

# FCC Enforcement Monitor

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## **F**CC Slaps NYC Individual with a \$404,166 Fine for Interfering with NYPD Radio Frequencies

After a unique investigation involving a television host's Twitter account, a New York Police Department investigation into criminal impersonation of a police officer, and a bomb threat to Times Square, the FCC fined a New York City man for operating on NYPD radio frequencies without authorization, malicious interference with officers' communications, and transmission of false distress calls.

Section 301 of the Communications Act prohibits the unauthorized use of any device for radio transmission of energy, communications, or signals. Section 333 of the Act prohibits willful or malicious interference with any stations licensed, authorized, or operated by the United States Government. The FCC has interpreted this to include repeated disruptions to public safety communications apparatus. In addition, Section 325(a) prohibits the utterance or transmission of "any false or fraudulent signal of distress, or communication relating thereto."

In August, 2016, the Enforcement Bureau responded to a TV host's Twitter message that stated "A man hacked into the NYPD's secure radio network to yodel repeatedly . . . ." Several weeks later, the NYPD arrested the individual, who admitted under interrogation to making the transmissions. The transmissions, which went to several NYPD precincts over the course of four months, included a bomb threat to a Times Square pharmacy, threats to harm police officers, music, and profanity.

Several months after the initial arrest, the FCC issued a Notice of Apparent Liability proposing the statutory maximum of \$19,246 for each of the 21 violations it found. The individual was found to have violated Section 301 and Section 333 for each of the nine calls he made, and the FCC found three violations of Section 325(a) (one for each of the false threats and distress calls).

Following the individual's failure to respond to the Notice, the FCC issued a Forfeiture Order to make the proposed \$404,166 fine a reality. The FCC stated in the Order that the man's actions showed deliberate disregard for "the safety of NYPD officers and the public that they are called to serve and protect."

### **FCC Proposes a \$144,344 Fine Against Pirate Radio Operator and Property Owners**

Taking a new approach, the FCC proposed a fine against not only the operator of a Florida-based unlicensed radio station, but against the owners of the property housing the station.

Section 301 of the Communications Act states that "No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio . . . except under and in accordance with this Act and with a license [granted by the FCC]." In past pirate radio actions, the FCC tended to invoke Section 301 against only the pirate radio operator. In this case, the FCC broadened the definition of a party that "use[s] or operate[s]" a station to include those who knowingly have control and access to the transmission equipment and pay for the station's utility costs.

Beginning in March 2012, the FCC tracked unlicensed transmissions emanating from the property owners' Miami residence. The FCC issued repeated Notices of Unauthorized Operation ("NOUO") against the couple and the operator. After the couple's initial NOUO, U.S. Marshals entered their property and confiscated radio transmission equipment that was found in a shed next to their home.

Despite the seizure of the equipment, repeated warnings from the FCC, and the couple's subsequent denials that anything was taking place on their property, the transmissions continued. The FCC discovered that the property owners controlled access to the property (including the transmission antenna in their backyard) and paid for all of the Internet and electricity going into the shed.

Investigators also found social media posts from one of the property owners with pictures of him and the operator inside the shed during a transmission. Also, during multiple encounters with the property owners, the FCC investigators discovered that the illegal transmissions would cease almost immediately upon their arrival at the property, only to start up again on a later date.

Investigators were able to track down the operator based on the confiscated equipment, the man's social media page, and the content of his broadcasts.

In a Notice of Apparent Liability issued against both the operator and the property owners, the FCC proposed the statutory maximum fine of \$144,344 and held all of the parties jointly and severally liable. The FCC found the property owners to be apparent willful participants in the unauthorized operations because, despite knowledge of wrongdoing and exclusive control over access to the

property, they continued to provide access and services necessary for the broadcasts beyond those consistent with a standard landlord-tenant relationship. The FCC's proposed fine fits into a recent pattern of strong actions against pirate radio operators.

### **Company Fined \$25,000 for Private Land Mobile Radio Violations**

The FCC fined a California private land mobile radio ("PLMR") station licensee \$25,000 for monopolizing frequencies which it shared with other co-channel stations and for failing to regularly transmit station identification information.

PLMR is often used for public safety activities, land transportation, and industrial logistics. There are currently over 400,000 PLMR licensees operating in the United States, and stations are generally required to share frequencies with other PLMR stations. Part 90 of the FCC's Rules addresses the operation of such systems. Section 90.403(c) prohibits a single station's continuous use of a channel unless it has been granted exclusive use. Section 90.403(e) states that "[l]icensees shall take reasonable precautions to avoid causing harmful interference. This includes monitoring the transmitting frequency... and such other measures as may be necessary to minimize the potential for causing interference." Also, Section 90.425(a) requires a PLMR station to identify itself by its call sign during each transmission exchange or once every 15 minutes during continuous use.

The investigation into the station began when the FCC responded to a complaint from one of its co-channel licensees, whose own use of the shared frequency was almost completely blocked due to the station's continuous operation. After receiving a verbal warning and committing to correct the violations, the licensee shifted its continuous radio operations to a different shared frequency. When that led to the licensee receiving a Notice of Violation, it shifted back to the initial frequency, and resumed continuous operations, once again failing to make required station identifications.

Upon receiving a Notice of Apparent Liability, the licensee alleged that it had been acting at the behest of the prime contractor of a project on which it was working. The licensee claimed that the prime contractor initially convinced it to obtain the license and when the contractor first heard of the complaints, the station was stripped of access to its own transmitter, preventing the station from taking corrective action.

In response, the FCC issued a Forfeiture Order, and reminded the PLMR operator that despite the alleged actions of the prime contractor, "licensees are charged with full knowledge of, and compliance with, the Commission's Rules." The Order specified the base fines of \$4,000 for failure to minimize transmissions, \$7,000 for harmful interference to a co-channel station, and \$4,000 for repeated failures to transmit the station's call sign, for a total base fine of \$15,000. The FCC then adjusted this amount upward to \$25,000 in response to the licensee's continued unlawful operation of the station for at least 90 days after receiving the Notice of Violation.