

# FCC Enforcement Monitor

## April 2018

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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 issue includes:*

- *FCC Proposes \$235,668 Forfeiture for Filing Untruthful Information*
- *Major Phone Carrier Settles Dispute With FCC Over Rural Call Completion Issues for \$40 Million*
- *Repeat Pirate Nets \$25,000 Fine*

#### **Tower Records: FCC Proposes Large Fine for Dozens of Falsified Tower Registrations**

After a bizarre string of events involving unlit towers, falsified applications, and alleged theft, the FCC proposed a penalty of \$235,668 against a Wisconsin holding company for providing false and misleading information on dozens of Antenna Structure Registration (“ASR”) applications and misleading an Enforcement Bureau agent.

Section 1.17 of the FCC’s Rules requires a party that is either (A) applying for an FCC authorization; or (B) engaging in activities that require such authorizations, to be truthful and accurate in all its interactions with the FCC. Specifically, Section 1.17(a)(2) states that no person shall “provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading....”

In December 2016, the Enforcement Bureau began investigating an unlit tower in Wisconsin after the Federal Aviation Authority (the “FAA”) forwarded a complaint from a pilot who had noticed the structure. Unlit towers pose a serious danger to air navigation. In the midst of the investigation, the tower’s ASR information was changed to show a new company had taken control of the tower. When an FCC investigator reached out to the newly registered owner, the company’s CEO stated that his company had recently acquired the tower, knew of the lighting problem, and would make repairs as soon as the weather permitted. In the meantime, the company also began changing the registration information for other towers, requested flight hazard review from the FAA for some of these towers, and filed an ASR application for construction of a new tower in Florida.

Several months later, the original owner of the unlit tower informed the FCC that the other company was not actually the owner and that the imposter company’s “CEO” had improperly changed the ownership information for several sites in the ASR system. The true owner also claimed that the alleged fraudster had changed locks and stolen equipment from several of the real owner’s towers—including the new lighting equipment that the original owner bought to repair the extinguished tower lighting.

In response, the Enforcement Bureau sent a Letter of Inquiry (“LOI”) to the claimed CEO’s physical and email addresses seeking more information about his various applications. To date, the Bureau has not received any response.

In a Notice of Apparent Liability (“NAL”), the Enforcement Bureau determined that the CEO’s company became subject to Section 1.17 when it applied for the Florida tower registration, and also that the CEO was engaging in activities that require FCC authorization. According to the NAL, the CEO apparently provided false and misleading information on 42 separate change in ownership applications and communicated false information to the investigating agent. According to the Enforcement Bureau, the company also violated Section 403 of the Communications Act (the “Act”) by failing to respond to the LOI.

Under its statutory authority to penalize any party that “willfully or repeatedly fails to comply” with the Act or the FCC’s Rules, the FCC may issue up to a \$19,639 forfeiture for each violation or each day of a continuing violation. Accordingly, the FCC proposed a fine of \$19,639 for each of the 10 apparently false applications filed in the past year, \$19,639 for the company’s alleged misleading statements to the investigating agent, and an additional \$19,639 for its failure to respond to the FCC’s questions, for a total of \$235,668.

### **Missed Connections: Major Phone Carrier Agrees to Pay \$40 Million After Investigation Into Rural Call Completion Issues**

The FCC entered into a Consent Decree with a major phone carrier after an investigation into whether the carrier violated the Commission’s Rural Call Completion Rules.

According to the FCC, consumers in low-population areas face problems with long-distance and wireless call quality. In an effort to address these problems, the FCC has promulgated a series of directives that prohibit certain practices it deems unreasonable and require carriers to address complaints about rural calling (“Rural Call Completion Rules”).

In 2012, **the FCC’s Wireline Competition Bureau determined** that a carrier may be liable under Section 201 of the Act for unjust or unreasonable practices if it “knows or should know that calls are not being completed to certain areas” and engages in practices (or omissions) that allow these problems to continue. This includes (1) failure to ensure that intermediate providers (companies that connect calls from the caller’s carrier to the recipient’s carrier) are performing adequately; and (2) not taking corrective action when the carrier is aware of call completion problems.

Since 2014, the FCC has **prohibited the use of “false ring signaling,”** the practice of triggering a “false” ring tone before the call reaches the rural provider (making it appear that the call has been connected when it has not). The FCC has continued to update its Rural Completion Rules **as recently as this month.**

In 2016, three rural carriers in Wisconsin complained to the FCC that customers of the major carrier were unable to complete long-distance calls to consumers serviced by the rural carriers. These rural carriers also complained of false ring tones used for these incomplete calls. Around the same time, individual customers complained directly to the major carrier. The major carrier determined that each of the reported failed calls had been handed off to intermediate providers, and concluded that the intermediate providers had since remedied the problems. The Enforcement Bureau subsequently issued an LOI to investigate whether the major carrier degraded service to rural-bound calls and conveyed false ring tones to customers.

Regarding the incomplete calls, the Enforcement Bureau found repeated call problems from the major carrier to at least ten different rural carriers. The Bureau also found that, beginning in 2007, the major carrier had begun automatically inserting false ring tones for calls that took too long to complete and continued this practice for some calls even after the FCC prohibited it.

According to the terms of the Consent Decree, the major carrier agreed to (1) admit that it did not correct the call delivery problems to rural callers associated with its intermediate providers; (2) admit that it violated the FCC's prohibition on inserting false ring tones; (3) institute a compliance plan to address future rural call completion problems; and (4) pay a \$40 million fine to the U.S. Treasury.

### **Show Me Your License: FCC Hits Elusive New Jersey Pirate with \$25,000 Fine**

The Enforcement Bureau proposed a \$25,000 forfeiture against a New Jersey man for allegedly operating an unlicensed radio station from multiple sites.

Section 301 of the Act prohibits the transmission of radio signals without an FCC authorization. Pirate operators can cause interference to nearby communications systems and financial harm to licensed broadcast stations by diverting revenue and listeners while avoiding regulatory fees and other legal obligations.

The Enforcement Bureau initiated the investigation in February 2015 after receiving a complaint that several unauthorized stations were operating in Paterson, New Jersey. Bureau agents tracked broadcasts on 90.9 MHz to a residential building and determined that the FCC had not authorized FM broadcast operations from that site. The agents returned to that site several more times, each time photographing an FM antenna on the roof and recording portions of the broadcasts, including segments that encouraged advertisers to call a phone number to place ads on the station. The agents identified the phone number's account holder as the pirate. On one of these occasions, agents noticed a car registered in the individual's name parked next to the broadcast site.

Several months later, an agent returned to the site but tracked the unauthorized signal to another residence four blocks away. Again, the agent photographed an FM antenna mounted on the building and recorded portions of the broadcast that used the same phone number heard in previous broadcasts. The agent noticed the same car from before and determined that the new site was also the billing address for the pirate's telephone.

The agent then posted a Notice of Unlicensed Radio Operation (On-Scene NOUO) to the residence's door, which stated that the individual was illegally broadcasting from the site and that continued operations could result in enforcement action. The following month, the Enforcement Bureau's regional office mailed the individual a Notice of Unlicensed Operation (NOUO).

Despite these warnings, agents determined that the individual had returned to the first transmit site to continue transmitting. For the next few months, agents again tracked the unlicensed transmissions, observed the antenna, and recorded portions of the transmissions that included references to the same individual's telephone number. The FCC issued an additional NOUO after each visit.

Section 1.80(b) of the FCC's Rules sets a base forfeiture of \$10,000 for "operation without an instrument of authorization for the service." The FCC proposed a \$10,000 forfeiture for each of two apparent violations of Section 301. The FCC then added a \$5,000 upward adjustment due to repeated violations despite multiple warnings, resulting in a total proposed fine of \$25,000.

Between the FCC's **tougher stance** on pirate radio operations this past year, and legislation in the U.S. House of Representatives that could **increase fines for unauthorized transmissions by millions of dollars**, pirates should expect no quarter going forward.