

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 issue includes:

- *FCC Fines Colorado Wireless Operators for Use of Unauthorized Equipment and Unauthorized Operations*
- *VoIP Provider Enters Into Consent Decree With \$180,000 Penalty Over Failure to Meet FCC Filing Requirements*
- *FCC Investigates Colorado Manufacturer's Unauthorized Signal Booster*

Two Colorado Wireless Operators Fined for Unauthorized Equipment and Unauthorized Operations

The FCC fined two Colorado-based wireless operators for intentionally altering settings on equipment so as to operate it in a manner not authorized by the FCC's rules. The operators, licensed to provide radiolocation services (such as radar services), instead operated a GPS vehicle tracking service using the unauthorized equipment on unauthorized frequencies.

Under Section 301 of the Communications Act of 1934 and Section 1.903(a) of the FCC's Rules, the operation of any device that transmits radio signals, communications, or energy without an FCC authorization is prohibited. Additionally, Section 302(b) of the Communications Act requires that radio frequency devices operate in accordance with their associated FCC authorization. While a radiolocation service licensed under subpart F of Part 90 of the FCC's Rules permits operations that "determine distance, direction, speed or position by means of radiolocation services, for purposes other than navigation," GPS services rely on satellite communications to determine the location of an object, typically to allow the owner of a GPS receiver to navigate based upon triangulation of the satellite GPS signals.

The FCC began investigating the two operators in April 2017 after receiving a complaint alleging that the companies were providing non-radiolocation wireless data transmission services rather than the radiolocation services for which they were licensed. The Enforcement Bureau issued Letters of Inquiry (LOI) to both operators, and FCC agents followed up with an investigation of the companies' shared facilities in Denver, Colorado. This investigation led the FCC to issue a second set of LOIs seeking additional information from the companies regarding the equipment used.

In October 2017, the companies filed requests for Special Temporary Authority (STA) acknowledging their unauthorized use of the equipment and seeking authority to migrate their radiolocation services to an affiliated non-radiolocation licensee authorized to operate on a different frequency. The FCC denied the STA requests, as well as a subsequent Petition for Rulemaking filed jointly by the companies, noting that the services proposed would still be prohibited on the newly-requested frequencies, and that the transmission of GPS coordinates is not a radiolocation service as defined by the FCC's rules.

In September 2018, the FCC issued a Notice of Apparent Liability (NAL) proposing \$534,580 in total fines against the two companies for the use of unauthorized equipment and conducting unauthorized operations. The companies responded to the notice, presenting several arguments as to why the NAL should be cancelled, but according to the FCC, still failing to explain how the non-radiolocation GPS service could legally operate using noncompliant equipment on a frequency band designated for other services.

The FCC considered and dismissed the companies' various arguments, upholding the fines it had originally proposed. Among other arguments, the companies asserted that they had held a reasonable belief that the GPS service was authorized due to prior conversations and assurances from FCC staff. The FCC rejected that argument and reiterated that "parties who rely on staff advice or interpretations do so at their own risk." Critically, the FCC noted that the licenses themselves did not authorize non-radiolocation services, and a license grant is not a blanket authorization to operate any equipment of a party's choosing. The FCC also rejected the companies' request that the fines be cancelled, instead choosing to adjust the fines upward due to both companies' history of repeated and continuous violations of the FCC's rules, along with the deliberate nature of these particular violations.

The companies have 30 days from release of the Orders to pay the fines in full. If the fines are not paid within that time, the FCC noted that it may refer the matter to the Department of Justice to commence collection proceedings.

VoIP Provider Hit With \$180,000 Penalty Over Failure to Comply with FCC Filing Requirements

The FCC entered into a Consent Decree with a Voice over IP (VoIP) provider, resolving an investigation into whether the provider violated several of the FCC's filing requirements. For purposes of settling the matter, the provider admitted that it failed to timely file its Telecommunications Reporting Worksheets, CPNI Certifications, Advanced Telecommunications Capability Data, and a response to an LOI from the Enforcement Bureau.

Under Section 254(d) of the Communications Act, "[e]very telecommunications carrier [providing] interstate telecommunications services . . . [must] contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service." In implementing this directive, the FCC requires interstate telecommunications service providers, including VoIP providers, to contribute a portion of their interstate and international end-user telecommunications revenue to the Universal Service Fund (USF). To accomplish this, providers must file annual, and in most cases quarterly, Telecommunications Reporting Worksheets (Worksheets) reporting their interstate and international revenue. Failure to timely file and accurately report this information prevents the FCC from ensuring the provider is contributing its required share to the USF.

Such providers must also document their compliance with the FCC's rules governing the protection of Customer Proprietary Network Information (CPNI), which are designed to protect the privacy and security of customer information. Section 64.2009(e) of the FCC's Rules requires providers to annually certify their compliance with the CPNI requirements and affirm that they have complied with the applicable rules.

Finally, providers of broadband service must file Advanced Telecommunications Capability Data on Form 477 every six months to provide information on their broadband customers. That data is then used to inform federal efforts to expand national broadband deployment.

The FCC has broad authority to conduct investigations to determine whether entities it regulates are complying with its rules. To that end, the FCC has long treated Letters of Inquiry sent to its regulatees as a Commission order to provide the requested information, with the failure to fully respond to an LOI being deemed a violation of an FCC order.

Between August 1, 2011 and August 1, 2020, the company failed to timely submit a total of 46 Worksheets, and between August 18 and November 10, 2020, submitted late filings for 8 Quarterly and Annual Worksheets that were due from April 2016 through August 2020. Similarly, the company did not file CPNI Certifications due March 1 of 2015, 2016, 2018, 2019, and 2020 until June 30, 2020. In investigating the company's repeated failures to meet these filing requirements, the Enforcement Bureau issued an LOI on February 20, 2020 requesting a response from the company by March 20, 2020. That deadline was later extended to May 19, 2020, but the company failed to respond by even that extended deadline, instead submitting seven partial responses between July 29 and October 1, 2020.

To resolve the investigation, the Bureau entered into a Consent Decree with the provider under which the provider (1) admitted, for purposes of the Consent Decree, that it violated the Communications Act and FCC's rules by failing to timely file Worksheets, CPNI Certifications, Form 477 broadband data, and a response to the FCC's LOI request; (2) agreed to pay a \$180,000 penalty; and (3) agreed to implement a three-year compliance plan to prevent future violations.

FCC Investigates Colorado Manufacturer Over Signal Booster Interference Concerns

The FCC's Enforcement Bureau issued a Notice of Violation to a Colorado-based manufacturing company over interference complaints connected to the company's Private Land Mobile Radio (PLMR) operations. PLMR licensees operate wireless communications systems frequently used by public safety, manufacturing and other industrial business organizations. These systems support internal communications and often operate on the same or nearby frequencies to other PLMR licensees.

Section 90.219 of the FCC's Rules sets forth the requirements for PLMR licensees' use of devices, known as signal boosters, that improve the reach of PLMR signals in a particular area. Section 90.219(c) states that "PLMR licensees that operate signal boosters are responsible for their proper operation and are responsible for correcting any harmful interference that the signal booster operation may cause to other licensed communications services."

On October 5, 2020, responding to an interference complaint from a Denver-area emergency dispatch center, FCC agents employed direction-finding equipment to identify radio signals emanating from the manufacturer's office complex. The investigation revealed the emissions were coming from a signal booster at that location, and subsequent tests confirmed the booster as the source of the interference to the dispatch center's licensed communications systems. When the manufacturer unplugged the booster, the interference ceased.

The FCC issued a Notice of Violation to the manufacturer seeking additional information concerning the violations and any remedial actions taken to prevent such interference. The company must now respond to the FCC within 20 days fully explaining each violation, summarizing the actions taken to correct each violation and prevent future violations, and providing a timeline for any corrective actions that have not yet been completed.