

# FCC Enforcement Monitor

## May 2023

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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:*

- *LPFM Station Fined \$15,000 for Airing Commercial Advertisements*
- *FCC Issues Notices to the Landowners of Sixteen Pirate Radio Sites*
- *Telecommunications Carrier Pays \$227,200 To Resolve 911 Outage Investigation*

#### **Violations of Noncommercial Broadcasting Underwriting Laws Result in \$15,000 Penalty for Low Power FM Station**

The licensee of a Colorado low power FM (LPFM) radio station must pay a \$15,000 penalty for airing commercial advertisements in violation of the Communications Act and the FCC's rules for noncommercial broadcasting.

All LPFM radio stations are licensed as noncommercial educational stations and are therefore prohibited from airing advertisements (defined as programming material broadcast "in exchange for any remuneration" and intended to "promote any service, facility, or product" of for-profit entities). Such stations are permitted to identify contributors and underwriters that provide financial support to the station but may not promote a contributor or underwriter's products, services, or businesses. The FCC articulated its noncommercial broadcasting policy in a 1981 *Report and Order*, explaining that "[t]he Commission's interest in creating a 'noncommercial' service has been to remove the programming decisions of public broadcasters from the normal kinds of commercial market pressures under which broadcasters in the unreserved spectrum usually operate." In exchange, LPFM and other noncommercial stations benefit from being exempt from regulatory fees and from having fewer regulatory requirements than those imposed on commercial stations.

In 2015, the FCC started receiving complaints about an LPFM station airing advertisements and began investigating and monitoring the station in 2018. The investigation found that over a period of three months in 2018 the station aired more than 1,600 advertisements promoting the products, services, or business of at least 14 of the station's financial contributors, including a steakhouse, shoe store, and jeweler. The FCC issued a *Notice of Apparent Liability for Forfeiture (NAL)* in 2020 proposing a \$15,000 fine.

The licensee did not dispute the FCC's findings but filed a response to the NAL requesting a reduction or elimination of the proposed penalty based on its inability to pay and history of compliance with the FCC's Rules and citing consent decrees in which the FCC agreed to reduce proposed fines. The FCC reviewed the station's financial statements and IRS filings and the record of advertisement complaints made about the station and ultimately decided that no reduction or elimination of

the forfeiture was warranted. In releasing the Forfeiture Order affirming the \$15,000 fine, the FCC distinguished the facts underlying the cited consent decrees and also noted that consent decrees are negotiated between a party and the FCC and have no precedential value on third parties.

### **FCC's Pirate Radio Enforcement Targets Sixteen Landowners Across New York and New Jersey**

As we discussed [last May](#), the Enforcement Bureau (Bureau) has turned its attention to the landowners of illegal broadcast radio (colloquially known as “pirate radio”) sites. Last month, the Bureau issued sixteen warnings to New York and New Jersey landowners for apparently allowing illegal pirate radio broadcasting from their respective properties. The Communications Act prohibits the transmission of radio signals without prior FCC authorization because such signals can, among other things, pose risks to public safety by interfering with licensed operations such as air traffic control.

The FCC increased its efforts to combat illegal broadcast operations after Congress's passage of the PIRATE Act in early 2020. The Bureau stated that “owners can no longer turn a blind eye to pirate radio operations on their property.” The PIRATE Act provides the Commission with increased enforcement authority, and the FCC may now impose fines of up to \$2,316,034 against individuals or entities that knowingly permit pirate radio operations on their property.

In addition to tougher fines, The PIRATE Act requires the Commission to conduct periodic enforcement sweeps and grants the FCC authority to take enforcement action against landlords and landowners that willfully and knowingly permit unauthorized broadcasting on their properties. The PIRATE Act permits the FCC, without first having to issue a Notice of Unlicensed Operation, to propose a penalty against any person that “willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting.” The FCC will issue a Notice of Illegal Pirate Radio Broadcasting providing the landowner a chance to remedy the situation before enforcement action is taken.

In response to complaints of illegal FM broadcast operations across the sixteen locations in New York and New Jersey, FCC agents confirmed radio signals were emanating from each of the properties without an FCC license authorizing such transmissions. The Bureau issued Notices of Illegal Pirate Radio Broadcasting to the respective landowners, warning the landowners that they faced fines totaling more than \$2.3 million if the FCC determines they continued to permit illegal broadcasts from their property.

While the FCC's Rules create exceptions from licensing requirements for certain extremely low-powered wireless devices, the Commission's agents determined that the exceptions did not apply to the transmissions originating from the properties. The property owners were given ten business days from the date of their respective Notices to (1) provide evidence demonstrating that pirate radio broadcasts are no longer occurring on their property, and (2) identify the individual(s) engaged in the illegal broadcasts, and were warned that failure to respond may result in an adverse finding and enforcement action, including substantial fines.

### **911 Outage Lasting More Than Two Weeks Leads to \$227,200 Settlement**

A provider of Voice over Internet Protocol (VoIP) service entered into a consent decree with the FCC last month to resolve an investigation concerning a 911 service outage in April 2022 that lasted more than two weeks. Section 9.11(b)(2)(ii) of the FCC's Rules requires interconnected VoIP service providers to transmit “[a]ll 911 calls” to public safety answering points (PSAPs).

During April 2022, the VoIP provider was in the process of planned upgrades to its network, replacing Session Border Controllers (SBCs) and transitioning customers to a new 911 routing service. The 911 disruption occurred before all SBCs were replaced. Customers whose interconnected VoIP service transitioned to the new 911 routing service before their service was transitioned to the new SBCs experienced one-way audio during 911 calls: that is, callers could hear the PSAP operators, but the PSAP operators could not hear the 911 callers. Phone number information and location information were delivered to the PSAPs, enabling PSAP operators to place return calls to communicate with the 911 callers. The outage lasted more than two weeks.

The Bureau issued a Letter of Inquiry to the provider in September 2022, and issued follow-up questions in November and December 2022. The provider timely responded to each of the Bureau's inquiries, and in April 2023, the provider entered into a Consent Decree with the Bureau to resolve the investigation.

The terms of the consent decree require the provider to pay a \$227,200 civil penalty. Additionally, the provider must implement a compliance plan to "develop and implement, or where processes already exist, improve upon, processes in the evolving 911 environment" to identify risks that could result in 911 service disruptions, protect against such risks, detect 911 outages when they occur, respond to such outages with remedial actions, and recover from such outages as soon as practicable. The provider is also required to report any material violations of the 911 rules or the terms and conditions of its consent decree within fifteen calendar days of discovering a violation.