forfeiture Order was issued. Accordingly, the FCC proposed the maximum allowed penalty of \$122,661 for each of those two dates, bringing the total proposed fine to \$325,322.