
FCC Enforcement Monitor

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- *Spoofed Calls Lead to Multiple \$25,000 Fines and Ongoing Criminal Case*
 - *Amateur Radio Licensee Fined \$25,000 for Intentional Interference*
 - *Failure to Timely Request STA Results in \$5,000 Fine and Shortened License Term*
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Spoofing's No Joke: Two Men Face \$25,000 Fine Each for Harassing Phone Call Scheme

The FCC proposed to fine two New York men for apparently using false caller ID numbers – a practice commonly known as “spoofing” – to place harassing phone calls to the ex-wife of one of the men.

The Truth in Caller ID Act of 2009, as codified in Section 227(e) of the Communications Act and Section 64.1604 of the FCC's Rules, prohibits any person, in connection with any telecommunications service or IP-enabled voice service, to knowingly cause, directly or indirectly, any caller ID service to transmit or display misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value.

In September 2015, the National Network to End Domestic Violence contacted the FCC on behalf of one of their clients and explained that someone was using spoofing services to stalk and harass her. The FCC subsequently opened an investigation into the matter.

Using information and call logs provided by the woman, the investigation found that between May 2015 and September 2015, 31 harassing phone calls were made. It found that the callers used a spoofing service provider to make the woman believe she was answering calls from sources such as local jails and prisons, the school district where her child attends school, and her parents' home. In addition, it found that the callers used a voice modulation feature of the spoofing service to disguise their voices, and conveyed threatening and bizarre messages. For example, calls that spoofed the caller ID information of Sing Sing correctional facility threatened “we are waiting for you.” Other calls referenced personal information specific to the woman and her minor child.

FCC staff subpoenaed call records for the cell phone of a friend of the woman's ex-husband after the woman told staff that she believed her ex-husband – against whom she had a restraining order during the time period in question – and his close friend were behind the calls. The woman explained to FCC staff that for some of the calls she had used a third-party “unmasking” service to reveal that the true caller ID was that of her ex-husband's friend, with whom she had no independent relationship. The call records showed that each time the friend called the spoofing service, the woman received a spoofed call. The parent company of the spoofing service confirmed that the friend used its service to make spoofed calls to the woman.

The FCC also found that the ex-husband was directly involved in at least some of the calls. For example, the FCC found that the friend made a spoofed call moments after he was called by the ex-husband, and while he was still on the phone with the ex-husband. The FCC explained that the fact that the ex-husband “did not dial the spoofed calls himself does not absolve him of liability for the harassment and stalking of his ex-wife.”

The Communications Act and the FCC's Rules authorize a fine of up to \$10,000 for each spoofing violation, or three times that amount for each day of a continuing violation, up to a statutory maximum of \$1,025,000. The FCC may adjust a fine upward or downward depending on the circumstances of the violation. Citing the “egregious” nature of the violation, the FCC proposed to fine the ex-husband and the friend \$25,000 each. The friend was also arrested and charged with stalking and aggravated harassment after the woman filed a complaint with local police.

Haters Gonna Hate: Amateur Radio Licensee Fined \$25,000 for Racial Slur-Filled Interference

A California amateur radio licensee received a \$25,000 fine from the FCC for intentionally interfering with the transmissions of other amateurs radio operators and transmitting prohibited communications, including music.

Section 333 of the Communications Act states that “[n]o person shall willfully or maliciously interfere with or cause interference to any radio communications of any stations licensed or authorized by or under the Act or operated by the United States Government.” Similarly, Section 97.101(d) of the FCC's Rules states that “[n]o amateur operator shall willfully or maliciously interfere with or cause interference to any radio communication or signal.” In addition, Section 97.113(a)(4) of the Rules states that “[n]o amateur station shall transmit . . . [m]usic using a phone emission except as specifically provided elsewhere in this section.”

After receiving multiple complaints of interference, primarily from the Western Amateur Radio Friendship Association (“WARFA”), FCC field agents, with assistance from the FCC's High Frequency Direction Finding (“HFDF”) Center, conducted investigations to find the source of the interference. On August 25 and 27, 2015, between 7:45 p.m. and 9:45 p.m., the agents observed at least 12 instances of the licensee intentionally transmitting on top of, and interrupting, WARFA amateurs. The interruptions lasted from 30 seconds to at least 4 minutes, and included noises, recordings, music, and talking over WARFA users. The transmissions included racial, ethnic, and sexual slurs. The licensee ended his transmissions each night when WARFA members ended their transmissions.

On August 28, 2015, FCC agents conducted an inspection of the licensee's station, and warned him that his transmissions violated the Communications Act and the Commission's rules. Later that day, the licensee sent an email to the FCC's San Francisco Office District Director, stating that the transmissions

were not violations and that he would continue them. That night, the HFDF Center observed that the licensee was again transmitting on top of, and interrupting, WARFA users.

Based on its investigations, the FCC issued a Notice of Apparent Liability for Forfeiture (“NAL”) in December 2015 that proposed a \$25,000 fine against the licensee. The FCC’s Rules authorize base forfeiture amounts of \$7,000 for interference and \$4,000 for unauthorized emissions. The NAL proposed a \$7,000 fine for each of the two days that the field agents observed interference, and \$4,000 for the unauthorized emissions on each day, for a total of \$22,000. The FCC added an upward adjustment of \$3,000 because the licensee continued to cause interference after being warned.

In response to the NAL, the licensee raised several constitutional arguments, including that the transmissions were protected by the First Amendment, and that the FCC characterized them as jamming or interference simply because it did not agree with the content of his transmissions. The FCC rejected these arguments, stating that “it is well-established that regulation of radio in general does not violate the First Amendment.” It added that the violations were based on the manner of the transmissions, not their content.

The licensee also argued that the FCC could not prove that he was the operator that was causing harmful interference, or that he had prevented any station from communicating with another station. The FCC disagreed, asserting that “after staff had compared and synthesized all the observations of Bureau Field Agents and the HFDF Center, they were able to determine not only that [the licensee’s] station was the source of the transmissions at issue, but also that [the licensee] had consistently caused interference to other amateur operators, by transmitting on top of and interrupting those other operators.”

Responding to the FCC’s finding that music was unlawfully transmitted, the licensee admitted that “his race relations improvement song,” commercial rock music, and segments of static were played over the air, but denied that he made such transmissions. Noting the licensee’s description of the race song as “his” song, and citing the “clear” results of the investigation, the FCC found the licensee’s denial unpersuasive.

Finding the licensee’s arguments to be without merit, the FCC stated that it had no reason to cancel, withdraw, or reduce the \$25,000 fine.

Sound of Silence: Failure to Meet Minimum Operating Standards Leads to \$5,000 Fine and Shortened License Term

The FCC proposed a \$5,000 fine for a Colorado radio licensee for discontinuing operation of its AM station without timely requesting Special Temporary Authority (“STA”) from the Commission to do so. Section 73.1740 of the FCC’s Rules requires stations to adhere to minimum operating requirements and, under Section 73.1740(a)(4), if a station is unable to operate in compliance with its license for more than 30 days, it must request authority from the FCC to remain silent. Notwithstanding the grant of such authority, if a station fails to transmit broadcast signals for any consecutive 12-month period, the station’s license expires at the end of that period pursuant to Section 213(g) of the Communications Act.

In December 2012, the licensee filed a license renewal application. On the application, the licensee responded “No” to the question of whether it had met the minimum operating schedule. It stated that none of the silent periods had lasted for 12 consecutive months, and explained that between 2009 and 2014 it was silent for five distinct periods of just under one year each. In addition, the licensee stated that it sometimes “overlooked” the requirement to request an STA to remain off the air for more than 30 days.

As it evaluated the application, the FCC was not able to locate an STA request for one of the five periods of silence. The period in question lasted for over 11 months, from December 11, 2011 to December 6, 2012. Citing the licensee's failure to file an STA for this period, and its failure to offer any explanation other than to say it "overlooked" the requirement, the FCC found that the licensee had apparently violated Section 73.1740 of the FCC's Rules. The FCC proposed a \$5,000 fine for the violation, the base fine amount for the unauthorized discontinuance of service.

The FCC also observed that during the last four years of the licensee's eight-year license term, the station was off-air for about three and one-third years, and for periods adding up to about 17 months during the time its license renewal application was pending. While acknowledging that none of these periods of silence lasted 12 consecutive months, the FCC questioned whether it should renew licenses for stations that resume operations for a short time in between long periods of silence only to avoid license termination. The FCC stated that such a practice is counter to the policy against allowing extended periods of silence, which aims to "ensure that scarce broadcast spectrum does not lie fallow and unavailable to others."

Ultimately, the FCC indicated it intended to approve the license renewal application, but only for two years instead of a full term of eight years. The FCC explained that the limited renewal period will provide it with an opportunity to review the licensee's compliance, and to take any corrective actions that may be necessary.

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

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