

FCC Enforcement Monitor

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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:

- *Virginia Sheriff and FCC Determine Public Safety Interference Caused by Handheld Radio*
- *Unauthorized Operation by Puerto Rico AM Station Leads to Notice of Violation*
- *Signal Booster Operated by Luxury Apartment Building in Texas Interferes with Local Public Safety System*

Virginia Investigation Results in Notice of Unlicensed Operation for Interfering with a Public Safety Communications System

Following an investigation by a Virginia sheriff's office into interference with the county's public safety radio communications system, the FCC's Enforcement Bureau conducted its own investigation and issued a Notice of Unlicensed Operation (NOUO) to an individual.

According to the NOUO, the sheriff's office determined that a handheld Motorola two-way radio was transmitting signals in an attempt to self-authenticate and thereby access the county's system. The handheld unit used a unique identification code and had apparently been illegally programmed to operate on the county's licensed frequencies. The investigation led to an individual who admitted that he had programmed the radio to operate on the county's frequencies and that he was the one operating it at the time the device attempted to self-authenticate and gain access to the county's public safety radio system.

Under Section 301 of the Communications Act, use of radios like the one in question must generally be licensed by the FCC unless they transmit at a sufficiently low level of power to qualify under Part 15 of the FCC's Rules for unlicensed operation. The handheld radio in question was not certified as a Part 15 device.

In addition, any person operating a radio transmitter on frequencies exclusively licensed for public safety use needs an FCC license. The NOUO stated that no such license had been issued to the individual.

Violators of Section 301 are subject to "substantial monetary fines, *in rem* arrest action against the offending radio equipment, and criminal sanctions including imprisonment." The individual has 10 days to respond to the FCC with a description of the steps he is taking to avoid future unlicensed operation and interference.

Puerto Rico AM Station Receives Notice of Violation for Unauthorized Operation

A Puerto Rico AM radio station recently received a Notice of Violation (NOV) from the FCC. In the NOV, the FCC's Enforcement Bureau stated that field agents out of its Miami office observed the station operating in violation of its license. Specifically, the agents reported that the station was operating from a single tower with a non-directional pattern, whereas the station's license specifies a directional antenna pattern using a two-tower array. The station had not requested and obtained Special Temporary Authority from the FCC to operate at variance from its licensed parameters.

Within 20 days of the issuance of the NOV, the licensee is required to file a response which "(i) must fully explain each violation, including all relevant surrounding facts and circumstances, (ii) must contain a statement of the specific action(s) taken to correct each violation and preclude recurrence, and (iii) must include a timeline for completion of any pending corrective action(s)." The licensee must also include "an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of [the licensee] with personal knowledge of the representations provided" in its response. The FCC may then take additional enforcement action once it has the relevant facts in hand.

Signal Booster Interference Leads FCC Agent to Texas Apartment Building

Following a complaint of interference with a city's public safety communications system in Texas, an FCC field agent determined that a signal booster operating in the 858-859 MHz band at a luxury apartment building was the cause of the interference.

Specifically, the field investigation found that the device was a signal repeater designed to assist public safety officials inside buildings where signals may have difficulty penetrating walls and structures. Such devices require experienced installers and coordination with local public safety officials to ensure they function properly and do not cause interference to the public safety frequencies on which they retransmit public safety signals. In this case, the agent reported that the interference stopped when a representative of the apartment building disconnected power to the device.

Under Part 90 of the FCC's Rules, such signal boosters must either be licensed or operated with the consent of the public safety licensee whose frequencies are being retransmitted. In this case, the device was not licensed and the user had not been given permission to retransmit on the city's public safety frequencies. As a result, the FCC issued a Notice of Harmful Interference to the building owner.

The Notice of Harmful Interference stated that signal boosters must always operate on a non-interference basis and that certain signal boosters, as indicated on or next to the product's label, must be registered with the FCC before operation.

While the FCC noted that such signal boosters are often required by local codes to ensure emergency responders' radio equipment will function properly indoors, operation on public safety frequencies requires great care and planning. Unauthorized or improper operation can interfere with emergency communications and is a violation of the FCC's rules and Section 301 of the Communications Act. As the Notice of Harmful Interference indicated, causing harmful interference with such a device can result in "severe penalties, including, but not limited to, substantial monetary fines, *in rem* arrest action against the offending radio equipment, and criminal sanctions including imprisonment."

The building owner has 10 days to respond in writing to the FCC with (1) evidence that it has obtained a license from the FCC or the express consent of the city public safety licensee to operate the signal booster, (2) a description of the steps taken to confirm that the booster is properly configured and no longer causing harmful interference, (3) a complete description of the signal booster(s) that it operates at the property, and (4) if the device label states that registration with the FCC is required, evidence that it has registered the device.