

## Pirates, Pirates Everywhere - Fines Up to \$25,000 for Unlicensed Radio Stations

February 2, 2012 by David Oxenford

For an industry that some say is about to be made obsolete because of its digital competition, there are still many people who want a piece of the FM spectrum. We've written much about the contest between LPFM and translator proponents seeking their piece of FM spectrum - a contest that we should see resolved by the FCC in the very near future. One topic that we have not written much about is "**pirate radio**," stations that operate illegally - without FCC authority. This week, the FCC issued several orders, **fining individuals up to \$25,000 for operating pirate radio stations** in various places around the country (see decisions [here](#) and [here](#), and two other fines of \$20,000 or more noted below). Pirate radio has been and remains a big problem for many broadcasters and, despite the fines in cases like this, pirates seem to continue to crop up - especially in urban markets.

The pirate radio problem has always been with broadcasters. In the past there was both the romance of the outlaw radio operator and concerns over the snake oil salesmen who were broadcasting from stations in Mexico, and there was a famous religious broadcaster who lost a battle with the FCC over the Fairness Doctrine in connection with a real radio station and then resumed operations from a boat off the coast of New Jersey. But in the last 20 years pirates have been much more localized, low power operators, trying to reach audiences largely in urban areas. Despite a series of court decisions rejecting any First Amendment claim of pirates, and denying any claim that these low-power, local stations did not implicate the FCC's power over interstate commerce regulation, pirates have never gone away. In many ways, the FCC introduced the concept of Low Power FM stations in the 1990s as a way to provide an outlet for those who might otherwise be inclined to operate an unlicensed station. In fact, one of the big arguments at the time of the initiation of LPFM was whether former pirate radio operators should be allowed to apply for LPFM stations.

But LPFM has never stemmed the pirate radio tide, as these stations keep cropping up all over the country. Perhaps LPFM has not been rolled out fast enough, or perhaps it simply is easier to just throw up a pirate station, rather than having to wait for the FCC processes - which, in the end, may not allow for a radio station in a particular community anyway because of interference concerns. The interference concerns are, of course, the biggest issue - as many full-power stations, which have been purchased for significant sums and which have large audiences, can have real issues reaching these audiences because of pirate radio stations. The pirates can also threaten public safety, as was the case with [one pirate fined \\$20,000 last week for operating an illegal station](#) that was causing interference to frequencies adjacent to the FM band that are used for FAA purposes.

So what can be done besides waiting for FCC enforcement, which can take time given the limited FCC staff in field offices and the multitude of activities that they must perform - and the

difficulty of playing "whack-a-mole" with pirate stations who may shut down in one location, only to reemerge elsewhere a day or two later? (see this [case decided last week](#), where a pirate was fined once by the FCC, only to start up operations a second time, leading to a \$25,000 fine as a repeat operator). Some states, including Florida, New Jersey and New York have enacted state laws that make operation of a pirate radio station a state crime, so that state and local police can assist in enforcement. In some cases, that has worked very well, but local law enforcement is also tasked with many other priorities and they may not be as familiar with this crime as they would be with issues that they deal with on an every day basis.

So what is the broadcaster who is facing interference or competition from a pirate to do? First, he needs to be active in pursuing the matter, providing as much information as possible to the Federal authorities (and to state authorities where state laws apply). Find out where the illegal signal is originating. Look for other evidence of the operation (in one case in which a client of mine was involved, the pirate went so far as to have a website advertising its operations). In some cases where owners can be identified, civil suits from owners of program content (like music rights holders) can also be brought to bear. And don't give up, as authorities will usually act when provided enough information about the illegal operations, as these recent cases demonstrate.

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