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## FCC Enforcement Monitor

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### *Headlines:*

- *FCC Proposes \$10,000 Fine to FM Licensee for Public Inspection File Violations*
  - *Spoofed Calls Lead to \$25,000 Fine*
  - *Wireless Licensee Agrees to Pay \$28,800 Settlement for Operating on Unauthorized Frequencies*
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### **FM Licensee Hit with \$10,000 Proposed Fine for “Extensive” Public Inspection File Violations**

The FCC proposed a \$10,000 fine against a South Carolina FM licensee for “willfully and repeatedly” failing to retain all required public inspection file documents.

Section 73.3526 of the FCC’s Rules requires each commercial broadcast station to maintain a public inspection file containing specific information related to station operations. Subsection 73.3526(e)(12) requires each radio station to place in its public file, on a quarterly basis, an Issues/Programs List that details programs that have provided the station’s most significant treatment of community issues during the preceding quarter. In addition, Section 73.2080 of the FCC’s Rules requires licensees to place in their public files annual equal employment opportunity (“EEO”) reports listing the licensee’s job vacancies and recruitment efforts.

The licensee conceded in its 2011 license renewal application that it failed to place all required public inspection file documentation in the station’s public inspection file. The licensee attached an exhibit to the application stating it did not timely place Issues/Program Lists in its public file for 18 quarters between 2004 and 2010. It further explained that eight of the Lists had since been recreated and placed in the file, but that ten could not be recreated. The licensee also stated that it had not timely placed annual EEO reports in its public file for the years 2005 and 2008.

Stating that the violations were “extensive” and lasted nearly the entire license term, the FCC graciously proposed to fine the licensee just \$10,000—the base amount for a violation of the public inspection file rule. More importantly, the FCC stated that it would grant the station’s license renewal application after

concluding the forfeiture proceeding so long as “there are no other issues . . . that would preclude grant of the application.”

### **Man Fined \$25,000 for Harassing Phone Calls**

The FCC fined a New York man for using false caller ID numbers—a practice commonly known as “spoofing”—to place harassing phone calls to his friend’s ex-wife.

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 from knowingly causing, 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.

As we reported in [FCC Enforcement Monitor](#) last summer, the National Network to End Domestic Violence contacted the FCC on behalf of one of its 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 caller 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 caller used a voice modulation feature of the spoofing service to disguise his voice, 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 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 the fine upward or downward depending on the circumstances of the violation. Citing the “egregious” nature of the violations, the FCC proposed to fine the ex-husband and the friend \$25,000 each.

The friend filed an opposition to the proposed fine, asserting that he did not intend to harm the woman, had no profit motive, and was unaware of the Truth in Caller ID Act. In upholding the \$25,000 fine, the FCC determined that harm includes not only physical or financial harm, but also emotional harm, as is caused by stalking and harassment, and that ignorance of the law is not a defense.

### **Wrong Frequency: Operating on Unauthorized Frequency Costs Wireless Licensee \$28,800**

A wireless telecommunications licensee entered into a consent decree to resolve an FCC investigation into the licensee’s operations on unauthorized frequencies. Section 1.903(a) of the FCC’s Rules prohibits the transmission of energy, communications, or signals by radio except in accordance with FCC authorization.

In July 2016, the FCC’s Wireless Telecommunications Bureau discovered that the licensee, which was authorized to operate on the 3650-3700 MHz band was instead operating on frequencies in the 3550-3650 MHz band—a band not yet available for commercial use. The FCC contacted the licensee on July 25, 2016, and ordered it to immediately cease use of the unauthorized frequencies. The parent company of the licensee responded that, following communications with FCC staff, the licensee started to migrate and disconnect customers and stopped transmitting on the unauthorized frequencies within 24 hours. The parent company

also explained that when it realized in May 2016 that some customers were receiving service on the unauthorized frequencies, it “took immediate steps to cease operations on the unauthorized frequencies, and had stopped such operations on July 26, 2016.”

During an August 2016 inspection, however, an FCC field agent found that one of the licensee’s transmitters was still operating on unauthorized frequencies. The agent notified the licensee on August 17, 2016, and the licensee immediately ceased operations on the unauthorized frequencies. Following a subsequent Enforcement Bureau inquiry and the licensee’s acknowledgment that it had operated on unauthorized frequencies at nine locations, the licensee and FCC negotiated a consent decree to resolve the investigation.

Under the terms of the consent decree, the licensee will pay a civil penalty of \$28,800. It also agreed to implement a three-year compliance plan, pursuant to which the licensee will designate a compliance officer, establish operating procedures to help ensure compliance, develop a compliance manual, and implement a training program for its employees. The consent decree also requires the licensee to file four compliance reports with the FCC over a three-year period.

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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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