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## FCC Enforcement Monitor

By Scott R. Flick and Paul A. Cicelski

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### *Headlines:*

▪ *Assignment of Paired AM Stations Denied by the FCC*

▪ *Use of Illegal Cell Phone Jammers Leads to Fines in Excess of \$125,000*

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### **FCC Denies Two Assignment Applications of Paired AM Stations**

Early this month, the FCC issued two letters denying several assignment applications seeking to separately assign jointly-operated AM stations to different licensees, contrary to the FCC's rules.

In the 1990s, the FCC expanded the AM band frequencies and permitted AM licensees to operate both existing AM band stations and expanded band AM stations in order to improve the quality of the AM service. However, this dual operating authority was contingent upon the surrender of one of the two licenses within five years from the grant of the license for the expanded band station.

In September 1999, one of the licensees filed an assignment application to assign two paired AM band stations to a second licensee. The FCC granted this assignment application, but the receiving licensee only consummated the assignment of one of the two AM stations due to "environmental issues." Several years later, the two licensees filed several new assignment applications requesting FCC approval to separately assign the stations to new licensees, including one application in 2006 and two applications in 2012. In none of these applications did the licensees mention that the stations were part of a jointly-operated pair or that any additional special conditions might apply.

In its letters, the FCC denied all of the pending assignment applications and declined to grant a waiver of the FCC's rule requiring the surrender of one of the two licenses. In its decisions, the FCC stated that the grant of the applications would be contrary to the public interest and would "(1) constitute a further violation of a Commission-imposed processing policy; (2) bestow a further benefit on a party that knowingly engaged in such violation; (3) be unfair to those licensees that have returned one of the paired licenses; and (4) be inconsistent with the expanded band licensing principle that each licensee surrender one license at the expiration of the dual operating authority period." In other words, the FCC made clear that the only assignment application it would be willing to accept is one resulting in both AM stations being held by a single licensee.

### **Use of Cell Phone Jammers to Prevent Cell Phone Use during Working Hours Does Not Pay Off**

The FCC has long kept a careful eye on the sale and use of illegal cell phone jamming devices that interfere with cellular communications. This month, the FCC continued to take action against the use of illegal cell phone jammers by issuing two hefty Notices of Apparent Liability for Forfeiture ("NAL") against two companies, one in Alabama and one in Louisiana, both of which used several cell phone jamming devices at their worksites.

As described in the two NALs, each company purchased four cell phone jammers from various Internet sources (and a fifth jammer as a backup) and installed them throughout their worksites to prevent their employees from using cell phones while working. In both instances, agents from the FCC's Enforcement Bureau responded to anonymous complaints and inspected the worksites. Using direction finding techniques, the agents discovered strong wideband emissions on the cellular bands and determined that the source of these emissions was from signal jammers.

The Enforcement Bureau agents then inspected the worksites and interviewed the managers of the two companies, both of whom admitted that they had purchased the jammers online and operated them at their worksites—one company for a period of two years and the other for a period of a few months. Both managers showed the agents the locations of the jamming devices and voluntarily surrendered them.

Sections 301, 302(b), and 333 of the Communications Act generally prohibit the importation, use, marketing, and manufacture of cell phone jammers because jammers are designed to impede authorized communications and can disrupt safety communications, such as 911 calls. Moreover, since the primary purpose of a jammer is to interfere with authorized communications, jamming devices cannot be certified and cannot comply with the FCC's technical standards for operation.

In response to the use of illegal jamming devices, the FCC issued substantial forfeitures to both companies. The relevant base forfeiture amounts are \$10,000 for operating without FCC authorization, \$5,000 for using unauthorized or illegal equipment, and \$7,000 for interference with authorized communications. The base forfeiture for violations of the prohibition on signal jamming is \$16,000 per violation or per day, up to a maximum of \$112,500 for a single violation. For the company in Alabama that operated four jamming devices for a period of two years, the FCC found that the company committed 12 total violations, representing three violations for each of the four jamming devices in use. Thus, the fine would normally be \$16,000 per violation, for a total fine of \$192,000. However, since the company immediately surrendered the jamming devices and was cooperative with the Enforcement Bureau agents, the FCC reduced the penalty by 25% to \$144,000. The FCC applied the same type of calculation to the company in Louisiana that operated four jamming devices for a period of a few months, resulting in a fine of \$126,000 after a 25% reduction in the total fine amount. The FCC also ordered both companies to submit sworn written statements providing contact information for the sellers of the jamming devices and all information regarding the sources from which the jamming devices were purchased.

In addition, the FCC cautioned the companies that while the FCC chose not to impose separate forfeitures for the illegal importation of the jamming devices, the FCC has the power to impose "substantial monetary penalties" on individuals or businesses who illegally import jammers. The FCC further warned the companies and other individuals and businesses that the FCC "may pursue alternative or more aggressive sanctions, should the approach set forth [here] prove ineffective in deterring the unlawful operation of jamming devices."

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If you have any questions about the content of this Advisory, please contact the Pillsbury attorney with whom you regularly work, or the authors of this Advisory.

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