

FCC Enforcement Monitor

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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 special issue takes a look at the government's renewed efforts to scuttle **Pirate Radio operations**.*

Since the government first began regulating the airwaves, it has struggled to eliminate unlicensed radio operators. In its latest effort, the FCC is taking a hardline approach to this illegal behavior and is partnering with local and federal law enforcement, as well as Congress, to accomplish the task.

While Chairman Pai has made clear that pirate radio prosecutions are once again a priority at the FCC, it is Commissioner O'Rielly who has been the most vocal on this front, calling for more aggressive action against unauthorized operators. The continued prevalence of pirate radio operations has been chalked up to several factors, including insufficient enforcement mechanisms and resources, the **procedural difficulties in tracking down unregulated parties**, and **lackadaisical enforcement** until recently.

Regulators and broadcast industry leaders have also expressed frustration with the **whack-a-mole** nature of pirate radio enforcement—shutting down one operation only to have another pop up nearby.

Real Consequences

Congress has also begun to take an interest in the issue, with the House Subcommittee on Communications and Technology holding a hearing last week discussing the subject. One of the witnesses was David Donovan, president of the New York State Broadcasters Association. In **his testimony**, he listed numerous risks that unlicensed operations present to the public, including failure to adhere to Emergency Alert System rules and RF emissions limits (which can be critically important where a pirate's antenna is mounted on a residential structure). Pirate operators also create interference to other communications systems, including those used for public safety operations, while causing financial harm to legitimate broadcast stations by diverting advertising revenue and listeners from authorized stations.

Despite these harms, pirate operations continue to spread. This past month, the FCC issued a Notice of Unlicensed Operation ("NOUO") to a New Jersey individual after the FCC received complaints from the Federal Aviation Administration ("FAA") that an FM station's broadcasts were causing harmful interference to aeronautical communications operating on air-to-ground frequencies. FCC agents tracked the errant transmissions to the individual's residence and confirmed that he was transmitting without authorization.

Days later, the FCC issued an NOUO to another New Jersey resident who was transmitting unlicensed broadcasts from a neighborhood near Newark Airport. Once again, FCC agents were able to determine the source of the signal and found that the property owner was not licensed to broadcast on the frequency in question.

In each of these NOUOs, the FCC stated that the transmission of unlicensed radio signals violates federal law and demanded the offenders immediately cease operations. Each party was given ten days to provide the FCC with any evidence that it is authorized to operate on the frequencies in question. The FCC will use these responses and any other relevant information available to determine what type of enforcement action it may pursue against these individuals. Violators risk fines, confiscation of contraband equipment, and even imprisonment.

An Increase in Enforcement

The FCC's actions are not limited to New Jersey—the past 18 months have seen a **major uptick** in pirate radio enforcement actions by the FCC across the country. According to unsealed court documents, the FCC recently teamed up with the U.S. Marshals Service and the Boston Police Department to seize radio transmission equipment from two unlicensed stations in Boston.

In that case, the FCC began investigating the stations after receiving complaints from the public, including a complaint from a licensed broadcaster about interference with its signal. The equipment seizure came after the FCC issued several NOUOs to the unlicensed stations throughout the summer and fall of 2017.

One of the unlicensed stations was well-known in the area. Videos and photographs of live broadcasts were posted to the station's social media page during the weeks before and after the FCC's warnings. As of the date of this publication, the station still has an active website and social media presence. Its website prominently displays messages encouraging advertisers to reach out for on-air spots, and its social media page shows local community leaders and musicians at its studio.

The other pirate station was operated by a woman who the FCC claimed was not only the station operator, but the host of her own weekday afternoon program.

In response to these high-profile actions, Rosemary Harold, Chief of the FCC's Enforcement Bureau, emphasized the FCC's focus on pirate radio stations. "We are pursuing multiple legal routes to stop pirate broadcasters; the seizure action in Boston is just one of them."

The PIRATE Act

David Donovan noted in his testimony before the House subcommittee that unlicensed operations are not rarities, particularly in larger radio markets, citing a recent study of the New York metropolitan area that revealed the existence of at least 76 unauthorized radio stations in a four-day span.

A major obstacle to enforcement, however, is the limited tools the FCC has to go after pirates. Federal law currently limits the fine for pirate radio operations to \$19,246 per day of a continuing violation, up to a maximum of \$144,344 for a single act or failure to act. It has become apparent that these fines are not deterring pirates, and **there now appears to be bipartisan support in Congress** for dramatically raising those fines.

Currently pending before the House is the **Preventing Illegal Radio Abuse Through Enforcement Act** ("PIRATE Act"), which would subject violators to a maximum fine of \$100,000 per day of a continuing violation up to a new maximum fine of \$2,000,000 per act. The proposed legislation would also codify a **recent Enforcement Bureau practice** of penalizing individuals who facilitate such behavior by knowingly providing services or access to property that directly aids pirate operations.

The bill also takes aim at the equipment used in pirate operations, giving the FCC authority to destroy equipment held from *in rem* seizures within three months of its removal.

In addition to strengthening enforcement tools, the legislation would require the FCC to perform biannual enforcement sweeps of the five largest radio markets (New York, Los Angeles, Chicago, San Francisco, and Dallas) to prosecute pirate operations.

As the FCC steps up its enforcement efforts and Congress gets involved, it looks like stormy seas ahead for pirate radio operators.