

FCC Enforcement Monitor

December 2025

By Scott R. Flick and Elizabeth E. Craig

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 Notice to Virginia Property Owner Over Pirate Radio Activity*
- *Public Media Organization Enters into \$86,400 Consent Decree Over False EAS Tones*
- *Media Bureau Finds Broadcaster Did Not Violate Good Faith Negotiation Rules*

FCC Warns Landowner Over Unauthorized Broadcasts on Its Property

The FCC's Enforcement Bureau issued a *Notice of Illegal Pirate Radio Broadcasting* to a Virginia property owner in Williamsburg, VA. The Enforcement Bureau's Columbia Office investigated the property after receiving a complaint about unlicensed FM broadcasts on 99.5 MHz. On two separate occasions, April 1 and July 17, 2025, agents used direction-finding equipment to confirm that the transmissions were emanating from a restaurant located on the property.

FCC records indicated that no license had been issued for a broadcast station operating on 99.5 MHz at that location. The Enforcement Bureau also determined that the transmissions exceeded the power limits permitted for unlicensed operation under Part 15 of its Rules.

Under the Preventing Illegal Radio Abuse Through Enforcement Act (the PIRATE Act), the FCC has the authority to impose substantial fines not only on the individuals directly responsible for unauthorized broadcasting, but also on property owners who knowingly and willfully allow such activity to take place on their premises. The Notice warned the property owner that it could face penalties of up to \$2,453,218 if the FCC determined that it continued to permit unauthorized pirate radio broadcasts from its property.

The Notice directs the property owner to respond to the FCC within ten business days and provide evidence that the unlicensed pirate radio broadcasts have ceased. The Notice also requires the property owner to identify the individual(s) responsible for the pirate operation. Finally, the Notice informs the property owner that a failure to respond may be treated as evidence of knowledge and consent to the illegal broadcasts for purposes of initiating subsequent FCC enforcement proceedings involving "significant financial penalties" against the landowner.

Public Media Organization Resolves False EAS Tone Violations With \$86,400 Consent Decree

The FCC's Enforcement Bureau entered into a Consent Decree with a public media organization to resolve an investigation into the unauthorized transmission of Emergency Alert System (EAS) tones. According to the Consent

Decree, the organization distributed a program that included actual or simulated EAS tones to its 46 owned radio stations and approximately 500 affiliated stations, triggering violations of Sections 11.31 and 11.45 of the FCC's Rules. The Consent Decree includes an \$86,400 civil penalty and a multi-part compliance plan.

The EAS is a national public warning system designed to deliver critical emergency information to the public, including weather alerts and AMBER alerts. To preserve the integrity of emergency alerts, EAS tones may only be aired for specific uses, such as actual emergencies, authorized tests, and qualifying public service announcements (PSAs). Section 11.45 of the FCC's Rules strictly prohibits airing EAS tones or simulations thereof unless they are aired in connection with one of these uses. The concern is that misuse of EAS tones will lead to accidental system triggers or the public becoming desensitized to the alert tones in an actual emergency, both of which threaten the effectiveness of the alerting system.

The Enforcement Bureau's investigation stemmed from the May 24, 2023 broadcast of a British Broadcasting Company (BBC) program about chasing tornadoes. The program contained EAS tones and audio portions of NOAA tornado warning alerts. The public media organization held exclusive U.S. distribution rights for the BBC program and provided it to its own stations as well as noncommercial educational stations across the country with which it had affiliation agreements.

The Enforcement Bureau issued three Letters of Inquiry (LOI) over a seven-month period beginning in November 2023. The media organization timely responded to each LOI and confirmed that on May 24, 2023, each of its 46 stations and approximately 500 affiliated stations aired the program "one or more times." The organization admitted the accuracy of the facts alleged, including the Enforcement Bureau's assertion that the tones had been aired in the absence of an actual emergency, authorized test, or qualifying public service announcement.

To settle the matter, the organization agreed to pay an \$86,400 "voluntary contribution" to the U.S. Treasury and implement a multi-part compliance plan to ensure no further violations occur. Under the compliance plan, the public media organization must appoint a compliance officer with specific knowledge of the EAS rules, adopt and implement internal operating procedures designed to prevent future violations, create and distribute a compliance manual to its employees, and conduct EAS training for its employees. The organization must also report any future violations of EAS rules or the Consent Decree to the FCC within fifteen calendar days of discovery and submit annual compliance reports for the next two years.

FCC Rejects Good Faith Negotiation Complaint in Retransmission Consent Dispute

While the *FCC Enforcement Monitor* has traditionally focused on matters involving violations of the FCC's rules, sometimes a decision finding no violation is just as important for those seeking to know where the legal line lies. In this case, the FCC's Media Bureau denied a complaint filed by a multichannel video programming distributor (MVPD) alleging that a major broadcaster violated its obligation to negotiate a retransmission consent agreement in good faith. The dispute arose after the parties failed to reach agreement on renewal of both a retransmission consent agreement and a network distribution agreement for a co-owned video program service. The MVPD alleged that the broadcaster's conduct in the negotiations violated both the Commission's *per se* and its "totality of the circumstances" standards under Section 76.65 of the FCC's Rules.

Section 325 of the Communications Act requires broadcasters and MVPDs to negotiate retransmission consent in good faith. In its 2000 *Good Faith Order*, the FCC adopted two standards for assessing good faith: a list of objective negotiation standards, violation of any one of which constitutes a *per se* violation, and a "totality of the circumstances" test that considers whether the overall conduct of a negotiating party reflects a failure to negotiate in good faith.

During negotiations, the broadcaster offered two proposals shortly before the prior agreements expired: (1) a short-term extension of both prior agreements conditioned on negotiating a bundled deal, or (2) a stand-alone retransmission consent agreement with revised terms, including language on rates for any future-acquired stations and increased rates for its programming streams. The MVPD rejected both offers, and when the prior agreements expired, the MVPD ceased carriage of the broadcaster's programming. After additional counterproposals failed to result in an agreement, the MVPD filed a complaint with the FCC asserting that the broadcaster violated the FCC's *per se* good faith rule by refusing to offer more than a single unilateral proposal, and also violated the rule under the totality of circumstances test.

In a recent Memorandum Opinion and Order, the Media Bureau rejected both claims. The Media Bureau found that the broadcaster had offered multiple proposals, each with different terms, so it had not presented a single unilateral proposal. It also did not find that the broadcaster's rejection of the subsequent counterproposal constituted a *per se* violation. As to the totality of circumstances, the Media Bureau noted that the parties' disagreement over retransmission rates reflected a commonplace business dispute, and not a failure to negotiate in good faith.

The Media Bureau reiterated that negotiating parties are not required to reach agreement, merely to negotiate in good faith, and that the good faith requirement does not prevent a negotiating party from pursuing terms consistent with its economic interests.

Although the Media Bureau encouraged the parties to "return to the bargaining table" and resume negotiations, it concluded that the broadcaster had not violated the *per se* good faith requirements nor failed to negotiate in good faith under the totality of circumstances test, and thus denied the MVPD's complaint.